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Dear Mr Thorley

Examination of the Amber Valley Local Plan part 1 – the Core Strategy

As indicated at the hearing session on 1 May, I consider it necessary to suspend the examination of the plan to enable the Council to carry out certain pieces of further work. These are set out beneath under points 1-3. I cover the procedural aspects of the suspension at point 4.

1 Objectively assessed housing need

My letter to the Council dated 7 April 2014 concluded that Fig 14 of the sensitivity testing carried out by GL Hearn on behalf of the three Housing Market Area (HMA) authorities is likely to provide a sound assessment of housing needs for the period 2011-28.

As was accepted at the hearing on 1 May, the adjusted need figures set out in Fig 14 will require the HMA authorities to revisit the Duty-to-Cooperate (DtC) to review the way in which the City of Derby's increased unmet needs should be distributed between Amber Valley and South Derbyshire, bearing in mind agreement that Derby's ability to meet its own needs is capped by its fixed physical capacity.

Encouragingly, the 3 authorities expressed a continuing positive approach to this re-visiting of the DtC. However, in doing so the HMA authorities will also need to consider very carefully the extent to which re-consultation with other neighbouring authorities may be necessary in order to satisfy the legal duty or the soundness test of 'positive preparation'.

Employing the figures from Fig 14, the Amber Valley requirement for the period 2011-28 is as follows:

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Amber Valley Local Plan Part 1 Core Strategy – Examination

Borough's assessed needs: 17yrs x 435pa	7395
Borough's contribution to Derby's needs, as in submitted plan (* this element requires joint HMA reconsideration under the DtC)	1074*
Total requirement 2011-28 (subject to DtC review as above)	8469* (498pa)
<u>Borough's 5-year housing land requirement:</u>	
5-yr basic annual average 498 x 5 (subject to DtC review)	2490
plus	
(1) deficit accrued 2011-14, ie 1494 (498 x 3) minus 694 completions in those years, to be made up within the first 5 years where possible [national Planning Policy Guidance (PPG) on Housing and Economic Land Availability Assessment, Methodology Stage 5, para 035]	800
(2) 20% buffer brought forward into first 5 years for persistent under-delivery [National Planning Policy Framework (NPPF) para 47]	498
Total (*subject to DtC review as above)	3788*

I have considered the views expressed about requiring further additions to the supply to make up for the deficit in house-building which occurred in 2008-11. However, in my view the Strategic Market Assessment (SHMA), subject to the sensitivity testing undertaken in March 2014, can be considered an adequate base point for capturing and then projecting forward the overall needs existing at around the time of the 2011 Census. Although the census may have reflected an element of suppressed household formation resulting from the economic downturn, the sensitivity tests allow for a phased return to less suppressed levels.

The land requirement summarised above includes an allowance to enable the shortfall in 2011-14 to be made up by 2018/19, in accordance with national PPG as well as a 20% buffer for persistent under-delivery in accordance with the NPPF. Provision on that scale should ensure that land supply in Amber Valley would not be a constraining factor preventing either the significant boost to house-building sought by the NPPF or the potential for increased household formation.

I conclude that no further addition to the above supply is necessary to compensate for deficits in 2008-11 against the former Regional Spatial Strategy. Although those years were nominally the first 3 of the plan I am not convinced that any other aspects of the strategy, such as its retail and employment land policies, would be undermined or made unsound in any identifiably material way by rebasing the housing provision from 2011. In any case, alongside the content of the core strategy major retail proposals often require the preparation of impact studies based on data current at the time, while the detailed review of employment land allocations has been delegated to the forthcoming part 2 plan so any necessary

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revisiting of the broad-brush data behind the Employment Land Review could be undertaken in that context.

By the time of its adoption the plan's forward view would be less than the 'preferably 15-year time horizon' indicated in the NPPF. However, I do not consider it essential to lengthen the plan's time horizon at this point in the process since monitoring of the plan is bound to point to the need for its review well within its period to take account of housing outputs and future household projections and to provide a firm basis for rolling forward the 5-year supply.

2 5-year housing land supply

As explained beneath, I have serious concern that the plan does not provide a secure 5-year housing land supply and is not consistent with national policy in that respect.

The National Planning Policy Framework (NPPF) requires (para 47) that in order to bring about a significant boost to the supply of housing, local planning authorities should identify specific 'deliverable sites' sufficient to provide a 5-year supply of housing land against their housing requirements. 'Deliverable sites' are defined as ones which are '*available now, offer a suitable location for development now, and are achievable with a realistic prospect that housing will be delivered on the site within 5 years and in particular that development is viable*'. Sites with planning permission are to be considered deliverable until permission expires '*unless there is clear evidence that schemes will not be implemented within 5 years, for example they will not be viable, there is no longer a demand for the type of units, or sites have long term phasing plans.*']

The national PPG states at para 008 ref ID12-008 that a Council's policies will not be considered up-to-date if the existence of a 5-year supply of deliverable housing sites cannot be demonstrated. It therefore follows that a plan would be unlikely to be sound (and therefore appropriate to proceed to adoption) in such circumstances.

Until the revised distribution of Derby's unsatisfied needs has been determined (see point 1 above) the precise target for Amber Valley's 5-year supply remains unknown. However, in the meantime, I have considered the views expressed by the Council and others about the likely deliverability of the sites in Amber Valley's 5-year supply update of the position as at 31.3.14, as against a provisional need of 3,788. I also visited a certain number of sites in the schedules, although by no means all. I deal below with the categories of sites identified by the Council.

Allocated sites with planning permission

The Council estimates that these sites will deliver 1022 completions by 2018/19. Most are under construction or have full planning permission and may be able to perform as indicated. However, the Middlebrook Transport site is still in active use and only has outline planning permission so it may be optimistic to assume that 50 completions are likely to occur within the period. Coppice Farm only has outline permission and still has to be sold to a house builder, so may not be able to deliver as many as 220 by 2018/19, while a contribution of the same size at Outseats Farm may also be slightly optimistic by the timescales discussed at the examination. Reliable completions from this category of sites may in the order of 900-950.

Larger brownfield sites with planning permission

The Council estimates that such sites would yield some 614 dwellings by 2018/19. However, there appear to be significant uncertainties associated with some of these. Many have not progressed beyond outline permissions granted some time ago. Some examples of sites whose actual availability was questioned without any convincing reply are QES Ripley, the former Evans Concrete, Ripley (now in another commercial use), Heanor Haulage (a location of limited attractiveness and unknown availability), and a number of other sites (eg Leabrooks Club; Station Road and other sites in Langley Mill; Parkside Close, Ironville). I also saw that the site at Newlands Drive, Riddings, if actually available, would require considerable clearance. This is not a comprehensive picture of the sites in this category, but overall it appears on present evidence that the actual yield could be considerably less than estimated, possibly in the region of 400.

Larger unallocated greenfield sites with planning permission

These sites are mainly either under construction or being progressed towards commencement by local house-builders. From the available evidence there is nothing to suggest that the indicated total of 335 completions could not occur by 2018/19 even if there were to be some internal slippage within the 5 years.

Small brownfield windfall sites

The Council's estimate of 250 (50pa) from this source by 2018/19 seems reasonable.

Small greenfield sites with planning permission

The Council's estimate of 80 (16pa) within the period from this source also appears reasonable.

Sites with resolution to grant planning permission subject to S106 agreement

The Council's update paper estimates some 519 completions from these 7 sites. A number of them have been progressing only slowly, even towards outline planning permission, and some questions were raised about the viability and attractiveness of certain sites. In my view it would be prudent to assume some slippage in delivery by these sites, relying upon no more than 400 from these sources within 5 years.

Local Plan allocations without planning permission or resolution to grant planning permission subject to S106 agreement

The Council suggests 207 completions on these 5 sites by 2018/19. However, two (at Duffield and Langley Mill) have been allocated since 2006 but have not yet reached the stage of a planning application. Another of the larger sites (Milford Mills, at a pivotal position in the World Heritage Site) is the subject of an application submitted in 2006 which has not yet been determined, although a decision is described as 'pending'. From what was said about the waste disposal site at Pye Bridge this is a smaller site which may be of little attraction. All in all, on present

evidence the 5-year contributions from this group of sites appear significantly optimistic, with delivery perhaps only in the region of 100.

Strategic sites without planning permission

The Council estimates some 890 5-year completions from the strategic allocations.

Land north of Denby (SG3) – from all the evidence presented, this is capable in principle of being a sound and realisable large-scale allocation, subject to some modification covering the matters covered at the hearing about which I will shortly write to the Council separately. However, the estimated completion of 486 dwellings by 2018/19 appears over-optimistic in view of the likely lead times necessary for obtaining outline planning permission, signing appropriate agreements/undertakings, approving the necessary remediation programme for the tar pits, resolving the issues associated with 17 different ownerships (possibly requiring a compulsory purchase order), disposing of land to house-builders who would then need to obtain their own reserved matters approvals, and installing the necessary early stages of infrastructure. It may be realistic to assume the delivery of up to 120 homes by 2018/19 on the frontage land owned by an individual owner willing and able to make early progress. However, that is likely to be the maximum contribution from this site which can be relied upon with a sufficient degree of certainty within 5 years.

Alfreton Road, Codnor (SG2) and Nottingham Road, Ripley (SG7) – under point 3 below I conclude that there is a need for the production of more clearly reasoned and focused evidence concerning the ‘exceptional circumstances’ for removing this land from the Green Belt. The soundness of allocating these sites remains dependent upon that. Subject to that, there would be tight timetables and challenges to meet on approvals, securing the County Council’s participation as a landowner, guaranteeing assured and affordable forward capital-funding of the road, completing disposals to house-builders and their securing of reserved matters approvals.

In view of the above factors I consider it appropriate to be cautious about the deliverability of more than a combined total of about 450 completions in the 5-year period at sites SG2, SG3, SG4 and SG7.

Sites in the Strategic Housing Land Availability Assessment (SHLAA)

In its recent housing land supply update statement (April 2014) the Council pointed to a number of SHLAA sites which it sought to include within the 5-year land supply, suggesting that they could produce as many as 1,651 completions within the period. There could be some circumstances in which such sites may be considered to meet the NPPF definition of deliverability. However, the SHLAA itself identifies the great importance of noting that this is a piece of evidence, not an allocations document, that inclusion of a site does not imply that planning permission should be granted for any specific use, and that allocations are to be made through the Development Plan.

Most of the sites identified by the Council are greenfield sites for which planning applications have not yet been submitted but were said to be being ‘pursued’. In many cases planning permission on such sites would be outside present planning

policy for the Borough; moreover, it can reasonably be supposed that many such applications would raise the kinds of site-specific issues to which the SHLAA itself refers and arouse at least some public opposition, in some cases possibly a great deal. It would therefore tend to be premature, without further firm evidence, to count such greenfield sites as part of an assured supply with a reasonable prospect of delivery within the period.

A smaller number of the SHLAA sites are brownfield, although not necessarily within the defined urban areas. The majority of the larger ones are again at pre-application stage. If firm convincing evidence can be brought forward to justify a conclusion that a SHLAA site would have a reasonable prospect of contributing within the period it could be possible to take account of them, but there is a danger of the plan-preparation process being perceived as being bypassed if such sites were to be relied upon to a significant degree.

If any sites in the SHLAA are able to make truly deliverable contributions within 5 years it would be more in keeping with a plan-led system to introduce the larger ones into the core strategy as strategic allocations or, in the case of the smaller sites, to consider including them as part of the provision to be made through the forthcoming Site Allocations Plan.

Overall conclusion

From the nature of the evidence which was available it is difficult to assess precisely how far the stock of truly deliverable housing land falls short of the interim 5-year requirement referred to above. However, I am in no doubt that the Council is currently unable to demonstrate the existence of a secure deliverable 5-year supply: on present evidence that supply appears to be somewhere in the region of 3,000. The submitted plan is incapable of progressing to adoption until this is remedied. The Council therefore needs to identify and bring forward further strategic allocations to deal with this shortfall. If necessary this may require exercising flexibility about the minimum size for such allocations. While not departing too far from the strategy of concentrating on the main towns it may also be helpful to select sites from a slightly wider range of locations as this would provide more market choice and probably speed take-up and delivery.

The successful identification of a secure 5-year supply would safeguard Amber Valley against unwelcome applications on sites not allocated in accordance with the adopted plan. However, the evidence base for the 5-year supply needs to be realistic, transparent and unambiguous. Reliance should not be placed upon sites which (in all the circumstances) are unlikely to meet the requirement of the NPPF for a 'realistic prospect' of delivery. Other advice on availability is included in Planning Practice Guidance paras 3-020/023. The Council will therefore need to adopt a carefully informed and critical approach to the inclusion of individual sites within the supply, avoiding insufficiently founded assumptions or undue optimism. It would also be prudent not to adopt too minimalist an approach to the new allocations since the significant boost to supply sought by the NPPF (and a secure 5-year supply) is probably more achievable by allocating a larger number of suitable sites at a greater variety of locations rather than placing too much reliance on a smaller number of sites at fewer locations.

3 Policy SS11 (amendments to the Green Belt), policy IN4 (the proposed new A610 relief road) and policies SG2 and SG7 (the strategic allocations at Alfreton Road, Codnor and Nottingham Road, Ripley)

As discussed at the hearings, NPPF (paragraph 83) requires the identification of 'exceptional circumstances' to justify the alteration of Green Belt boundaries through a review of the Local Plan. The recent High Court case of Gallagher Homes Ltd & Solihull MBC reinforces that this is a stringent test and reiterates the importance of ensuring that reasons for any decision concerning exceptional circumstances are clearly and unambiguously identified and explained.

The Core Strategy identifies exceptional circumstances for deleting land from the Green Belt at Ripley and Codnor in the first paragraph of section 6.15. This states that the provision of the new link road will relieve congestion on the A610 and improve the east-west link between the A6/A38 and the M1, thereby '*enabling* (my emphasis) the provision of new housing development and the development of high quality employment land, which will help to improve the local economy.'

This chain of reasoning appears to be the wrong way round. The Council accepted at the hearing that there are sufficient candidate sites to meet Amber Valley's housing and employment land needs without the requirement to consider removing land from the Green Belt. Consequently, the main 'exceptional circumstance' identified by the Council appears to be that the long-planned new road (otherwise unlikely to be funded within any foreseeable timescale) could be enabled by funding generated if sites SG2 and SG7 were to be released from the Green Belt for development. The new housing and employment land would contribute towards the Borough's needs, but those needs are not in themselves presented as the 'exceptional circumstance' justifying the proposed alteration to the Green Belt.

I therefore conclude that the plan needs to be supported by a new, stand-alone statement of evidence about the current perceived need for this piece of highway infrastructure. Since that need is the fundamental factor behind the existence or otherwise of 'exceptional circumstances', such evidence should place less emphasis on the length of time during which the road has been 'on the stocks' as a planned proposal and more upon the current perceived need for it. This would include (a) the specific evidenced reasons why the existing Ripley – Woodlinkin section of the A610 is unable to fulfil the particular role and purpose it is intended to serve as compared with the already improved sections of the route which, as I have seen, represent the greater part of its overall length, and b) the material improvements which the diverted route would bring in those respects.

It is not my role as part of the examination to consider the new road's design in great detail, as shown in the current planning applications. However, the new evidence should provide sufficient information about (c) whether or not the current intended design/width/specification of the new link (including the number and position of its junctions with roads serving the new areas of development) would allow the route to fulfil its intended purpose as an improved section of the A610, as identified under (a). It should also (d) demonstrate clearly that the associated developments will be able to generate the level of funding required to complete the new link, thereby providing assurance that the outcome expected by the identified 'exceptional circumstances' is capable of being delivered.

If such evidence can be clearly formulated, the Council would need to use it as a foundation for proposing changes to appropriate sections of the Core Strategy, identifying the 'exceptional circumstances' for altering the Green Belt boundaries for the housing/employment development and the bypass which it would enable.

4 Procedural matters

The Council will now need to take action to bring forward proposals for changes to the plan covering points 1-3 above. Such changes will of course require a revised sustainability appraisal and consultations including a period of advertisement for 6 weeks during which representations may be made for consideration at resumed hearings. It is not appropriate for me to set a precise date for those hearings now, although it was suggested at the hearing on 1 May that this should be no later than November, since 6 months is usually regarded as the maximum period for suspension.

I would be grateful if the Council can now draw up a draft timetable for the work to be undertaken. This will need to include sufficient time at the end for the Council to sort representations about the proposed changes into groups related to particular sites or policies, which will greatly facilitate my absorption of their contents. Sufficient time will also need to be included for me to prepare and circulate agendas before the hearings sessions. Please be in contact with the Programme Officer as soon as possible about this draft programme.

If they contribute to a sound plan the above changes will clearly have to be advertised after the hearings as Main Modifications. The Council has, of course, already prepared a schedule of Main Modifications concerning certain other matters raised in my initial soundness concerns and questions. Most of these would remain appropriate to be taken forward and advertised at the formal Main Modifications stage subject to the comments in brackets beneath*.

*[MM1 will need further change in the light of point 1 of this letter. However, the Council should also check whether any of the changes proposed as a result of this letter require other consequential amendments to the MMs.

MM12: It has been agreed that the words '...in the countryside unless....' should be replaced by '..if..'

MM13-MM14: I have agreed with the Council that these are unnecessary.

MM17 may not be consistent with the resolution to grant planning permission for part of the SG7 site fronting Nottingham Road. This will require checking.]

Two further matters arose from discussion of the Main Modifications on 2 May. Concerning MM24-25, it was agreed that the suspension provides an opportunity to review their current content in order to secure conformity of policy R1 with the Government's recent announcement of its conclusions on its review of housing standards. Similarly, concerning policy E6, the suspension gives time to put forward suitable new material on ecological networks. As these matters will cover totally new material the Council should include their proposals on both of the above matters in its revised sustainability appraisal and in their consultations so that they can, if necessary, be considered after the suspension.

Roy Foster

Inspector