Consultation Responses
Ashover Neighbourhood Plan
Submission Draft July 2017

Respondent 1:
Joseph Drewry from Environment Agency

Response:
The Environment Agency previously replied to the Ashover Draft Neighbourhood Plan on the 8th March 2016. At this time, specific housing allocations made up part of the Neighbourhood Plan and we had comments on the proposed housing allocation at Fallgate. As the housing allocations are no longer part of the Neighbourhood Plan, then these comments are now no longer applicable.

The Environment Agency also commented on the proposed Biodiversity policy, which is now AP 19. We are happy to see that the majority of suggestions for the rewording of the condition have now been incorporated within the policy.

Therefore, the Environment Agency has no further comments to make on this Ashover Parish Neighbourhood Plan Pre Submission.

Respondent 2:
Clive Fletcher from Historic England

Response:
Your Neighbourhood Plan falls within Ashover Village conservation area and includes a number of designated heritage assets including 1 GI listed building, 83 GII listed buildings and 1 scheduled ancient monument. It will be important that the strategy you put together for this area safeguards those elements which contribute to the importance of those historic assets. This will assist in ensuring they can be enjoyed by future generations of the area and make sure it is in line with national planning policy.

The conservation officer at [NEDDC] is the best placed person to assist you in the development of your Neighbourhood Plan They can help you to consider how the strategy might address the area’s heritage assets. At this point we don’t consider there is a need for Historic England to be involved in the development of the strategy for your area.

If you have not already done so, we would recommend that you speak to the staff at Derbyshire County Council who look after the Historic Environment Record and give advice on archaeological matters. They should be able to provide details of not only any designated heritage assets but also locally-important buildings, archaeological remains and landscapes. Some Historic Environment Records may also be available on-line via the Heritage Gateway (www.heritagegateway.org.uk). It may also be useful to involve local voluntary groups such as the local Civic Society, local history groups, building preservation trusts, etc. in the production of your Neighbourhood Plan.
Your local authority might also be able to provide you with general support in the production of your Neighbourhood Plan. National Planning Practice Guidance is clear that where it is relevant, Neighbourhood Plans need to include enough information about local heritage to guide planning decisions and to put broader strategic heritage policies from the local authority’s local plan into action at a neighbourhood scale. If appropriate this should include enough information about local non-designated heritage assets including sites of archaeological interest to guide decisions.

Further information and guidance on how heritage can best be incorporated into Neighbourhood Plans has been produced by Historic England. This sign posts a number of other documents which your community might find useful in helping to identify what it is about your area which makes it distinctive and how you might go about ensuring that the character of the area is retained. These can be found at: http://www.historicengland.org.uk/advice/planning/plan-making/improve-yourneighbourhood/

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**Respondent 3:**

Adrian Chadha from Highways England

**Response:**

Highways England welcomes the opportunity to comment on the Ashover Neighbourhood Development Plan that covers the period 2016-2033. It is noted that the document provides a vision for the future of the Parish of Ashover and sets out a number of key objectives and planning policies which will be used to help determine planning applications.

Highways England has been appointed by the Secretary of State for Transport as strategic highway company under the provisions of the Infrastructure Act 2015 and is the highway authority, traffic authority and street authority for the Strategic Road Network (SRN). It is the role of Highways England to maintain the safe and efficient operation of the SRN whilst acting as a delivery partner to national economic growth. In relation to the Ashover Neighbourhood Plan, Highways England’s principal interest is safeguarding the operation of the M1, which routes approximately 9 miles to the east, whilst the A38 routes approximately 8 miles to the south of the Neighbourhood Plan area.

Highways England understands that a Neighbourhood Plan is required to be in conformity with relevant national and Borough-wide planning policies. Accordingly the Neighbourhood Plan for Ashover is required to be in conformity with the emerging North East Derbyshire Local Plan (NEDLP) and this is recognised within the document.

It is noted that planning permission has been granted for a total of 50 new dwellings to come forward across the Neighbourhood Plan area. It is expected that limited further development will come forward with the North East Derbyshire Local Plan document not proposing any specific housing requirements for the Parish and stating that development will be limited to small infill sites to meet local needs.
Highways England considers that due to the small scale of development being proposed, and the distance of the Neighbourhood Plan from the SRN, that there will be no impacts upon the operation of Highways England’s network.

**Respondent 4:**
Daniel Sellers

**Response:**
Agree with plan objectives:

1. Ensure that development takes place in the most sustainable location. Encourage the right types of development that meet local needs.
2. Conserve and enhance heritage assets and their settings.
3. Protect important community facilities and shops.
4. Promote high quality design in new development.
5. Protect the countryside and special landscape.
6. Protect open spaces that are important to the community and/or wildlife. Seek ways of addressing the problems of traffic congestion.

I feel it is important that new development maintains the setting/character/local distinctiveness.

I agree with the requirement to support sustainable development.

I agree with all the Neighbourhood Plan Policies. I especially agree with Policies AP11 (design) and Listed Buildings (AP12).

I feel it is important that Listed Buildings are used & maintained to stop them becoming derelict.

It is also important that new development preserves & enhances the natural and built environment.

I support the Local Green Space submissions.

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**Respondent 5:**
Amec Foster Wheeler on behalf of National Grid

**Response:**
National Grid has appointed Amec Foster Wheeler to review and respond to development plan consultations on its behalf. We are instructed by our client to submit the following representation with regards to the above Neighbourhood Plan consultation.

**About National Grid**

National Grid owns and operates the high voltage electricity transmission system in England and Wales and operate the Scottish high voltage transmission system. National Grid also owns and operates the gas transmission system. In the UK, gas leaves the transmission system and enters the distribution networks at high pressure. It is then transported through a number of reducing pressure
tiers until it is finally delivered to our customers. National Grid own four of the UK’s gas distribution networks and transport gas to 11 million homes, schools and businesses through 81,000 miles of gas pipelines within North West, East of England, West Midlands and North London.

To help ensure the continued safe operation of existing sites and equipment and to facilitate future infrastructure investment, National Grid wishes to be involved in the preparation, alteration and review of plans and strategies which may affect our assets.

Specific Comments

An assessment has been carried out with respect to National Grid’s electricity and gas transmission apparatus which includes high voltage electricity assets and high pressure gas pipelines, and also National Grid Gas Distribution’s Intermediate and High Pressure apparatus.

National Grid has identified that it has no record of such apparatus within the Neighbourhood Plan area.

Gas Distribution – Low / Medium Pressure

Whilst there are no implications for National Grid Gas Distribution’s Intermediate / High Pressure apparatus, there may however be Low Pressure (LP) / Medium Pressure (MP) Gas Distribution pipes present within proposed development sites. If further information is required in relation to the Gas Distribution network please contact plantprotection@nationalgrid.com

Respondent 6:
Carolyn Garnham

Response:

I am a resident of Farhill just outside of Ashover.

Overall I think it is a very good and well thought out plan/

Inevitably, I am contacting you because I have a negative comment about one part of it, for which I apologise. I appreciate all your work and sensitivity.

Tranquillity is identified as an important part of the neighbourhood character, but in fact Ashover can be a very noisy place indeed at times, and after a recent discussion with the environmental office I understand that it could potentially be a lot noisier, as new owners of the motocross site allow it full usage to exceed the hitherto experienced norm.

It seems as though there are few actual curbs effective on noisy sports within the area, and multiple such developments could spring up without any regard for the actual ACCUMULATION of time periods of noise.

For example motocross has been a 6 day a year activity, but could now increase, and be accompanied by regular shooting. Additionally, reckless motoring seems to me to be at least as important as traffic congestion. Having children here makes me sensitive o bikes and cars driven with no regard for pedestrian safety or excessive noise, and this seems a regular vent in the region of the village. There have also been drones overflying residences on a number of occasions.
There are also no curbs on the number of late night commercially run parties at the Ashover showground, in marquees (sounds like a rock festival, and you can hear every word of the music!) which have run into the small hours several times.

Overall, we have to do more to (at least) protect the existing levels of tranquillity we so enjoy here, and make sure that noisy sport activities do not actually increase.

**Respondent 7:**
Helen Boffy

**Response:**
I am writing to advise the NEDDC my views on the draft Ashover Neighbourhood Plan which is currently out to public consultation.

I would like it to be recorded that I fully support all aspects of the draft Ashover Neighbourhood Plan. The plan reflects my views on how future development in the Parish should be managed/controlled. I agree that there should be some development but it should be managed in a sensible way.

I trust that the independent Examiner and the District Council will be made aware of this response and that the Plan is approved to make the Ashover NP part of the development plan for the district.

I also hope that the development plan is finalised and adopted as soon as possible.

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**Respondent 8:**
David Boffy

**Response:**
I am writing to advise the NEDDC my views on the draft Ashover Neighbourhood Plan which is currently out to public consultation.

I would like it to be recorded that I fully support all aspects of the draft Ashover Neighbourhood Plan. I believe that the plan reflects my views on how future development in the Parish should be managed/controlled. I agree that there should be some development but it should be managed in a sensible way.

I trust that the independent Examiner and the District Council will be made aware of this response and that the Plan is approved to make the Ashover NP part of the development plan for the district.

I also hope that the development plan is finalised and adopted as soon as possible.
**Respondent 9:**

Christopher Pratt

**Response:**

With reference to the submitted Ashover Neighbourhood Plan I would like to make the following comment...

The Neighbourhood Plan is good for Ashover because it has given the community an opportunity to say what happens regarding new development in the parish regarding location, types of building etc. We must endeavour to protect as much as possible for future generations and at the same time do our bit towards the districts housing needs. I feel that this has been achieved and fully support it.

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**Respondent 10:**

Muriel Pratt

**Response:**

I would like to comment on the Ashover Neighbourhood Plan.

The Neighbourhood Plan is a good guide directed by people of Ashover. We understand we have to contribute to the districts housing numbers and we believe this has been addressed by consultation with the community and identifying suitable sites which do not detract from the identity of the village.

On the question of windfall sites I believe when assessing what happens to these it should not automatically be 4 bed dwellings but consideration should be given to people's opinion that if there is a shortfall it is for smaller houses or bungalows.

I fully endorse the contents of this plan and believe it should be put into force as soon as possible.

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**Respondent 11:**

Jane Hardwick

**Response:**

I am in support of the Ashover Neighbourhood Plan. I support the proposed SDLs and suggest strongly that these should be taken forward to the Local Plan.

I support that any future housing should be low density and that the settlement gaps between Ashover, Kelstedge, Milltown and Fallgate are very important and must be maintained.

I agree with the statement that residents of Ashover parish have a strong sense of pride and connection with the countryside and as such urban style development must not destroy this.

Development in the countryside should be very strictly controlled.
I support the statement that windfall sites should not all go to large detached houses, just because there is more profit to be made. If bungalows for the elderly and small family homes are identified as what is required then windfall sites should take this into account. Second homes should be discouraged.

Since the Plan has been written a further application for 10 bungalows has been passed and this too should be taken into account.

Any affordable houses built should only go to people with a local connection.

I support the statements that tranquillity, countryside and dark skies are very important to Ashover and must be protected strongly.

Noisy sports must be strictly controlled.

To sum up I am in support of the Plan and hope it can swiftly move through the process now with no further holdups.

Respondent 12:
Christine Brocksopp

Response:
I want to express my wholehearted support for this plan.

It has consulted the community at all stages and has given the community ample opportunity to have input. This plan reflects the wishes of the community.

Respondent 13:
David Dale – Derbyshire County Council

Response:
The comments below are Derbyshire County Council’s Member and Officer technical comments with regard to the housing, renewable energy and dark skies aspects of the Plan.

Local Member Comments: Councillor Barry Lewis, the Local County Council Member for Wingerworth and Shirland Electoral Division has been consulted.

Officer Comments

General: To aid referencing, DCC would suggest that it would be helpful to add paragraph numbers throughout the document.

Housing: DCC has now assessed the Submission Draft against the housing comments it made on the Pre-Submission Draft and welcomes the fact that apart from the comment on Page 22 of the Affordable Housing section all its other comments have been fully taken into account, as follows:
4. The Plan, Its Purpose and What We Want To Achieve: This has been updated to reflect the comment DCC made that the Neighbourhood Plan period should be extended up to 2033, to be consistent with the Plan period of the North East Derbyshire Local Plan Consultation Draft.

7. Ashover Neighbourhood Plan Policies

7.1 Spatial Strategy: The Development Strategy has been appropriately updated to address DCC’s comments on the Pre-Submission Draft and to include the Settlement Hierarchy definitions relevant to Ashover Parish set out in the LPCD, which defines Ashover and Kelstedge as being Level 3: Settlements with Limited Sustainability and Alton, Fallgate and Littlemore as Level 4: Very Small Villages and Hamlets with Very Limited Sustainability. In both the level 3 and 4 settlements, the LPCD does not set out a housing requirement for these settlements. The requirements of the LPCD have been appropriately incorporated in revisions to Section 7.1 Spatial Strategy, Section 7.2.1: Housing Growth, and Section 7.2.3: Housing Allocations which set out the LPCD hierarchy and state that the APNP does not make any specific housing allocations.

7.2 Housing Development and Meeting Housing Need

7.2.1 Housing Growth: DCC also commented on the Housing Growth Section of the Pre-Submission Draft that the methodology for setting out a housing requirement for the APNP area was rudimentary (based on the Parish’s proportion of the 2011 census figure) and was based on an outdated District housing requirement figure set out in the North East Derbyshire Local Plan Initial Draft (2015). This has been addressed in the Submission Draft as no reference is now made to a housing requirement for the Parish, consistent with the requirements of the LPCD which does not identify a housing requirement for Level 3 and Level 4 settlements.

7.2.5 Affordable Housing: On page 22, DCC would reaffirm its previous concerns about the reference being made to development proposals for new housing comprising 10 or more dwellings to provide at least 40% on site affordable housing. It should be noted that the LPCD actually states that there is a requirement for affordable housing to be provided in developments of more than 10 dwellings, which reflects the order of the Court of Appeal decision on 13 May 2016, which gave legal effect to the policy set out in the Government’s Written Ministerial Statement of 28 November 2014, that developer contributions (including affordable housing) should not be sought from developments of 10 units or less and which have a maximum combined gross floorspace of no more than 1,000 square metres. This needs to be amended in the background text on page 22 to be consistent with both national and emerging Local Plan policy requirements.

7.6 Landscape, Green Spaces and the Natural Environment

7.6.6 Renewable Energy and Low Carbon Technologies: DCC welcomes the adoption of its suggested wording amendments to the Pre-Submission Draft supporting text and the associated policy (AP19).

7.6.8 Dark Skies: DCC also welcomes the adoption in the Submission Draft of its suggested addition of a dark skies policy (AP21).

Respondent 14:
Roger Brocksopp

Response:
I wish to express my support for the above plan.
Respondent 15:
Andrew Hardwick

Response:
I write to totally support the Ashover neighbourhood plan and hope it will soon move to completion.

As it says – Ashover residents do have a strong sense of pride and connection with the countryside and settlement gaps must be maintained and any permitted development must be strictly controlled.

The SDL’s should be taken forward to the Local Plan with all haste.

Respondent 16:
Alastair Petrie

Response:
I write in support of the Ashover Neighbourhood Plan.

It’s preparation:

- Has been the subject of extensive consultation and taken full account of the widespread views of the community.
- It represents an excellent balance between providing the housing needed for local growth and protecting a landscape much valued by both residents and visitors.
- The report pays due attention to protecting important heritage assets and the biodiversity of the parish.
- By all account it reflects the views of the overwhelming majority of the community.
- It appears to be fully harmonised with the aims and objectives of the emerging Local Plan for the rural west of the District.
- The Neighbourhood Planning Team have given careful consideration to the setting of settlement development limits and it is to be hoped that these are reflected and consolidated in the next release of the Emerging Local Plan.

And for all these reasons I commend its adoption.

Respondent 17:
Elspeth Cunningham and Robert Green

Response:
We wish to register our support for the Ashover Neighbourhood Plan.
**Respondent 18:**  
Barbara Archer  
**Response:**  
I support the Ashover Neighbourhood Plan as presented for consultation.

**Respondent 19:**  
John Weselby  
**Response:**  
I support Ashover neighbourhood development plan as proposed and object to the current applications for planning permission.

**Respondent 20:**  
John and Jill Watson  
**Response:**  
As a resident of Ashover I fully support the Ashover Neighbourhood Plan as presented for consultation.

**Respondent 21:**  
Paul Blatherwick  
**Response:**  
I support the Ashover Neighbourhood Plan as presented for consultation.

**Respondent 22:**  
Jane Steel  
**Response:**  
I support the above plan as presented for consultation.
Respondent 23:
Michael Steel
Response:
I am writing to express my support for the Ashover Neighbourhood Plan as presented for consultation.

Respondent 24:
Martin Archer
Response:
I support the Ashover Neighbourhood Plan as presented for consultation.

Respondent 25:
John Marsden
Response:
I support the Ashover Neighbourhood Plan as presented for consultation.

Respondent 26:
Joanne Bissell
Response:
I support the Ashover Neighbourhood Plan as presented for consultation.

Respondent 27:
John Bradley
Response:
I am writing to express my support for the Ashover Neighbourhood Plan as presented for consultation.

**Respondent 28:**
Ian Wildbur

**Response:**
I support the Ashover Neighbourhood Plan as presented for consultation.

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**Respondent 29:**
Ian Middleton

**Response:**
I support the Ashover Neighbourhood Plan as presented for consultation and believe that the plan satisfies both the housing requirement without over developing a beautiful village and parish.

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**Respondent 30:**
Janet Bradley

**Response:**
I fully support the Ashover Local Plan presented for consultation.
It is an extremely thorough, well written document.

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**Respondent 31:**
James Sutherland

**Response:**
I am writing to support the Ashover Neighbourhood Plan as presented for consultation.

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**Respondent 32:**
Mark and Amanda Shaw
Response:

We would like to show our support for the Ashover Neighbourhood Plan presented for consultation and thank all those who have worked on the project.

Respondent 33:

Stephen Greenwood

Response:

I wish to register my support for the Ashover Neighbourhood Plan as currently drafted.

Please do not accept amendments that give any prospect of success for applicants wishing to undertake development on any land surrounding the village.

Respondent 34:

Sally Skinner

Response:

I support the Ashover Neighbourhood Plan as presented for consultation.

Respondent 35:

Melanie Proctor-Smith

Response:

I support the Ashover Neighbourhood Plan as presented for consultation, it has taken into account the views of the widespread community and represents a good balance between providing the housing needed for local growth and protecting a much valued landscape.

Respondent 36:

Anne Eastwood

Response:

I fully support the Ashover Neighbourhood Plan as presented for Consultation.
Respondent 37:
Peter Maskrey

Response:
I support the Ashover Neighbourhood Plan as presented for consultation.

Respondent 38:
Roger and Jacky Waterhouse

Response:
We support the Ashover Neighbourhood Plan as submitted. We think it represents a balanced view of the future development of the parish.

Respondent 39:
Thelma Childs

Response:
I support the Ashover Neighbourhood Plan as presented for consultation.

Respondent 40:
Neil Tiley (Pegasus Group) on behalf of Marsh Green Estates LTD

Response:
See full response.

Conclusions:

As identified through this response, the Ashover Neighbourhood Plan has not been prepared in accordance with the Regulations and does not meet the Basic Conditions. As a result, it cannot be recommended to proceed to referendum. A significant amount of remedial work is required to produce a Neighbourhood Plan which is capable of being made, including the designation of the appropriate area.

The number of issues with the Neighbourhood Plan is so extensive that it is very difficult to summarise. However, I draw attention to some of the key issues below:

- The designation of the neighbourhood area was not undertaken in accordance with the regulations;
• The designation neighbourhood area does not align with the area covered by the Neighbourhood Plan;
• Participation in the Neighbourhood Plan will have been prejudiced by the uncertainty regarding the designated area;
• The Neighbourhood Plan was prepared in advance of the Draft Local Plan (consulted upon from February to April 2017) and so cannot have been informed by the Draft Local Plan;
• The policies of the Neighbourhood Plan have fundamentally changed since the pre-submission draft and these changes have not been subject to and consultation;
• The current consultation on the Neighbourhood Plan has not been publicised in accordance with the Regulations;
• The incorrect publicity may have prejudiced responses to this consultation;
• The necessary evidence to support the proposed policies has not been produced and in accordance with the Examiner’s Report to the Weedon Neighbourhood Plan, the Ashover Neighbourhood Plan cannot therefore proceed to referendum;
• It is unclear what purpose the Neighbourhood Plan proposed Limits to Development fulfil. If these are meant to be included in the made Neighbourhood Plan then this would require:
  • An SEA in accordance with the High Court Judgement of Stonegate Homes Ltd and Littleworth Properties Ltd and Henfield Parish Council;
  • That boundaries were defined using a clear methodology that was equitable to all landholdings; and
  • That all reasonable alternatives were assessed.
• However, none of the above have been undertaken and so the Neighbourhood Plan would not meet the Basic Conditions if these boundaries were proposed to be made;
• If the boundaries are not proposed to be made, they should not be included in the Neighbourhood Plan;
• The Neighbourhood Plan identifies Objectives which provide for sustainable development. However, the majority of policies undermine these objectives (and sustainable development) being achieved;
• The majority of policies are unclear providing uncertainty for a decision-taker, and/or are actively contrary to national policy (and the presumption in favour of sustainable development). As a result, the Basic Conditions are not met;
• The Neighbourhood Plan as drafted will not be effective, as it does not allocate sites and there is a five-year land supply shortfall across the District. The result will be that all of the policies of the Neighbourhood Plan will be immediately out-of-date and afforded reduced weight. This could be addressed through the allocation of site, such that the Neighbourhood Plan would benefit from the protection afforded by the Written Ministerial statement.

Respondent 41:

Kathryn Eastwood

Response:

Please be advised that I support the Ashover Neighbourhood Plan as presented for consultation.
**Respondent 42:**
Nick Chapman

**Response:**
Please be advised that I support the Ashover Neighbourhood Plan as presented for consultation.

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**Respondent 43:**
Felicity Bingham on behalf of Natural England

**Response:**
See full response

Natural England does not have any specific comments on this draft neighbourhood plan.

We support the following policies: AP14: Landscape Character, AP15L Local Green Spaces, AP16: Biodiversity, AP17: Important Trees and Hedgerows and AP19: renewable Energy and Low Carbon Technologies.

Additionally we refer to the annex which covers the issues and opportunities that should be considered when preparing a Neighbourhood Plan.

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**Respondent 44:**
John Fleming on behalf of Gladman Developments

**Response:**
See full response

**Conclusions:**

Gladman recognises the role of neighbourhood plans as a tool for local people to shape the development of their local community. Whilst we support many of the policies aims and objectives in principle, we feel that the Plan would benefit from additional modifications to the Plan to ensure that it allows for flexibility going forward and ensures the Plan is capable of reacting positively to changes which may occur over the plan period.
Respondent 45:
David and Sheila Allen

Response:
We support wholeheartedly the Ashover Neighbourhood Local Plan and would like to see it implemented without any further delay.

Respondent 46:
Warwick and Susan Gorman

Response:
We fully support the Ashover Neighbourhood Plan as presented for consultation.

Respondent 47:
Charlotte Stainton on behalf of Philip Barlrop

Response:
We are concerned that the settlement boundary for Fallgate shown on previous versions of the Neighbourhood Plan has now been removed. Fallgate has been recognised as a sustainable settlement by the Council granting 18 dwellings in this settlement over the last few years. The lack of a settlement limit and the policies as currently drafted effectively means that no new development (other than countryside developments) will be appropriate in this hamlet and this will result in the decline of this part of the parish.

We request that the settlement limit for Fallgate be reinstated to reflect that there are a significant number of existing dwellings in this locality and that development within the settlement of Fallgate should be seen as appropriate (as demonstrated by recent permissions).

We also request that the site which is the subject of planning permission 15/01302/OL be allocated as a housing site. The Council concluded that this development is sustainable when permission was granted and therefore it is logical that this site be acknowledged as an appropriate way to allow Fallgate to grow in a small way.

If no settlement boundary is introduced, the policies should be amended to allow the development of sites that fall between existing dwellings. As the Neighbourhood Plan is currently drafted, developments such as 17/00539/OL for 2 houses at Woodview would not be allowed. This cannot be what the Neighbourhood Plan team intended because Ashover Parish Council strongly supported that development and the Chairman of Ashover Parish Council even spoke in support of the application at the NEDDC Planning Committee. This indicates that the Neighbourhood Plan as currently drafted does not reflect the intentions of local people and the Parish Council, in terms of permitting appropriate infill development.
The planning policies for Fallgate need to be amended to reflect the numerous permissions (for all 18 dwellings) that have been granted for this settlement and also to ensure that appropriate infill developments will be permitted in the future (whether within or outside settlement boundaries).

**Respondent 48:**

Melanie Lindsley from Coal Authority

**Response:**

The Coal Authority is a non-departmental public body which works to protect the public and the environment in coal mining areas. Our statutory role in the planning system is to provide advice about new development in the coalfield areas and also protect coal resources from unnecessary sterilisation by encouraging their extraction, where practical, prior to the permanent surface development commencing.

As you will be aware the Neighbourhood Plan area lies within the current defined coalfield. The eastern part of the Plan area including Northedge, Alton, Fallgate and Littlemoor lie on the surface coal resource. The defined Development High Risk Area also covers part of the eastern side of the Plan area.

According to the Coal Authority Development High Risk Area Plans, there are recorded risks from past coal mining activity in the form of approximately 43 mine entries and there have been 6 reported hazards in the Plan area. In addition there are recorded shallow coal workings, thick coal outcrops, past surface coal mining and unrecorded probable underground coal workings at shallow depth.

If the Neighbourhood Plan allocates sites for future development in these areas then consideration as to the development will need to respond to these risks to surface stability in accordance with the National Planning Policy Framework and the North-East Derbyshire Development Plan. In addition any allocations on the surface coal resource will need to consider the impacts of mineral sterilisation in accordance with the National Planning Policy Framework and the Derbyshire Minerals Plan.

As the Neighbourhood Plan does not allocate any sites for development at this time the Coal Authority has no specific comments to make.

**Respondent 49:**

Sharon Hubbard

**Response:**

I support the Ashover Neighbourhood Plan as presented for consultation.
**Respondent 50:**

Paul Eastwood

**Response:**

I would like to make clear my support for all aspects of the Neighbourhood Plan for Ashover as is currently proposed.

**Respondent 51:**

Wendie and Jim Heading

**Response:**

This is to confirm that we support the Ashover Neighbourhood Plan as presented for consultation.

**Respondent 52:**

Richard Pigott (Planning and Design Practice Ltd) on behalf of Simon Carr

**Response:**

See full response

**Conclusion:**

The policies contained within the Neighbourhood Plan are reliant on a Draft Local Plan which remains in its early stages and is pursuing a strategy of Green Belt release which is highly questionable. Whilst there is a recognition that the parish’s housing market is unbalanced there are sustainable solutions to deal with this issue in the medium to long term.
RESPONSE TO THE ASHOVER PARISH NEIGHBOURHOOD PLAN SUBMISSION CONSULTATION VERSION

ON BEHALF OF MARSH GREEN ESTATES LTD

Prepared by: NEIL TILEY
## CONTENTS:

<table>
<thead>
<tr>
<th></th>
<th>INTRODUCTION</th>
<th>1</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>DEVELOPMENT OF THE NEighbourHOOD PLAN</td>
<td>2</td>
</tr>
<tr>
<td>3</td>
<td>THE SEA</td>
<td>8</td>
</tr>
<tr>
<td>4</td>
<td>THE REVISED NEighbourHOOD PLAN</td>
<td>10</td>
</tr>
<tr>
<td>5</td>
<td>THE LONGEVITY OF THE NEighbourHOOD PLAN</td>
<td>31</td>
</tr>
</tbody>
</table>
1. INTRODUCTION

1.1 This response to the submission draft Ashover Neighbourhood Plan has been prepared by Pegasus Group on behalf of Marsh Green Estates Ltd. It responds to the consultation which runs until 31st August 2017 according to North East Derbyshire Council’s website.

1.2 Pegasus Group recognise and support the opportunity provided by neighbourhood planning to create a positive planning framework at a local level that supports sustainable development. Indeed, Pegasus Group are actively involved in the preparation of neighbourhood plans nationally and have significant expertise in this regard.

1.3 This response is intended to provide constructive feedback on the Ashover Neighbourhood Plan in order that appropriate modifications can be recommended by the Examiner to produce a Neighbourhood Plan which meets the Basic Conditions. However, as identified throughout this response, the Neighbourhood Plan has not been prepared in accordance with the Neighbourhood Planning (General) Regulations 2012 (as amended) and does not meet the Basic Conditions, and so the Examiner will not be able to lawfully recommend that the Neighbourhood Plan proceeds to referendum.
2. DEVELOPMENT OF THE NEIGHBOURHOOD PLAN

Neighbourhood Area Designation

2.1 The Neighbourhood Planning (General) Regulations 2012 (as amended) require that:

“5.—(1) Where a relevant body submits an area application to the local planning authority it must include—

(a) a map which identifies the area to which the area application relates;...”

2.2 Ashover Parish Council submitted such an application to North East Derbyshire District Council on 3rd December 2014 including a map of the area to be designated. However, the area described in that map is different to the area now proposed in the Neighbourhood Plan set out on page 4 of the submission draft.

2.3 The map submitted by the Parish Council overran the page such that the areas to the far west and far east of the area now identified in the Neighbourhood Plan were not identified and so presumably are not designated as part of the Neighbourhood Plan area. The boundary is also different in a number of other locations, including to the south of Walton Lees Farm; and to the west of Woodhead Grange Farm. These anomalies arose as a result of the submitted map being hand-drawn.

2.4 The effect of this is that the Neighbourhood Plan has not been prepared in accordance with the necessary regulations and that it does not relate to the area that is designated. The landowners of these areas may not have engaged in the Neighbourhood Plan as they may not have considered that it related to their landholdings. Furthermore, it is unclear which area the policies of the Neighbourhood Plan apply to.

2.5 The Consultation Statement identifies that:

“...legal advice has been sought on this via NEDDC. We are advised that designation this sufficiently clear as to seek the designation of the whole of the Parish of Ashover as a neighbourhood area; and that NEDDC was equally clear in its formal notice of application for designation.”
2.6 Whilst it is true that the application did identify that the Parish Council were applying for the designation of the Parish as a Neighbourhood Area, this is not sufficient to meet the regulations set out above which require a map detailing the area proposed to be designated as a matter of law.

2.7 The Formal Notice of the Application (18th December 2014) referred to the Parish area but included the map submitted by the Parish Council which did not coincide with the Parish Council area as defined by Ordnance Survey. This was subject to consultation until 6th February 2015.

2.8 Following the consultation, North East Derbyshire Council issued their designation of the Neighbourhood Area on 16th February 2015. This did not include any reference to the designation of the Parish area but rather identified that:

“A map (attached) identifying the area has been provided.”

2.9 The attached map is consistent with that submitted by the Parish Council which does not reflect the area identified in the Neighbourhood Plan. The designated area is therefore clearly related to a different area than that now proposed.

2.10 The legal advice (as summarised in the Consultation Statement) identifies that the Parish area was referred to in the application and the formal notice of this application. However, neither of these exercises were supported by an accurate map as required by the regulations. More importantly, the final designation of the area related explicitly to the area identified on the map and made no reference whatsoever to the Parish area. The effect is that the correct procedures have not been followed and the Neighbourhood Plan cannot be made as a matter of law.

2.11 This error is not simply a matter of failing to comply with regulations, it will also have prejudiced engagement and representations throughout the development of the Neighbourhood Plan.

2.12 A description is not sufficient as not all residents will necessarily be aware of which Parish they live within, and therefore will not have known whether (or not) they should engage in the Neighbourhood Plan process. This is compounded by the fact that there is no map of the Parish available on either the Ashover Parish Council website or the North East Derbyshire Council website. In addition, the only available map (namely the map submitted by the Parish Council) was
incorrect and so may have misled residents as to whether (or not) they lived within the Parish area.

2.13 The inaccuracy of this information will therefore have prompted some residents to submit representations and some to have not submitted representations, depending on whether or not they believed that the Neighbourhood Plan affected them and their landholdings.

Pre-submission draft of the Neighbourhood Plan

2.14 The pre-submission draft Neighbourhood Plan was subject to a round of consultation in February/March 2017.

2.15 Following the publication of the pre-submission draft of the Neighbourhood Plan on 26th January 2017, the revised draft North East Derbyshire Local Plan 2011-2033 was made available for consultation on 24th February 2017. The revised draft Local Plan cannot therefore have informed the pre-submission draft of the Neighbourhood Plan. Accordingly, a significant number of changes to the pre-submission draft of the Neighbourhood Plan have now been proposed.

Consultation

2.16 As above, there have been very significant changes to the Neighbourhood Plan (including the withdrawal of the SEA) which have not been subject to any consultation. Indeed, since the pre-submission draft of the Neighbourhood Plan, the policies have changed as follows:

- Former Policy AP1: Presumption in favour of sustainable development has been deleted;
- Former Policy AP 2/Current Policy AP1: Development within Limits to Development has been revised significantly, including to relate to only 2 settlements and the deletion of 2 bullet points;
- Former Policy AP4: New housing provision has been deleted;
- Former Policy AP 5/Current Policy AP3: Windfall housing sites has been revised significantly;
- Former Policy AP 7/Current Policy AP5: Affordable housing has been revised significantly;
- Former Policy AP 11/Current Policy AP9: Protection and enhancement of community facilities has been revised to include The Black Swan;
• Former Policy AP 12/Current Policy AP10: Assets of community value has been revised significantly;

• Former Policy AP 13/Current Policy AP11: Design has been revised to include an additional bullet point;

• Former Policy AP 15/Current Policy AP13: Non designated heritage assets has been revised significantly;

• Former Policy AP 17/Current Policy AP14: Landscape character has been revised significantly;

• Former Policy 21/Current Policy AP19: Renewable energy and low carbon technologies has been revised significantly, including the deletion of 3 bullet points;

• Former Policy AP 22/Current Policy AP20: Noisy sports has been revised significantly; and

• Current Policy AP21: Dark skies is entirely new.

2.17 Many of these changes are to be welcomed. However, given the extent of these significant changes, which have not been subject to consultation (although have been informed by the responses to the consultation), it would have been prudent for the Neighbourhood Plan to be subject to another round of consultation prior to submission. Now that the Neighbourhood Plan has been submitted for examination, this opportunity is no longer available and so it is considered that it will be necessary to undertake hearing sessions in order to provide a sufficient opportunity to address the extent of these changes.

Publicising the Plan

2.18 The Neighbourhood Planning (General) Regulations 2012 (as amended) require that:

“16. As soon as possible after receiving a plan proposal which includes each of the documents referred to in regulation 15(1), a local planning authority must—

(a) publicise the following on their website and in such other manner as they consider is likely to bring the proposal to the attention of people who live, work or carry on business in the neighbourhood area—

(i) details of the plan proposal;

(ii) details of where and when the plan proposal may be inspected;

(iii) details of how to make representations;
(iv) a statement that any representations may include a request to be notified of the local planning authority’s decision under regulation 19 in relation to the neighbourhood development plan; and

(v) the date by which those representations must be received, being not less than 6 weeks from the date on which the plan proposal is first publicised; ...”

2.19 North East Derbyshire Council have sought to meet this regulation through the publication of a Public Notice. The website states:

“Details of where the Plan is deposited, how to comment, contact details, and subsequent stages of the process are on the Public Notice.”

2.20 However, the Public Notice on the website erroneously relates to the Holymoorside and Walton Neighbourhood Plan which was subject to consultation until 7th July 2017. The correct Public Notice for the Ashover Neighbourhood Plan is not available.

2.21 Despite this error, details of the plan proposal are available on the website and so regulation 16(a)(i) is met. However, the details of where and when the plan may be inspected are incorrect and so regulation 16(a)(ii) has not been met. Accordingly, people may not have been able to access the required documents.

2.22 It is assumed that the requirements of regulation 16(a)(iii) and (iv) are consistent for both neighbourhood plans and so the details for Holymoorside and Walton will be appropriate for Ashover.

2.23 The date for the submission of representations is available on the Council’s website, although the incorrect date is provided in the Public Notice (as this relates to a different area). It is therefore debatable as to whether regulation 16(a)(v) has been met. Furthermore, representations to the Holymoorside and Walton Neighbourhood Plan had to be received by 5pm, but in the absence of the correct Public Notice for Ashover, there is no deadline and so all representations received up until midnight on 31st August 2017 will be required to be accepted.

Evidence

2.24 It has been set out in the previous submissions of Pegasus Group that the necessary evidence to support the policies of the Neighbourhood Plan had not been made available (or it does not exist).
2.25 This absence of evidence had been raised by Pegasus Group during the pre-submission consultation earlier this year, and the consultants acting on behalf of the Steering Group responded on 1st March 2017, less than 2 weeks before the consultation deadline. The consultants identified that the infrastructure evidence is included within the Neighbourhood Plan (as drafted), but this is severely lacking and as set out below is incorrect and so has misinformed the Neighbourhood Plan.

2.26 The consultants also suggested that the evidence in support of the housing mix and tenure required in the proposed policies is contained in the Housing Needs and Characteristics report. However, this report only identifies the current housing stock and makes no recommendations or assessment regarding future need or how this can be accommodated.

2.27 The consultants suggest that the methodology applied to the North East Derbyshire Local Plan Review (2002) has been used to determine the Limits of Development. This methodology pre-dates the NPPF, reflecting the national policy of rural restraint which existed at that time. It therefore should not be used to determine NPPF boundaries which are required to meet rural needs. Furthermore, the historic methodology has not been applied in any case, as it identifies that commitments should be included in the Limits of Development, but this has not been undertaken in the Neighbourhood Plan.

2.28 There was no evidence in support of the other policies. This continues to be the case.

2.29 The absence and deficiency of proportionate evidence to support policies, has been considered in the Examiner’s Report to the Weedon Neighbourhood Plan. In that case, the Examiner found that the evidence provided was not sufficient and as a result she was unable to recommend that the Neighbourhood Plan proceeded to referendum. In the case of Ashover there is not only insufficient evidence but a total absence of evidence on many matters which must necessitate the same conclusion.
3. **THE SEA**

**The Process**

3.1 Ashover Parish Council prepared an SEA Screening Report in March 2016 and it was identified that the Neighbourhood Plan may have significant environmental effects and as such in order to comply with EU Regulations that an SEA was required.

3.2 As identified in the NPPG, an SEA should be prepared as early as possible in the plan-making process in order that the findings of the SEA help to shape the strategy within the Neighbourhood Plan. However, in Ashover the requirement for an SEA was only identified following submission of the Neighbourhood Plan. It is therefore clearly the case that the SEA had not shaped or informed the Neighbourhood Plan (as submitted) in any way, contrary to National Guidance.

3.3 The SEA was prepared in October 2016 and was not publicised in accordance with the regulations. As the responses to this SEA are not publically available it cannot be demonstrated that all of the responses have been addressed; and given the lack of publicity the consultation will not have been comprehensive.

3.4 It has become evident that a revised SEA is not going to be prepared as the District Council no longer consider that the Neighbourhood Plan is likely to have significant environmental effects (presumably because the Neighbourhood Plan is no longer proposing to allocate sites). Accordingly, the existing SEA has been withdrawn.

**Significant Environmental Effects**

3.5 The Neighbourhood Plan proposes to amend the Limits to Development of Ashover and Kelstedge (although the status of this is uncertain as addressed later in this response). The proposed amendments include the full extent of large gardens, some sites with the potential for adverse impacts on heritage assets, and some open land parcels. This has the effect of formally identifying the development of these areas as acceptable in principle, which will have impacts on the environment.

3.6 Policy AP2 of the Neighbourhood Plan also limits development to that within the Limits of Development of Ashover and Kelstedge. Littlemoor also currently has
Limits of Development, but Policy AP2 would prevent these being operative. The emerging Local Plan proposes that Littlemoor is suitable for infill development. Policy AP2 therefore in effect replaces a clearly defined boundary at Littlemoor with a site specific judgement as to whether a site represents infill development. This change clearly has the potential for significant environmental effects, especially as Littlemoor is surrounded by a Special Landscape Area.

3.7 Indeed, in accordance with the *High Court Judgment of Stonegate Homes Ltd and Littleworth Properties Ltd and Henfield Parish Council* the creation of any Limits to Development (or BUAB in that instance) will inevitably have environmental implications. In that case, Mrs Justice Patterson identified that a failure to explain why the proposed Limits to Development are preferred to any alternatives, and the lack of any assessment of the environmental impacts of any alternative is in breach of EU obligations. The same must apply here, such that an SEA must be required which assesses alternative Limits to Development.

**Reasonable Alternatives**

3.8 The Environmental Assessment of Plans and Programmes Regulations 2004 identify that all reasonable alternatives need to be considered.

3.9 The Neighbourhood Plan proposes a number of policies to which there are clearly reasonable alternatives, including the proposed amendments to the Limits of Development, but for which no SEA has been undertaken. This is in breach of the regulations.
4. **THE REVISED NEIGHBOURHOOD PLAN**

**Basic Conditions**

4.1 A Neighbourhood Plan is required to meet a series of Basic Conditions in order to proceed to referendum, as articulated in Schedule 4B of the Town and Country Planning Act 1990 (as amended). These include:

- Having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the order;
- The making of the order contributes to the achievement of sustainable development;
- The making of the order is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area); and
- The making of the order does not breach, and is otherwise compatible with, EU obligations.

4.2 It is in this context that the following responses have been prepared, although comments are also provided where clarification is required within the draft wording of the Neighbourhood Plan. These responses are structured to follow the format of the Neighbourhood Plan.

**Plan Objectives**

4.3 A series of objectives are identified on page 8 of the Neighbourhood Plan. These objectives broadly reflect sustainable development as articulated in the NPPF and are supported. Indeed, there is evidence throughout the Neighbourhood Plan that these objectives reflect the aspirations of the community (including on page 7 and 8). However, the policies of the Neighbourhood Plan do not enable these objectives to be achieved.

4.4 For example, the second objective seeks to:

> “Encourage the right types of development that meet local needs.”

4.5 Section 7.2.5 (page 21) of the Neighbourhood Plan identifies that this includes a need for affordable housing to be provided to address the issue of housing
affordability. However, Policy AP3 prevents affordable housing being required on any development as it limits such development to about 5 dwellings. The Court of Appeal decision of *Secretary of State for Communities and Local Government v West Berkshire District Council et al [2016] EWCA Civ 441* confirms that affordable housing cannot be sought on sites of 10 units or less. Therefore, Policy AP3 is inconsistent with the objective.

4.6 Similarly, the fourth objective seeks to:

“Protect important community facilities and shops.”

4.7 Community facilities and shops need to remain viable concerns to be retained. In order to do this the population of the settlements needs to be maintained or to grow (in the face of increased levels of home delivery and internet shopping). It is acknowledged on page 11 of the Neighbourhood Plan that the population is old and that it is ageing. This means that there will be fewer people per house in the future, as elderly people are more likely to live alone or in couples. The anticipated ageing of the population would therefore be expected to reduce the current population with corresponding negative effects on the viability of community facilities and shops. In order to retain facilities, it would therefore be necessary to promote residential development, but the Neighbourhood Plan does not do this. Indeed, it prevents any residential development beyond small scale schemes within the Limits of Development which themselves are tightly constrained.

4.8 The inconsistency of the policies with the objectives not only undermines the consistency of the Neighbourhood Plan it also prevents the sustainable development which is aspired to by the community. Such internal inconsistencies were identified by the Examiner of the Weedon Neighbourhood Plan as not providing a practical framework as required by the NPPF.

How the Plan Supports Sustainable Development

4.9 The Neighbourhood Plan is required to contribute to sustainable development which is defined by paragraphs 8 to 219 of the National Planning Policy Framework (NPPF) as described in paragraph 6 of the NPPF. The NPPF constitutes national policy and so a failure to provide for sustainable development results in a Neighbourhood Plan not meeting 2 of the Basic Conditions (sustainable development and consistency with national policy).
4.10 On page 8 and 9, the Neighbourhood Plan sets out a local definition of sustainable development, which is broadly consistent with that identified in the NPPF. However, as above the policies of the Neighbourhood Plan undermine the delivery of this sustainable development as aspired to by the community.

4.11 The particular conflicts are that the policies of the Neighbourhood Plan will undermine the viability of existing community facilities and shops, as well as preventing the levels of housing which are necessary to meet the needs of present and future generations, and preventing the right quantity of housing development.

**Spatial Strategy**

4.12 The Neighbourhood Plan identifies on page 14 that the community does not wish to see significant housing, but that they are generally sympathetic to development that helps to meet local needs, supports local services and facilities, and fosters diverse and mixed communities.

4.13 These two aspirations of the local community cannot both be fulfilled. The Neighbourhood Plan has afforded greater weight to the former (resisting housing development) at the expense of the latter. The policies which prevent local needs (including affordable needs) from being met and which undermine the viability of facilities works directly against the NPPF which seeks to support a prosperous rural economy (see paragraph 28) and meet the needs of different groups in the community (see the first bullet of paragraph 50). The Neighbourhood Plan is not therefore consistent with national policy and does not provide for sustainable development (as defined by the NPPF). Accordingly, two of the Basic Conditions are not met.

4.14 The second paragraph on page 15 of the Neighbourhood Plan identifies that there has been much development in the Parish in recent years. However, there is no evidence to support this claim. This absence of proportionate evidence is contrary to the NPPG (41-039) and prevents the Neighbourhood Plan proceeding to referendum as identified by the Examiners Report to the Weedon Neighbourhood Plan.

4.15 The Parish Council’s response to the application for 26 dwellings at the Land at the Junction of Narrowleys Lane and Moor Road identified that "the Parish has
received approximately 40 dwellings over the past 20 years”. Similarly, the withdrawn Local Plan identifies that over the period 2011 to 2014 there were only 2 completions. This average of either 2 dwellings or 0.5 dwellings per year cannot be described as much development, and so the Neighbourhood Plan misrepresents the facts. This misrepresentation appears to have informed all of the policies of the Neighbourhood Plan and this is a significant concern regarding the rationality of those policies.

4.16 The Neighbourhood Plan however identifies that 50 dwellings have been granted consent across the Parish. There is no certainty that all of these dwellings will be constructed, but even if they are delivered in the next 5 years, this would still only provide for a total of 52 to 90 dwellings over 25 years, or 2 to 4 dwellings per annum, which again could not be described as much development.

4.17 Similarly, the same paragraph identifies that there is evidence that the scale and pace of the 2 dwellings per year delivered historically have “stretched” facilities such as schools. However, in the appeal decisions at the Land at the Junction of Narrowleys Lane and Moor Road it was agreed that no contributions towards educational provision was required owing to the existing capacity of schools. Indeed, all of the schools within the Neighbourhood Area have surplus capacity of in excess of 5%.

4.18 Stretton Handley School (although just outside the Neighbourhood Area) has a surplus capacity in excess of 25% and the Derbyshire School Organisation Plan identifies that in such circumstances action is required, including potentially the closure of the school. To support the continued viability of these school’s additional pupils are required within the local area. Such additional pupils would be accommodated in new development which in turn would support the schools. Without these additional pupils, the schools may be forced to close with severe adverse effects on the existing population of the Parish.

4.19 The Neighbourhood Plan therefore wholly misrepresents the capacity of educational infrastructure in the area, identifying that schools are over-stretched when in fact they are desperate for additional pupils (including those arising from new development) to remain viable.

4.20 Page 15 of the Neighbourhood Plan also identifies that the alleged levels of development have “stretched” the road network. However, the appeal decision
identifies that the evidence "indicates that existing traffic flows in the area are generally low."

4.21 This paragraph within the Neighbourhood Plan is not supported by evidence, and indeed actively ignores the available evidence, to present a picture of a Parish which is delivering levels of housing which is impacting negatively on infrastructure. In fact, there are very minimal levels of development, which has had negative impacts on the viability of certain forms of infrastructure. The unjustified position has been used to set the context for policies which seek to limit development, which results in needs not being met and actively constrains sustainable development contrary to 2 of the Basic Conditions (sustainable development and consistency with national policy).

4.22 A similar issue has been dealt with in the High Court Judgment of Stonegate Homes Ltd and Littleworth Properties Ltd vs Horsham District Council and Henfield Parish Council. In this Judgment, Mrs Justice Patterson identifies that where there is technical evidence this cannot be dismissed in a Neighbourhood Plan without technical evidence to the contrary. It would therefore be wrong in law if the Neighbourhood Plan had been developed in the untrue context of development rates which have impacted adversely on infrastructure. This is clearly the case here, and so the policies within the Neighbourhood Plan formulated on this basis are unlawful.

Limits to Development

4.23 Limits to Development distinguish between areas where in planning terms development would be acceptable and where it would not. They therefore provide a key tool for a decision-taker when determining planning applications.

4.24 The current Limits to Development were adopted in 1998 and no longer provide an appropriate framework to facilitate the necessary growth. The Limits to Development are therefore currently out of date and are afforded reduced weight in accordance with paragraph 215 of the NPPF.

4.25 The pre-submission draft Neighbourhood Plan took positive action to address this and identified new Limits to Development to provide an up-to-date development plan.
4.26 However, the submission draft now identifies on page 15 that the Limits to Development are not to be revised through the Neighbourhood Plan. Nevertheless, the Neighbourhood Plan continues to propose Limits to Development as an input to the boundaries to be determined through the Local Plan. It is considered that these comments are more appropriate to the Local Plan.

4.27 It is entirely unclear what role these proposed Limits to Development will play if the Neighbourhood Plan proceeds to referendum. It could be that these are merely proposals which should be made through representations to the Local Plan and which should not be included in the Neighbourhood Plan; or it could be that these are proposed as defining the Limits to Development in the interim prior to adoption of the Local Plan. The position for any decision-taker in the interim will be uncertain and this will need to be clarified in the Neighbourhood Plan either through the removal or adjustment of Appendix E or through the removal of the second, third and fourth paragraphs under the title “Limits to Development“.

4.28 If the proposed Limits to Development are removed, then the development plan will continue to be out-of-date for Ashover until the Local Plan is adopted. It is therefore recommended that the Limits to Development are reviewed through the Neighbourhood Plan in order to provide an effective plan (see paragraph 182 of the NPPF), but in doing so should be supported by a transparent evidence base.

4.29 Furthermore, the Neighbourhood Plan proposes to amend the Limits to Development of Ashover and Kelstedge, but makes no such proposal for Littlemoor which has a “saved” Limit to Development from the adopted Local Plan. This would indicate that the Limits to Development of Littlemoor will be deleted through the Neighbourhood Plan. This alone could have significant environmental effects which would need to be assessed through an SEA, as the deletion of Limits to Development removes the tightly drawn boundary which determined where development was appropriate.

4.30 However, the revised Limits to Development must be determined based on a clear definition, so that these can be demonstrated to be equitable to all landholdings and to fulfil a consistent and clear purpose, namely to identify areas where development would be acceptable.
4.31 Any site included in the Limits to Development benefits from a presumption in favour of development as compared to those sites excluded from the Limits to Development. This means that the Limits to Development either need to be:

- tightly drawn around the existing built form (including existing permitted developments), so that certain undeveloped sites do not benefit from a presumption in favour of development in preference to other sites. This would need to be complemented by a more permissive policy which allowed development adjacent to the Limits to Development to meet the developmental needs; or

- the sites which are included and those which are excluded from the Limits to Development would need to be tested through the SEA to demonstrate that the most sustainable sites have been included and benefit from the presumption in favour of development.

4.32 However, in the Neighbourhood Plan, the proposed Limits to Development have been amended using a methodology which reflects rural restraint (contrary to the NPPF), and without any assessment of the sustainability of sites or of alternative Limits to Development through the SEA. The Neighbourhood Plan identifies that the proposed Limits to Development have been developed through consultation with stakeholders on page 15. The Consultation Statement identifies that this consultation is limited to the formal rounds of consultation on the Neighbourhood Plan. The proposed Limits to Development have not been developed in consultation with stakeholders, rather they have been identified by the Steering Group, and subject to consultation without any changes having been made in response to this consultation.

4.33 The Neighbourhood Plan also identifies on page 15 that the approach to identify Limits to Development is based on best practice although the identified best practice reflects the national policy of rural restraint in the historic PPS3 (contrary to the NPPF) and there is absolutely no published evidence as to how this out-of-date methodology has been applied in the Parish, as required in the NPPG (41-039). Furthermore, it is clear that the identified methodology (notwithstanding that this is contrary to the NPPF) which identifies that committed sites should be included in the Limits to Development has not been applied, as the Narrowleys Lane site is not included in the proposed Limits to Development.
4.34 The resulting proposed Limits to Development are inconsistent and biased towards the development of certain sites. They are also inconsistent with other policies proposed in the Neighbourhood Plan. A few examples of this include:

- The Limits to Development which define those areas which are acceptable for development, have been extended to include the full extent of residential gardens. This requires that garden development is acceptable in principle which runs contrary to the paragraph at the bottom of page 15 of the Neighbourhood Plan. This also suggests that the development of residential gardens is more sustainable than the development of other sites (including for example previously developed sites) which has not been justified through an SEA;

- The Limits to Development have been extended to include an area proposed to be allocated as a Local Green Space, and this results in this area being acceptable for development in principle, but also inappropriate for development under Policy AP15;

- The Limits to Development have been extended to include open areas of land, such as that between Pudding Bag Lane and Chapel Hill. This requires that development of this site is acceptable in principle without any assessment of its sustainability credentials relative to other sites;

- The Limits to Development have been extended to include permitted development sites, but this same courtesy has not been applied to the permitted development site at the Junction of Narrowleys Lane and Moor Road (which the Neighbourhood Plan relies upon to justify the deletion of the former Policy AP5). The result of this is that the Neighbourhood Plan defines the development of this site to be unacceptable despite the fact that it has been demonstrated to be sustainable by the Secretary of State and is relied upon in the Neighbourhood Plan to exclude other potential development sites. This means that the Neighbourhood Plan does not provide for sustainable development and is contrary to the NPPF, and that 2 of the Basic Conditions are not met;

- The Limits to Development which define those areas which are acceptable for development, have been extended to include the previously proposed unsustainable allocation at Hockley Lane. This requires that the
development of this unsustainable site is acceptable. This again results in the same 2 of the Basic Conditions not being met; and

- The Limits to Development have been extended to include some buildings (and their gardens) such as Butt Farm and Ashover House, but not other equally well-related buildings such as the buildings to the north of Hillside. Such an inconsistent and inequitable approach would need to be justified by proportionate evidence as required by the NPPG (41-039). Without this the Limits to Development would not accord with national guidance and one of the Basic Conditions would not be met.

**Policy AP1**

4.35 Policy AP1 refers to the Limits to Development, but as set out above it is unclear which Limits to Development this refers to. Clarification will be required within the Neighbourhood Plan to address this.

**Development in the Countryside**

4.36 Policy AP2 identifies that land outside of the Limits to Development of Ashover and Kelstedge will be treated as open countryside.

4.37 This precludes any development at Alton, Fallgate, and Littlemoor all of which are identified in the emerging Local Plan as Level 4 settlements which are appropriate for limited infill development. Littlemoor also has a Settlement Development Limit in the adopted Local Plan in which development is allowed. Policy AP2 is therefore inconsistent with the emerging and adopted Local Plan and one of the Basic Conditions is not met.

4.38 Furthermore, the extent to which Policy AP2 provides for sustainable development will depend upon the suitability of the Limits to Development which are currently contrary to at least 2 of the Basic Conditions as outlined previously; and the extent to which the local housing needs of the Neighbourhood Area are able to be met within the Limits to Development.

**Housing Growth**
On page 18 of the Neighbourhood Plan, it is recognised that the Parish experiences above average house prices and pressure to build more homes. This would indicate that there is a significant demand for additional housing within the Parish. Paragraph 47 of the NPPF requires that the needs (including those of people who would wish to move into the Parish) are objectively assessed and met in full. It is therefore suggested that Ashover Parish should receive an appropriate amount of housing to address this demand sustainably.

The Neighbourhood Plan recognises that residents accept that new housing development is necessary and that it can bring benefits to the Parish including supporting local facilities and creating a more balanced and sustainable community. Given that the protection of local facilities is one of the objectives of the Neighbourhood Plan it would be expected that the delivery of housing to support this objective would be encouraged. However, despite this, the Neighbourhood Plan now proposes no additional housing development.

Similarly, on page 18 of the Neighbourhood Plan, it is identified that recent housing developments had not met the needs of the community. This is unsurprising given the very limited levels of housing growth, on sites which cannot lawfully be required to provide for affordable housing (as identified in the NPPG). Meeting local needs is one of the objectives of the Neighbourhood Plan, but again the absence of housing proposals in the Neighbourhood Plan works directly against this.

It is identified that planning permission has been granted for 50 new dwellings. Of the five sites identified (which together provide for 46 dwellings), only the site at the junction of Narrowleys Lane and Moor Road provides any affordable housing to meet local needs. At present the average number of bids for every affordable unit in Ashover is 12. Each affordable home will only be suitable for a proportion of those households in affordable need (owing to size, type and location) and the number of bids for each property will reflect this, such that it is likely that the number of households in affordable need with a local connection will be many times greater than 12. This indicates that there is a significant discrepancy between affordable need and affordable supply, which will not be addressed by the planned supply. As a result, there is a need for significant levels of additional affordable housing (beyond the 10 units at the junction of Narrowleys Lane and Moor Road) to meet local needs in accordance with the objectives of the
Neighbourhood Plan. The NPPG identifies that affordable housing can only be sought on sites of more than 10 dwellings and so such sites will need to be provided for in the Neighbourhood Plan.

4.43 The withdrawn Local Plan proposed a distribution of housing to meet the previous requirement for 6,000 homes and stated:

“The Settlement Hierarchy is the basis for determining the appropriate level of new housing for each settlement, informed by the Sustainability Appraisal and the supply of sites in each area. The distribution of housing by settlement is also based on the specific requirements that have been identified in some settlements, where a growth level which is higher than the District average of 14% is proposed. This is in order to create more sustainable communities, for example by providing the opportunities and flexibility to deliver the necessary range of housing types and tenures, including specialist older persons and accessible accommodation for example. For those settlements where the Index of Multiple Deprivation (IMD) identifies issues, a higher level of new development can help to provide community facilities, and contribute to regeneration projects for example.” (my emphasis)

4.44 This distribution explicitly represented sustainable development. It was informed by a Sustainability Appraisal, by the supply of sites, the need to provide opportunities to deliver a range of housing types and the role in which development can support community facilities. This was therefore a very significant material consideration as it sets the context for whether or not the Neighbourhood Plan provides for sustainable development.

4.45 This distribution resulted in a housing requirement for 190 homes in Ashover Parish (115 in Ashover; 30 in Fallgate; 20 in Littlemoor (including Alton); and 25 in Kelstedge) over the period 2011 to 2031.

4.46 The distribution took account of the relative sustainability of different settlements to meet the District-wide needs. Any under-provision against the distributed housing requirements would therefore have the effect of displacing housing development to less sustainable locations, contrary to the NPPF and to sustainable development.

4.47 The distribution also took account of the supply of sites in each area, and so any under-delivery in one area may not be able to be addressed in other areas (which
are less sustainable in any case) owing to a lack of developable sites. This would prevent the necessary housing development to provide for sustainable development across the District. This would again be contrary to the NPPF and to achieving sustainable development.

4.48 In the case of Ashover, there are sustainable additional sites which could be developed to meet the housing requirements as identified in the October 2016 SEA. The development of these should be supported to ensure that there is sufficient housing in Ashover Parish and across North East Derbyshire to provide for sustainable levels of development.

4.49 The distribution also supported the delivery of a range of housing to meet specific housing needs, which as identified throughout the Neighbourhood Plan is still required in Ashover Parish. Any reduction from the identified distribution will limit the potential to deliver and the availability of the required mix of housing types and tenures, including limiting the number of affordable housing units, contrary to paragraphs 47 and 50 of the NPPF.

4.50 The Index of Multiple Deprivation (IMD) identifies that Ashover Parish is within the 19% most deprived areas nationally in regards to access to housing and services, and within the 11% most deprived in terms of the living environment. Additional development provides the opportunity to actively address these factors by improving the living environment, supporting existing services, delivering additional services and improving the choice and availability of housing. Indeed, as set out previously, some of the primary schools in the area stand the prospect of being closed as a result of limited pupil numbers with significant adverse effects on existing residents. Any reduction from the identified distribution would again undermine the ability of the Parish to develop sustainably and address existing conditions. This approach prejudices sustainable development.

4.51 It must however be acknowledged that this version of the Local Plan was withdrawn as the District Council identified that there were significant problems in showing that the proposed strategy could be delivered successfully. This did not apply to Ashover Parish as the identified distribution can be delivered (or at least more fully delivered) through the allocation of additional sustainable development sites (as identified in the October 2016 SEA) providing for the distribution identified in the withdrawn Local Plan, which forms a recent definition of
sustainable development across the District. In such a context, the revised Neighbourhood Plan was required to provide for at least 190 homes over the period 2011 to 2031. If this was rolled forward to cover the now emerging plan period, this would equate to a requirement for 209 homes from 2011 to 2033.

4.52 However, the pre-submission draft Neighbourhood Plan ignored the distribution which provides for sustainable development and instead applied the average 14% growth requirement to the settlements within the Parish. This ignored:

- the sustainability of the Neighbourhood Area compared to other areas within the District;
- the availability of sites within the Parish which are not available elsewhere;
- the need to deliver an appropriate range and choice of housing; and
- the need to sustain the viability of local services, particularly the primary schools.

4.53 The Neighbourhood Plan therefore did not provide for sufficient housing to facilitate sustainable development contrary to 2 of the Basic Conditions.

4.54 Since the pre-submission draft Neighbourhood Plan was published for consultation, a revised Draft Local Plan has now been subject to consultation from February to April 2017. The revised emerging Local Plan has not taken account of any comments received during this consultation and so the weight to be afforded must be very limited. It is very likely that this will significantly change prior to adoption.

4.55 The revised emerging Local Plan now suggests that there is no housing requirement for any of the settlements in Ashover Parish, despite the significant housing needs in these settlements, including to address the infrastructure issues and deprivation locally. Such an approach clearly does not reflect sustainable development and representations have been submitted to the Local Plan on this basis.

4.56 Similarly, at the time the pre-submission version of the Neighbourhood Plan was published the latest iteration of the Local Plan identified that Ashover was to be classified as a Large Settlement, which was expected to provide a focus for growth outside of the towns. The revised Local Plan now proposes to amend this such that Ashover will be designated as a Settlement with Limited Sustainability.
This clearly does not reflect the sustainability credentials of Ashover and representations have been submitted to the Local Plan on this basis.

4.57 The revised housing requirement and settlement hierarchy was not available when the pre-submission draft Neighbourhood Plan was published for consultation, and so it is clear that the Neighbourhood Plan was not prepared in the context of sustainable development, but rather that a subsequent Local Plan (which can be afforded very limited weight) now retrospectively suggests that the Neighbourhood Plan does provide for sustainable development.

4.58 In such a context, the Neighbourhood Plan faces a significant challenge in determining a housing requirement, which stands a prospect of having longevity. The Neighbourhood Plan could be prepared to accord with:

- the emerging revised Local Plan which can be afforded only very limited weight (as representations have yet to be considered) and which relies upon Green Belt releases (which are protected by the NPPF) and which constrains development which is required to meet the housing and infrastructure needs of Ashover Parish. This approach would prevent sustainable development and is likely to result in the Neighbourhood Plan becoming instantly out-of-date following the adoption of the Local Plan with appropriate modifications;

- the withdrawn Local Plan which sought to address local needs in accordance with the NPPF, in particular addressing the infrastructure, deprivation and housing issues which exist in Ashover Parish. This would provide for sustainable development and would remain up-to-date following adoption of the Local Plan. It would require at least 190 homes over the period 2011 to 2031 (or 209 homes from 2011 to 2033); or

- an alternative housing requirement.

4.59 The submission draft Neighbourhood Plan does not seek to deliver any particular level of housing, and indeed restricts the amount of housing that can be delivered. When the sustainability credentials of Ashover are taken into account (as set out in section 7.4 of the Neighbourhood Plan) this clearly does not represent sustainable development.

4.60 There are sustainable sites within the Parish to support a sustainable level of housing delivery which is necessary to facilitate the objectives of the
Neighbourhood Plan. Six alternative sites identified in the October 2016 SEA could provide an additional 124 homes and thereby address the vast majority of this shortfall.

4.61 Four of these alternative sites score more favourably in the October 2016 SEA (notwithstanding the fact that this represents a biased assessment as set out in the representations to the October 2016 SEA) than the Land at the Junction of Narrowleys Lane and Moor Road which has been identified as providing sustainable development by the Secretary of State. It must therefore be the case that these sites which score more favourably in the SEA also provide the opportunity for sustainable development (subject to the inherent bias within the SEA). These include the sites at Marsh Green Lane, Ashover (Northern) and the Corner of Butts Road and Narrowleys Lane, Ashover both of which are deliverable and sustainable.

4.62 The other 2 sites score broadly similarly to the Land at the Junction of Narrowleys Lane and Moor Road and so may also provide opportunities for sustainable development.

4.63 The Neighbourhood Plan should not plan for the identified housing requirement currently proposed in the emerging Local Plan, it should provide sufficient levels of housing to achieve its own objectives and provide sufficient flexibility to provide for an increased housing requirement if this arises through the Local Plan. This should be achieved through the identification of allocations now coupled with reserve sites in accordance with the NPPG (41-009).

**Windfall Housing Sites**

4.64 The final paragraph on page 19 of the Neighbourhood Plan identifies that there are high land values in the Parish. This would indicate that windfall development is less likely to come forward as sites would be unviable. However, the Neighbourhood Plan perversely seeks to argue that this will produce greater levels of windfall development. The realistic result of this is that windfall will be uncertain in Ashover and that this should not be relied upon to meet local needs.

4.65 The fourth paragraph on page 20 identifies that windfall development will come forward outside the defined Limits to Development of Ashover and Kelstedge. However, such windfall development would be expressly contrary to Policy AP2.
This again leads to an inconsistency in the Neighbourhood Plan, which means that the Neighbourhood Plan should not proceed to referendum in accordance with the findings of the Weedon Neighbourhood Plan Examiner.

4.66 Policy AP3 introduces a definition that windfall development will normally be on sites of 5 dwellings or less. This definition is not based on evidence and is not justified anywhere within supporting documentation contrary to the NPPG (41-039). It is also not consistent with the withdrawn Local Plan which does not set a threshold for windfall development. Furthermore, this unjustified threshold would preclude sustainable development opportunities such as Land at the Junction of Narrowleys Lane and Moor Road. Such an approach would therefore clearly not facilitate sustainable development (as represented by the recent planning approval), contrary to one of the Basic Conditions.

4.67 National guidance (NPPG 23b-031) identifies that affordable housing cannot be sought on sites of 10 units or less. The restriction of development to sites of 5 dwellings or less within the Neighbourhood Plan will therefore prevent the delivery of any affordable housing, despite the fact that the Neighbourhood Plan recognises a need for affordable housing and has this as an objective. Policy AP3 therefore demonstrably restricts sustainable development.

4.68 Furthermore, Policy AP3 duplicates Policy AP1 and so one should be deleted to provide a consistently worded single policy to deal with development inside the Limits to Development.

Housing Allocations

4.69 The Neighbourhood Plan identifies that it does not identify any housing allocations. This means that the protection afforded by the Written Ministerial Statement of December 2016 will not be engaged, and that with the current absence of a five-year land supply, policies relevant to the supply of housing (including Policy AP1, AP2 and AP3) will immediately be out of date. The Neighbourhood Plan will therefore not be effective, contrary to paragraph 182 of the NPPF. This is in addition to the fact that the Neighbourhood Plan policies collectively will prevent the Neighbourhood Plan objectives from being achieved.

4.70 In order to address this significant failing of the Neighbourhood Plan there are a number of options available:
• To recommend that the Neighbourhood Plan does not proceed to referendum; or

• To recommend that the Neighbourhood Plan is modified to include the allocation of sites. This will necessitate the preparation of an SEA to assess the significant environmental effects of the allocation of particular sites, and so will delay the Neighbourhood Plan significantly.

4.71 Additionally, or alternatively, a new policy could be introduced akin to Planning Policy: Development 1 of the Backwell Neighbourhood Plan which states:

“Housing development in Backwell\(^1\) which is at a level appropriate to the size and character of the settlement will be supported.”

4.72 Such a policy enables each proposal to be considered on its merits, which clearly reflects the presumption in favour of sustainable development. The Examiner in this instance noted that this Policy:

“...provides for a sufficiently flexible approach to take account of changing market conditions over time and as such, has regard to national policy.”

4.73 This flexibility would mean that even without the protection afforded by the Written Ministerial Statement, the policy would remain up-to-date in the absence of a five-year land supply and as a result the Neighbourhood Plan would be effective, as required by national policy.

New Housing Mix

4.74 The first sentence of this section identifies that:

“It is important that housing growth helps to meet the changing needs of the population.”

4.75 However, the Neighbourhood Plan precludes any housing development which would be required to deliver affordable housing, and does not make any specific provision for particular types of accommodation for specialist groups. The ambition cannot be achieved by the proposed policies of the Neighbourhood Plan.

4.76 Policy AP4 requires that development proposals deliver a mix of house types and sizes, and also that account is taken of local housing needs. As the Neighbourhood Plan only allows for development of up to 5 dwellings, it would be

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\(^1\) In the Backwell Neighbourhood Plan the word “in” is read to include sites adjacent to the settlement boundary.
impractical (and potentially unviable) for each small development to provide a mix of house types and sizes to meet the needs of the population. Such a mix can only realistically be provided on larger scale developments.

4.77 Furthermore, as set out repeatedly, the restriction on housing growth set out through the Neighbourhood Plan means that no affordable housing can be required on sites, and so local needs will remain unmet, if the policies of the Neighbourhood Plan are enacted.

**Affordable Housing**

4.78 Again, the housing problems facing the Parish are identified at the bottom of page 21. This particularly focusses on the affordable needs, with explicit support for the provision of affordable housing.

4.79 In order to address this need in accordance with the ambitions of the community, it is necessary to bring forward or facilitate development sites of more than 10 dwellings (as set out in the NPPG). However, the Neighbourhood Plan precludes such development. The result is that no affordable homes will be delivered through the Neighbourhood Plan.

4.80 Indeed, the Neighbourhood Plan identifies that the Local Plan has a threshold for affordable provision of 10 dwellings or more\(^2\). The Neighbourhood Plan precludes such development and so cannot provide for affordable housing. This restriction on the delivery of affordable housing to meet identified local needs, is the antithesis of sustainable development.

4.81 The second paragraph of Policy AP5 requires that all sites deliver affordable housing, unless exceptional circumstances apply. This is unlawful in light of the West Berkshire Court of Appeal Judgment, it is contrary to national policy, and it is contrary to the Local Plan. Such a policy (without a threshold) therefore does not meet at least 2 of the Basic Conditions. However, if a threshold (of more than 10 dwellings) is introduced to address the above, this will prohibit the requirement to deliver affordable dwellings to meet local needs and so will not provide for sustainable development contrary to one of the Basic Conditions. The only way to address this is to provide for a more positive policy framework, which

\(^2\) This is inconsistent with the NPPG (23b-031) which identifies that affordable housing can only be sought on sites of more than 10 dwellings
reflects national policy and sustainable development and facilitates development in excess of 10 dwellings.

**Community Facilities and Shops**

4.82 Section 7.4 identifies how important a social role the existing facilities and shops play within Ashover. It also identifies that some facilities have been lost and that this has had an adverse impact on the Parish. Indeed, it suggests that any further loss could have a major adverse impact on the community. The section also sets out an aspiration to increase local shops and facilities.

4.83 The viability of shops and facilities is dependent upon their patronage. This needs to be protected and increased if facilities are to remain viable and/or to support additional services. The population of the Parish is ageing, and the necessary result of this is that the population will decrease (without additional housing) as older people live in smaller household groups. The effect of this is that the patronage and viability of shops and facilities will decrease, unless housing is developed to offset this and maintain the local population.

4.84 The policies of the Neighbourhood Plan however seek to limit residential development, and the consequence of this is that the population will decrease with detrimental effects on the viability of facilities, such that the number of facilities is likely to reduce. As identified by the Neighbourhood Plan such a result would then result in major adverse impacts for the remaining community.

4.85 It is clear that in order to provide for sustainable development, and support a thriving rural community (in accordance with national policy) it is necessary to support appropriate levels of residential development. However, this is wholly precluded by the Neighbourhood Plan.

**Non Designated Heritage Assets**

4.86 Policy AP13 requires that proposals which affect a non-designated heritage asset or its setting will be required to conserve and where possible enhance its character and setting.

4.87 This is contrary to paragraph 135 of the NPPF which requires that the significance of a non-designated heritage asset should be taken into account and that a judgement on the scale of any harm or loss will be required.
4.88 Policy AP13 however, precludes any harm or loss regardless of the significance of the asset. This Policy is therefore not consistent with national policy and may preclude sustainable development.

Important Trees and Hedgerows

4.89 Policy AP17 requires that trees and hedgerows are retained. No such protection is afforded by national policy, with the exception of paragraph 118 of the NPPF which protects veteran trees only. Even with such veteran trees, national policy allows for these to be lost.

4.90 Policy AP17 is therefore not consistent with national policy and may preclude sustainable development.

Renewable Energy and Low Carbon Technologies

4.91 Policy AP19 seeks to limit the development of renewable energy and low carbon technology schemes. This is contrary to paragraphs 17 and 97 of the NPPF both of which seek to actively promote the development of such environmentally sustainable technologies.

4.92 Furthermore, the final bullet point of Policy AP19 requires that the potential positive effects of developments are identified, which runs counter to paragraph 98 of the NPPF which requires that:

“...local planning authorities should: not require applicants for energy development to demonstrate the overall need for renewable or low carbon energy and also recognise that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions...”

4.93 Policy AP19 is therefore not consistent with national policy and may preclude sustainable development.

Dark Skies

4.94 Policy AP21 resists any proposals to install lighting. The reference to lighting in this Policy requires clarification, as it could relate to street lighting only, or to house-lighting or something else.
4.95 For example, a milking barn which would be supported by Policy AP2 could require lighting for operational purposes and Policy AP21 would therefore prevent the needs of thriving rural communities.

4.96 Furthermore, there are opportunities for controlled street lighting (or other forms of lighting) which would minimise any light pollution, and such proposals should be facilitated where the benefits of associated development is necessary to support thriving rural communities.

**Monitoring and Review**

4.97 There is a typographical error in this section, as the Neighbourhood Plan covers the next 16 years rather than 17 years.
5. **THE LONGEVITY OF THE NEIGHBOURHOOD PLAN**

5.1 The Neighbourhood Plan is being prepared in advance of the Local Plan. It is therefore likely that the Neighbourhood Plan will not be consistent with the Local Plan as modified, when this is adopted.

5.2 In order to address this, it is necessary for the Neighbourhood Plan to be sufficiently flexible, such that it can continue to be afforded full weight following adoption of the Local Plan. A similar circumstance arose at the examination of the Backwell Neighbourhood Plan. In that case, the Examiner recommended the inclusion of Development Policy 1 to provide sufficient flexibility. A similar approach will be necessary in the Ashover Neighbourhood Plan.

5.3 However, given that there is less than a 5-year land supply across the District, the housing related policies of the Neighbourhood Plan will be out-of-date in any case. It is therefore necessary to allocate sites within the Neighbourhood Plan, to benefit from the protection afforded by the Written Ministerial Statement in order for the plan to be effective as required by national policy.

5.4 This cannot however be easily undertaken as this would require an SEA.
6. CONCLUSIONS

6.1 As identified through this response, the Ashover Neighbourhood Plan has not been prepared in accordance with the Regulations and does not meet the Basic Conditions. As a result, it cannot be recommended to proceed to referendum. A significant amount of remedial work is required to produce a Neighbourhood Plan which is capable of being made, including the designation of the appropriate area.

6.2 The number of issues with the Neighbourhood Plan is so extensive that it is very difficult to summarise. However, I draw attention to some of the key issues below:

- The designation of the neighbourhood area was not undertaken in accordance with the regulations;
- The designated neighbourhood area does not align with the area covered by the Neighbourhood Plan;
- Participation in the Neighbourhood Plan will have been prejudiced by the uncertainty regarding the designated area;
- The Neighbourhood Plan was prepared in advance of the Draft Local Plan (consulted upon from February to April 2017) and so cannot have been informed by the Draft Local Plan;
- The policies of the Neighbourhood Plan have fundamentally changed since the pre-submission draft and these changes have not been subject to any consultation;
- The current consultation on the Neighbourhood Plan has not been publicised in accordance with the Regulations;
- The incorrect publicity may have prejudiced responses to this consultation;
- The necessary evidence to support the proposed policies has not been produced and in accordance with the Examiner’s Report to the Weedon Neighbourhood Plan, the Ashover Neighbourhood Plan cannot therefore proceed to referendum;
- It is unclear what purpose the Neighbourhood Plans proposed Limits to Development fulfil. If these are meant to be included in the made Neighbourhood Plan then this would require:
  - an SEA in accordance with the High Court Judgment of Stonegate Homes Ltd and Littleworth Properties Ltd and Henfield Parish Council;
  - that the boundaries were defined using a clear methodology that was equitable to all landholdings; and
  - that all reasonable alternatives were assessed.
• However, none of the above have been undertaken and so the Neighbourhood Plan would not meet the Basic Conditions if these boundaries were proposed to be made;

• If the boundaries are not proposed to be made, they should not be included in the Neighbourhood Plan;

• The Neighbourhood Plan identifies Objectives which provide for sustainable development. However, the majority of policies undermine these objectives (and sustainable development) being achieved;

• The majority of policies are unclear, providing uncertainty for a decision-taker, and/or are actively contrary to national policy (and the presumption in favour of sustainable development). As a result, the Basic Conditions are not met;

• The Neighbourhood Plan as drafted will not be effective, as it does not allocate sites and there is a five-year land supply shortfall across the District. The result will be that all of the policies of the Neighbourhood Plan will be immediately out-of-date and afforded reduced weight. This could be addressed through the allocation of site, such that the Neighbourhood Plan would benefit from the protection afforded by the Written Ministerial Statement.
LEGAL OPINION

1. Introduction

1.1 We have been instructed by Marsh Green Estates Limited ("MGEL") to provide a legal opinion on the consultation process adopted by Ashover Parish Council ("the Parish Council") and North East Derbyshire District Council ("the Council") in seeking to designate the whole of the Parish of Ashover as a neighbourhood area. We have not been asked to comment or advise on any other matter of process or substance relating to the adequacy of the draft Ashover Neighbourhood Plan.

1.2 We understand that Pegasus Group, on behalf of MGEL, has made representations, to the Parish Council to the effect that there has been failure to comply with relevant legislative requirements relating to the designation of the Ashover Neighbourhood Area, in so much as the application submitted by the Parish Council was not accompanied by a map identifying the area that the Parish Council intended to be included. It did not identify the whole of the Parish of Ashover. The Parish Council's response to these representations is set out at page 43 of the Ashover Neighbourhood Plan 2016 - 2033 Consultation Statement dated July 2017:

"We can confirm that legal advice has been sought on this via NEDDC. We are advised that designation this [sic] sufficiently clear as to seek the designation of the whole of the Parish of Ashover as a neighbourhood area; and that NEDDC was equally clear in its formal notice of application for designation"

Our Advice

2. Relevant legislation

2.1 Neighbourhood planning is principally governed by the Localism Act 2011. The first step in the process to preparing and promoting a neighbourhood development plan is for a relevant body - a parish council or an organisation or body capable of being designated as a
neighbourhood forum\(^1\) - to apply to a local planning authority for an area to be designated as a neighbourhood area.

2.2 A neighbourhood area is defined at Section 61G(1) of the Town and Country Planning Act 1990 ("the 1990 Act") as:

"an area within the area of a local planning authority in England which has been designated by the local authority as a neighbourhood area; but that power to designate is exercisable only where -

(a) a relevant body has applied to the authority for an area specified in the application to be designated by the authority as a neighbourhood area, and
(b) the authority are determining the application"

2.3 Section 61G(11) of the 1990 Act provides that regulations may make provision in connection with the designation of areas as neighbourhood areas. Section 61G(11)(e) confirms that such regulations may make provision as to the form and content of applications for designation. The relevant regulations for the purpose of Section 61G(11)(e) are the Neighbourhood Planning (General) Regulations 2012 ("the Regulations").

2.4 Regulation 5 of the Regulations requires that:

"(1) Where a relevant body submits an area application to the local planning authority it must include -

(a) a map which identifies the area to which the area application relates;
(b) a statement explaining why this area is considered appropriate to be designated as a neighbourhood area; and
(c) a statement that the organisation or body making the area application is a relevant body for the purposes or section 61G of the 1990 Act"

2.5 Consultation requirements under the Regulations are set out in Regulation 6 which requires that:

"As soon as possible after receiving an area application from a relevant body, a local planning authority must publicise the following on their website and in such other manner as

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\(^1\) Section 61G(2) of the Town and Country Planning Act 1990
they consider is likely to bring the area application to the attention of people who live, work or carry on business in the area to which the area application relates -

(a) a copy of the area application;
(b) details of how to make representations; and
(c) the date by which those representations must be received, being not less than 6 weeks from the date on which the area application is first publicised."

3. Ashover Neighbourhood Area

3.1 The Parish Council made an application for designation as a neighbourhood area by way of letter to the Council dated 3 December 2014 ("the Application Letter"). As required by Regulation 5, a map confirming the area to be designated was attached to the Application Letter ("the Map"). The "area to which the application relates" for the purpose of Regulation 5(1)(a) is that shown on the Map. The Regulations do not require that a description of the areas to be designated is provided with the application, although it is plain that it would be sensible to do so. We note that in this case, a description was volunteered.

3.2 In this case, the "area to which the application relates" as shown on the Map does not include all or the same area as described in the Application Letter, whereas the description volunteered in the Application Letter seeks the designation of the whole of the Parish area. This Map does not on its face include all of the Parish area. The Map overruns the page and whilst there is a suggestion that some area more than that shown is or may be intended to have been included, the fact is that the Map does not include eastern and western elements of the Parish area.

3.3 The internal inconsistency between the Map and the Application Letter is then compounded by the Council who published a formal notice of the Parish Council's application on 18 December 2014 making reference to both the Application Letter and the accompanying Map ("the Notice"). The Notice set out the date by which representations were to be made to the Council. The Notice stated:

"Notice is hereby given that the North East Derbyshire District Council has received from Ashover Parish Council an application under Regulation 5 of the Neighbourhood Planning (General) Regulations 2012 for the District Council to designate the area comprising the

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2 As in force at the date of the making of the Application
Parish of Ashover as a neighbourhood area within the meaning of Section 61G of the Town and Country Planning Act 1990

3.4 We have not seen the legal advice received by the Parish Council but we understand the essence of the Parish Council's position to be that it was sufficiently clear from the description in the Application Letter and/or the Publication Notice the area that the Parish Council intended to designate was the whole of the Parish of Ashover and that it was not the area shown on the Map. In other words, the Map does not in itself determine the area that has been designated or has a less fundamental role in the process and is therefore secondary to the description provided in the Application Letter and/or Notice. The Parish Council's authority for adopting this position has not been revealed and is not known.

3.5 The Council's Record of Decision taken by the Assistant Director - Governance and Monitoring Officer dated 16 February 2015 ("the Decision") confirms the Council's decision to designate the area for the following reasons:

"I am satisfied that the requirements of the Neighbourhood Planning (General) Regulations 2012 have been met with regard to this application.

I am satisfied that the area is an appropriate area to be designated as a neighbourhood area and that the statement explaining why it is appropriate is satisfactory.

The statement explaining that the application is a relevant body is provided and is satisfactory.

A map (attached) identifying the area has been provided.

The application has been consulted on for the minimum period of six weeks in line with Regulation 5 of the Neighbourhood Planning (General) Regulations 2012. No representations were received."

3.6 We assume here that, in relation to consultation, the Officer intended to refer to Regulation 6 (not 5). Nonetheless, this extract from the Decision confirms our understanding that the Council satisfied itself that the requirements of, inter alia, Regulation 5 have been met and expressly confirmed that it relied on the Map provided (a copy of which was attached to the Decision).
3.7 We do not consider that the Parish Council's approach can be correct without reading wording into the Regulations. In other words, for the Parish Council to be correct Regulation 5 has to be read as being subject to a proviso that the area to be designated is only as shown on the map unless to the extent that it is not more fully described in the application to which it accompanies or the publication notice issued by the Council.

3.8 We appreciate the Parish Council's dilemma. Whilst we do not know precisely the advice that it has received, to suggest otherwise would leave it having to agree that there has been a failure to meet the requirement of Regulation 5. A Regulation that the Council has confirmed that it has complied with and that it has relied upon the Map in deciding to designate following consultation under Regulation 6.

3.9 We have no basis upon which to agree with interpretation that the Parish Council must adopt and our view is that it is flawed.

3.10 Rather, in our view, the Council has designated the Ashover Neighbourhood Area in accordance with the area shown on the Map. This interpretation must be preferred on the basis that the Map should be given primacy by virtue of its status under the legislation as a key requirement for a valid application for designation in accordance with Regulation 5(1), and is further supported by the fact that the Map is relied upon in the Officer's Decision. On this basis, in failing to identify the whole of the Parish area on the Map, the designation that has taken places does not cover the entirety of the Parish area. It covers the area that is shown on the Map.

3.11 If on the other hand, it can be said that the area designated comprises the whole of the Parish area, then those consulted, for the purpose of Regulation 6, were required to decipher for themselves which area was to be designated. Any party that relied upon the Map (rather than the description in the Application Letter or Notice) in determining whether or not it wished to make representations, may not have understood that their interests would be affected - if in the western and eastern areas not shown on the Map. In such circumstances there is real prospect that such persons may or will have been prejudiced by this material error and defect with the Map.

3.12 In our view, the interpretation that the Parish Council is erroneous and it would seem that the Council itself agrees as the Officer's Decision clearly adopts the Map for the purpose of
designated. Therefore, the area that has been designated in that shown on the Map - and not the whole of the Parish area of Ashover.


4.1 Section 38A(2) of the Planning and Compulsory Purchase Act 2004 defines a neighbourhood development plan as "a plan which sets out policies (however expressed) in relation to the development and use of land in the whole or any part of a particular neighbourhood area specified in the plan". Section 38A(12) confirms that 'neighbourhood area' has the meaning given by sections 61G of the Town and Country Planning Act 1990 as set out above at paragraph 2.2. It is therefore a pre-requisite of making a plan proposal that the area to which the plan relates has been designated as a neighbourhood area following the procedure set out in the Regulations.

4.2 The Ashover Neighbourhood Plan 2016 - 2033 Submission Version (July 2017) ("the Draft NP") has been submitted to the Council and is currently subject to a period of consultation from 20 July to 31 August 2017. This step in the process is referred to as publication which is governed by Regulation 16 of the Regulations. Regulation 16 requires:

"As soon as possible after receiving a plan proposal which includes each of the documents referred to in regulation 15(1), a local planning authority must -

(a) publicise the following on their website and in such other manner as they consider is likely to bring the proposal to the attention of people who live, work or carry on business in the neighbourhood area -

(i) details of the plan proposal;
(ii) details of where and when the plan proposal may be inspected;
(iii) details of how to make representations;
(iv) a statement that any representations may include a request to be notified of the local planning authority's decision under regulation 19 in relation to the neighbourhood development plan; and
(v) the date by which those representations must be received, being not less than 6 weeks from the date on which the plan proposal is first publicised"

4.3 Regulation 15 of the Regulations provides that a plan proposal must include a map or statement which identifies the area to which the proposed neighbourhood development plan relates. Page 4 of the Draft NP states that:
"the Plan covers the whole of the Parish of Ashover. It builds on the existing Parish Plan for Ashover. It is not intended to replace this. It sits alongside it to provide more detailed development 'planning' related policies to help achieve the aims and objectives of the Parish Plan"

4.4 Page 4 also contains at Figure 1 a plan of the Ashover Neighbourhood Plan Area ("the Plan"). In this context, the Plan and the area shown on the plan are a material matter in identifying the area over which the policies of the Draft NP will have effect if the Draft NP is subsequently made by the Council.

4.5 It is clear on a review of the Plan that it does not reflect the same area as the Map confirmed by the Council as the area designated as the Ashover Neighbourhood Area. The differences are:

4.5.1 the Plan now contains the areas making up the whole of Parish area at the western and eastern boundaries previously omitted from the Map; and

4.5.2 the Plan also includes other areas and omits other areas not previously shown on the Map - essentially the boundaries are drawn differently.

4.6 As to whether the Plan being relied upon in the draft NP is correct relies entirely upon whether the Parish Council is correct that the designation took effect so as to dedicate the whole of the Parish area (assuming that is in fact the area that the Plan now seeks to show).

4.7 For the reasons set out above, our view is that the designation took effect so as to designate only part of the Parish area as a neighbourhood area, as shown on the Map. Having regard to the relevant provisions of the Section 38A of the Planning and Compulsory Purchase Act 2004 and Regulation 16, we are further of the view that the Draft NP cannot lawfully purport to cover an area that is wider than the neighbourhood area that has been designated. The Plan currently included in the draft NP is therefore inadequate and in our opinion the earlier error of the Parish Council, compounded by the Council's designation utilising the Map, can now be remedied through this step in the process to adopting a neighbourhood plan.

4.8 Our view is that Council cannot lawfully adopt the Draft NP in its current form providing grounds for challenge by way of judicial review. It is compelled to go back and seek
designation of an area that in whole or part relates to the area to be adopted in any
neighbourhood plan that is brought forward.

DLA Piper UK LLP
16 August 2017
Dear Helen

Ashover Neighbourhood Plan - Formal consultation.

Thank you for your consultation on the above dated 20 July 2017

Natural England is a non-departmental public body. Our statutory purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development.

Natural England is a statutory consultee in neighbourhood planning and must be consulted on draft neighbourhood development plans by the Parish/Town Councils or Neighbourhood Forums where they consider our interests would be affected by the proposals made.

Natural England does not have any specific comments on this draft neighbourhood plan.

We support the following policies: AP14: Landscape Character, AP15: Local Green Spaces, AP16: Biodiversity, AP17: Important Trees and Hedgerows and AP19: Renewable Energy and Low Carbon Technologies.

Additionally, we refer you to the attached annex which covers the issues and opportunities that should be considered when preparing a Neighbourhood Plan.

For any queries relating to the specific advice in this letter only please contact Felicity Bingham on 02082 256387. For any new consultations, or to provide further information on this consultation please send your correspondences to consultations@naturalengland.org.uk.

We really value your feedback to help us improve the service we offer. We have attached a feedback form to this letter and welcome any comments you might have about our service.

Yours sincerely

Felicity Bingham
Sustainable Development Advisor
East Midlands Team
felicity.bingham@naturalengland.org.uk
Annex 1 - Neighbourhood planning and the natural environment: information, issues and opportunities

Natural environment information sources

The Magic website will provide you with much of the nationally held natural environment data for your plan area. The most relevant layers for you to consider are: Agricultural Land Classification, Ancient Woodland, Areas of Outstanding Natural Beauty, Local Nature Reserves, National Parks (England), National Trails, Priority Habitat Inventory, public rights of way (on the Ordnance Survey base map) and Sites of Special Scientific Interest (including their impact risk zones). Local environmental record centres may hold a range of additional information on the natural environment. A list of local record centres is available here.

Priority habitats are those habitats of particular importance for nature conservation, and the list of them can be found here. Most of these will be mapped either as Sites of Special Scientific Interest, on the Magic website or as Local Wildlife Sites. Your local planning authority should be able to supply you with the locations of Local Wildlife Sites.

National Character Areas (NCAs) divide England into 159 distinct natural areas. Each character area is defined by a unique combination of landscape, biodiversity, geodiversity and cultural and economic activity. NCA profiles contain descriptions of the area and statements of environmental opportunity, which may be useful to inform proposals in your plan. NCA information can be found here.

There may also be a local landscape character assessment covering your area. This is a tool to help understand the character and local distinctiveness of the landscape and identify the features that give it a sense of place. It can help to inform, plan and manage change in the area. Your local planning authority should be able to help you access these if you can’t find them online.

If your neighbourhood planning area is within or adjacent to a National Park or Area of Outstanding Natural Beauty (AONB), the relevant National Park/AONB Management Plan for the area will set out useful information about the protected landscape. You can access the plans on from the relevant National Park Authority or Area of Outstanding Natural Beauty website.

General mapped information on soil types and Agricultural Land Classification is available (under ‘landscape’) on the Magic website and also from the LandIS website, which contains more information about obtaining soil data.

Natural environment issues to consider

The National Planning Policy Framework sets out national planning policy on protecting and enhancing the natural environment. Planning Practice Guidance sets out supporting guidance.

Your local planning authority should be able to provide you with further advice on the potential impacts of your plan or order on the natural environment and the need for any environmental assessments.

Landscape

1 http://magic.defra.gov.uk/
2 http://www.nbn-nfbr.org.uk/nfbr.php
5 http://magic.defra.gov.uk/
6 http://www.landis.org.uk/index.cfm
8 http://planningguidance.planningportal.gov.uk/blog/guidance/natural-environment/
Your plans or orders may present opportunities to protect and enhance locally valued landscapes. You may want to consider identifying distinctive local landscape features or characteristics such as ponds, woodland or dry stone walls and think about how any new development proposals can respect and enhance local landscape character and distinctiveness.

If you are proposing development within or close to a protected landscape (National Park or Area of Outstanding Natural Beauty) or other sensitive location, we recommend that you carry out a landscape assessment of the proposal. Landscape assessments can help you to choose the most appropriate sites for development and help to avoid or minimise impacts of development on the landscape through careful siting, design and landscaping.

**Wildlife habitats**

Some proposals can have adverse impacts on designated wildlife sites or other priority habitats (listed here[^9]), such as Sites of Special Scientific Interest or Ancient woodland[^10]. If there are likely to be any adverse impacts you’ll need to think about how such impacts can be avoided, mitigated or, as a last resort, compensated for.

**Priority and protected species**

You’ll also want to consider whether any proposals might affect priority species (listed here[^11]) or protected species. To help you do this, Natural England has produced advice here[^12] to help understand the impact of particular developments on protected species.

**Best and Most Versatile Agricultural Land**

Soil is a finite resource that fulfils many important functions and services for society. It is a growing medium for food, timber and other crops, a store for carbon and water, a reservoir of biodiversity and a buffer against pollution. If you are proposing development, you should seek to use areas of poorer quality agricultural land in preference to that of a higher quality in line with National Planning Policy Framework para 112. For more information, see our publication Agricultural Land Classification: protecting the best and most versatile agricultural land[^13].

**Improving your natural environment**

Your plan or order can offer exciting opportunities to enhance your local environment. If you are setting out policies on new development or proposing sites for development, you may wish to consider identifying what environmental features you want to be retained or enhanced or new features you would like to see created as part of any new development. Examples might include:

- Providing a new footpath through the new development to link into existing rights of way.
- Restoring a neglected hedgerow.
- Creating a new pond as an attractive feature on the site.
- Planting trees characteristic to the local area to make a positive contribution to the local landscape.
- Using native plants in landscaping schemes for better nectar and seed sources for bees and birds.
- Incorporating swift boxes or bat boxes into the design of new buildings.
- Think about how lighting can be best managed to encourage wildlife.
- Adding a green roof to new buildings.

You may also want to consider enhancing your local area in other ways, for example by:

[^12]: https://www.gov.uk/protected-species-and-sites-how-to-review-planning-proposals
[^13]: http://publications.naturalengland.org.uk/publication/35012
• Setting out in your plan how you would like to implement elements of a wider Green Infrastructure Strategy (if one exists) in your community.
• Assessing needs for accessible greenspace and setting out proposals to address any deficiencies or enhance provision.
• Identifying green areas of particular importance for special protection through Local Green Space designation (see Planning Practice Guidance on this ¹⁴).
• Managing existing (and new) public spaces to be more wildlife friendly (e.g. by sowing wild flower strips in less used parts of parks, changing hedge cutting timings and frequency).
• Planting additional street trees.
• Identifying any improvements to the existing public right of way network, e.g. cutting back hedges, improving the surface, clearing litter or installing kissing gates) or extending the network to create missing links.
• Restoring neglected environmental features (e.g. coppicing a prominent hedge that is in poor condition, or clearing away an eyesore).

Dear Sir/Madam,

Re: Ashover Neighbourhood Plan – Regulation 16 consultation

This letter provides the response of Gladman Developments Ltd (hereafter referred to as “Gladman”) to the current consultation held by North East Derbyshire District Council (NEDDC) on the submission version of the Ashover Neighbourhood Plan (ANP) under Regulation 16 of the Neighbourhood Planning (General) Regulations 2012.

Legal Requirements
Before a neighbourhood plan can proceed to referendum it must be tested against a set of basic conditions set out in paragraph 8(2) of Schedule 4b of the Town and Country Planning Act 1990 (as amended). The basic conditions that the ANP must meet are as follows:

(a) Having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the order.
(d) The making of the order contributes to the achievement of sustainable development.
(e) The making of the order is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area).
(f) The making of the order does not breach, and is otherwise compatible with, EU obligations.

National Planning Policy Framework and Planning Practice Guidance
The National Planning Policy Framework (the Framework) sets out the Government’s planning policies for England and how these are expected to be applied. In doing so it sets out the requirements for the preparation of neighbourhood plans to be in conformity with the strategic priorities for the wider area and the role in which they play in delivering sustainable development to meet development needs.

At the heart of the Framework is a presumption in favour of sustainable development, which should be seen as a golden thread through both plan-making and decision-taking. For plan-making this means that plan makers should positively seek opportunities to meet the development needs of their area and Local Plans should meet objectively assessed needs, with sufficient flexibility to adapt to rapid change. This requirement is applicable to neighbourhood plans.
The recent Planning Practice Guidance (PPG) updates make clear that neighbourhood plans should conform to national policy requirements and take account the latest and most up-to-date evidence of housing needs in order to assist the Council in delivering sustainable development, a neighbourhood plan basic condition.

The application of the presumption in favour of sustainable development will have implications for how communities engage with neighbourhood planning. Paragraph 16 of the Framework makes clear that Qualifying Bodies preparing neighbourhood plans should develop plans that support strategic development needs set out in Local Plans, including policies for housing development and plan positively to support local development.

Paragraph 17 further makes clear that neighbourhood plans should set out a clear and positive vision for the future of the area and policies contained in those plans should provide a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency. Neighbourhood plans should seek to proactively drive and support sustainable economic development to deliver the homes, jobs and thriving local places that the country needs, whilst responding positively to the wider opportunities for growth.

Paragraph 184 of the Framework makes clear that local planning authorities will need to clearly set out their strategic policies to ensure that an up-to-date Local Plan is in place as quickly as possible. The Neighbourhood Plan should ensure that it is aligned with the strategic needs and priorities of the wider area and plan positively to support the delivery of sustainable growth opportunities.

**Planning Practice Guidance**

It is clear from the requirements of the Framework that neighbourhood plans should be prepared in conformity with the strategic requirements for the wider area as confirmed in an adopted development plan. The requirements of the Framework have now been supplemented by the publication of Planning Practice Guidance (PPG).

On 11th February 2016, the Secretary of State (SoS) published a series of updates to the neighbourhood planning chapter of the PPG. In summary, these update a number of component parts of the evidence base that are required to support an emerging neighbourhood plan.

On 19th May 2016, the Secretary of State published a further set of updates to the neighbourhood planning PPG. These updates provide further clarity on what measures a qualifying body should take to review the contents of a neighbourhood plan where the evidence base for the plan policy becomes less robust. As such it is considered that where a qualifying body intends to undertake a review of the neighbourhood plan, it should include a policy relating to this intention which includes a detailed explanation outlining the qualifying bodies anticipated timescales in this regard.

Further, the PPG makes clear that neighbourhood plans should not contain policies restricting housing development in settlements or preventing other settlements from being expanded.

**Relationship to Local Plans**

The current development plan relevant to the preparation of the ANP is contained in the saved policies of the North East Derbyshire Local Plan, saved with a Direction from the Secretary of State in 2008.

Work is progressing on the emerging North East Derbyshire Local Plan which will cover the period to 2033, together with land use allocations and key policies to direct development over the plan period. Once adopted, it will become part of the development plan for North East Derbyshire and will replace the ‘saved’ local plan policies.

Given the strategic requirements in the emerging Local Plan remain uncertain until it is tested by an Inspector at Examination against the tests of soundness outlined in paragraph 182 of the Framework, it will be important for the ANP to allow for flexibility to minimise any potential conflict between the emerging Local Plan and Neighbourhood Plan as Section 38(5) of the Planning and Compulsory Purchase Act 2004 states:
‘if to any extent, a policy contained in a development plan for an area conflicts with another policy in the development plan the conflict must be resolved in favour of the policy which is contained in the last document to be adopted, approached, or published (as the case may be).’

Ashover Neighbourhood Plan
This section highlights the key issues that Gladman would like to raise with regards to the content of the ANP as currently proposed. It is considered that some policies do not reflect the requirements of national policy and guidance, Gladman have therefore sought to recommend a series of alternative options to be considered as modifications in order for the plan to be consistent with the requirements of the Framework.

Neighbourhood Plan Policies

Policies AP1 and AP2

Gladman would be opposed to the use of settlement limits if these would preclude otherwise sustainable development from coming forward. The Framework is clear that development which is sustainable should go ahead without delay, in accordance with the presumption in favour of sustainable development. The use of a settlement limit as proposed to arbitrarily restrict suitable development coming forward on the edge of Ashover would not accord with the positive approach to growth required by the Framework. Further, it is noted that the supporting text makes clear that any revision of such boundaries will be considered through the emerging Local Plan and could therefore result in this policy being amended in a short period of time.

Gladman believe that the policy should be amended which promotes a criteria based approach consistent with the requirements of national policy. The following wording is put forward for consideration:

“The Ashover Neighbourhood Plan will take a positive approach to development proposals which lead to the delivery of sustainable development. Applications that accord with the policies in the Development Plan and the Ashover Neighbourhood Plan will be supported particularly where they:

- Provide new homes including market and affordable housing; or
- Opportunities for new business facilities through new or expanded premises; or
- Infrastructure to ensure the continued vitality and viability of the neighbourhood area.

Development adjacent to the existing settlement will be permitted provided that any adverse impacts do not significantly and demonstrably outweigh the benefits of development.”

Policy AP3

Gladman do not consider that this policy provides an appropriate basis for development as it seeks to limit development proposals to 5 dwellings or less. Whilst it is acknowledged that the policy wording includes the word ‘normally’ this could lead to inconsistencies being made through the decision making process. Accordingly, Gladman recommend that the policy is modified to offer support to windfall development as opposed to setting a dwelling limit in the policy wording.

Policy AP5

In principle, Gladman support the inclusion of policy AP5 which seeks to encourage the delivery of affordable housing in the neighbourhood plan area. However, given that the Plan does not specifically allocate any additional sites for residential growth, there is no guarantee that windfall sites will come forward at a sufficient scale to deliver additional affordable housing given that AP3 suggests windfall sites to be no more than 5 dwellings. As set out in response to policies AP1 and AP2, it is important that flexibility is built into the Plan to ensure sustainable growth opportunities can be delivered which will assist in delivering the plan’s wider objectives such as the delivery of affordable housing.
In addition, no information is provided to justify the inclusion of ‘exceptional circumstances’. Within the Framework, the ‘exceptional circumstances’ test for new development proposals is only featured in respect of development within nationally protected designations, which provides a specific national policy designation which indicates that development should be restricted. As such, there is no justification for the exceptional circumstances test and this should be delivered in order to allow flexibility to deliver affordable housing should opportunities arise where these could be delivered offsite.

Policy AP13: Non designated heritage assets

This policy is not in accordance with the requirements of national policy and should be modified to reflect paragraph 135 of the Framework and the policy test that should be applied in these instances is that a balanced judgment should be reached having regard to the scale of any harm and the significance of the non-designated heritage asset. The policy should be modified to reflect this position.

Policy AP14: Landscape

New development can often be located on the edge of settlements without resulting in the loss of openness, character or views considered to be important by the local community. The delivery of sustainable development proposals can often enhance an existing landscape setting and provide new vistas and views to the surrounding area. Opinions on landscape are highly subjective and it is therefore important to ensure that this policy provides sufficient clarity so that this policy can be applied consistently through the decision making process. Whilst an area of farmland on the edge of a settlement may be valued by local people, this does not in itself mean it forms a ‘valued’ landscape. This policy must allow a decision maker to come to a view as to whether particular locations contain physical attributes that would ‘take it out of the ordinary’. Local residents may raise particular concern with development which may be located on the edge of the settlement. However, an area’s generally pleasant sense of openness and the potential for views across an area to open countryside beyond cannot on their own amount to a valued landscape.

Policy AP15: Local Green Spaces

The designation of Local Green Spaces (LGS) is a significant and restrictive policy tool. As such, it is important that the designation of any land as LGS is capable of meeting all three tests outlined in paragraph 77 of the Framework which states that:

“The Local Green Space designation will not be appropriate for most green areas or open space. The designation should only be used:

- Where the green space is in reasonable close proximity to the community it serves;
- Where the green area is demonstrably special to a local community and holds a particular local significance, for example because of its beauty, historic significance, recreational value (including as a playing field), tranquillity or richness of its wildlife; and
- Where the green area concerned is local in character and is not an extensive tract of land.”

Whilst some consideration has been given to the proposed sites to justify their conclusion, Gladman is concerned that some of the proposed LGS designations do not meet the requirements for designation. The issue of whether LGS meets the criteria for designation has been explored in a number of Examiner’s Reports across the country and we highlight the following decisions:

- The Seldescombe Neighbourhood Plan Examiner’s Report\(^1\) recommended the deletion of a LGS measuring approximately \(4.5 \text{ha}\) as it was found to be an extensive tract of land.

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\(^1\) Note: Gladman has measured the size of LGS where these have not been specifically referenced by the Examiner.

\(^2\) [http://www.rother.gov.uk/CHttpHandler.ashx?id=22996&p=0](http://www.rother.gov.uk/CHttpHandler.ashx?id=22996&p=0) – Pages 22 - 23
The Oakley and Deane Neighbourhood Plan Examiners Report\(^3\) recommended the deletion of a LGS measuring approximately 5ha and also found this area to be not local in character. Thereby failing to meet 2 of the 3 tests for LGS designation.

The Alrewas Neighbourhood Plan Examiner’s Report\(^4\) identifies that both sites proposed as LGS in the neighbourhood plan to be extensive tracts of land. The Examiner in this instance recommended the deletion of the proposed LGSs which measured approximately 2.4ha and 3.7ha.

The Freshford and Limpley Neighbourhood Plan Examiner’s Report\(^5\) identified that the six LGS proposed did not meet the criteria required by the Framework either collectively or individually. Indeed, the Examiner identified that the combination of sites comprised of an extensive tract of land. The Examiner also considered that the protection of fields to ‘prevent agglomeration between the settlement areas…is not the purpose of Local Green Space designation’.

The Eastington Neighbourhood Plan Examiner’s Report\(^6\) recommended the deletion of three LGS (16ha and 2ha) considered to be extensive tracts of land. The third proposed LGS was deleted due to the lack of evidence demonstrating its importance and significance to the local community.

The Tattenhill and Rangemore Neighbourhood Plan Examiner’s Report\(^7\) recommended the deletion of 2 LGS comprising of 4.3ha and 9.4ha.

The Norley Examiner’s Report\(^8\) identified a total of 13 parcels of land to be designated as LGS. The Examiner recommended at §4.98 that the ‘identification of these extensive tracts of agricultural land was contrary to NPPF policy’ and recommended that the policy should be deleted. The proposed LGS measured in the range of 1ha – 4.3ha.

The Malpas and Overton Neighbourhood Plan Examiner’s Report\(^9\) recommended the deletion of policy LC4 which included a total 42 LGS. The Examiner identified that ‘a number of identified sites do not meet one or all of these requirements.’ With regard to the third criteria the Examiner recommended that sites 16, 17 and 40 be deleted as they are ‘relatively extensive tracts of countryside. The size of these sites ranged from 3.4ha – 16ha. In this instance the Examiner also highlighted the importance of contacting landowners at an early stage about proposals to designate land as LGS. The Examiner was unable to identify any evidence of a targeted consultation with landowners.

Gladman believe that this piece of evidence should be revisited prior to the submission of the Plan for examination to ensure that the proposed designations are capable of meeting the tests required by the Framework.

**Policy AP21: Dark Skies**

Impacts arising from light pollution can be addressed through good design. Some forms of lighting are likely to be necessary to support the infrastructure associated with development proposals, for example lighting in relation to highway safety. This should be reflected in the policy wording rather than the stance taken that lighting installation will be resisted in areas that are currently dark at night.

**Conclusions**

Gladman recognises the role of neighbourhood plans as a tool for local people to shape the development of their local community. Whilst we support many of the policies aims and objectives in principle, we feel that the Plan would benefit

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\(^3\) [https://www.basingstoke.gov.uk/content/doclib/1382.pdf](https://www.basingstoke.gov.uk/content/doclib/1382.pdf) - Pages 27 - 29


\(^8\) [http://consult.cheshirewestandchester.gov.uk/file/3626372-paragraphs.4.91-4.99](http://consult.cheshirewestandchester.gov.uk/file/3626372-paragraphs.4.91-4.99)

from additional modifications to the Plan to ensure that it allows for flexibility going forward and ensures the Plan is capable of reacting positively to changes which may occur over the plan period.

Gladman hopes you have found these representations helpful and constructive. If you have any questions do not hesitate to contact me.

Yours faithfully,
John Fleming

Gladman Developments Ltd.
Helen Fairfax,
Planning Policy Manager,
North East Derbyshire District Council,
2013 Mill Lane,
Wingerworth, Chesterfield,
S42 6NG
(sent by email to: local.plan@ne-derbyshire.gov.uk)

Dear Helen,

RE: ASHOVER NEIGHBOURHOOD PLAN

I wish to comment on the Ashover Parish Neighbourhood Plan 2016-2033 Submission Version (May 2017) on behalf of my client, Simon Carr, who owns land located on the southwestern side of Moor Road. It consists of a substantial detached dwelling known as The Bourne, an outbuilding known as The Coach House, the property’s large curtilage and rough pasture land to the side and rear of the property.

An outline planning application (ref. NED/17/00358/OL) for Residential development of up to 30 dwellings, the provision of open space, landscaping and a new point of access (outline with all matters reserved) was refused on 29th August 2017 due to concerns about impact on the landscape. Please find enclosed a site location plan (ref 1082-002) identifying the land to which I refer – the application site is edged in red and the remaining land is edged in blue.

We remain of the view that the site is suitable for some additional housing in the village. It was refused for one reason, namely the impact on the landscape. In my view the development would represent a modest extension to the village without altering its character in any meaningful way, as it adjoins residential development to the northeast and an approved housing development to the southeast (for which a reserved matters application has now been submitted).

I will now provide comments on various sections of the plan in the order in which they appear.

7.1 SPATIAL STRATEGY

As a general comment, the plan relies heavily on the Draft Local Plan and the identification of the villages within the parish of Ashover as Level 3 and 4 settlements. The Local Plan remains at an early stage of preparation and should not be relied upon at this stage. The fact remains that the council has a housing target of 6,600 new homes and there are difficult decisions to be made. Ashover is one of the larger settlements in the western part of the District and has repeatedly been identified as a sustainable location for housing development, for example in the adopted Local Plan, the Settlement Role and Functions Study, and the Settlement Hierarchy paper produced prior to 2015. The 2015 draft Local Plan identified it as being suitable to accommodate 115 dwellings and the evidence base which underpinned this approach remains valid. This is particularly significant because the Council decided to abandon that Plan as it was failing to identify sufficient housing land, including in the western part
of the District in which Ashover is located. Ashover benefits from a good range of local services and amenities and there is no service or infrastructure constraint affecting the suitability of further housing development in the village. The figure of 115 dwellings was justified because of a lack of affordable housing; an ageing population; and the need to maintain local services in the parish.

The knock-on effects of the council’s proposed new settlement hierarchy are significant. The proposals to remove 140 hectares of Green Belt land for development around Dronfield, Eckington and Killamarsh in the emerging Local Plan are highly questionable as all but a few of these areas of land continue to perform a valid Green Belt function. The prevention of modest levels of growth in places like Ashover simply increases the pressure on the council to release Green Belt land in other areas and there can be no guarantee that this strategy will be found sound when the Local Plan is examined.

The NPPF is clear, at paragraph 83, that “Once established, Green Belt boundaries should only be altered in exceptional circumstances”. It remains to be seen whether the council can convince an Inspector that exceptional circumstances exist.

**POLICY AP 1: DEVELOPMENT WITHIN LIMITS TO DEVELOPMENT**

I note that The Bourne, its outbuilding The Coach House (which previously had planning consent for its conversion to a separate dwelling, planning ref. 06/00042/FL) and its curtilage have not been included in the proposed Limits to Development of Ashover. This is an anomaly for which I can see no justification, particularly when ribbon development to the south of Butts Road and Hockley Lane is now proposed for inclusion within the Limits to Development in the submission version. On behalf of my client I would ask that The Bourne, the Coach House and its curtilage be included within the Limits to Development (indicated in blue on the submitted Site Location Plan).

It would be normal practice for the proposed Limits to Development to include sites with planning permission including the site adjacent to Moor Road and Narrowleys Lane for 26 dwellings. This abuts the southeast boundary of my client’s site. Planning permission has also been granted for 10 dwellings off Milken Lane on 16th June 2017. Again, this land should be included within the proposed Limits to Development.

**7.2.1 Housing Growth**

The document asserts that “With the development of the four sites proposed for housing in the original draft of the Neighbourhood Plan, the Narrowleys Lane housing approval and on-going ‘windfall development’ (see section 7.2.2), it is considered that the Plan provides for a proportionate amount of housing growth.” This is a judgement for the district council to make, bearing in mind its previous proposals for growth in Ashover and the Green Belt constraints in much of the rest of the district.

**POLICY AP 4: NEW HOUSING MIX**

There is recognition here that the housing mix in the village is unbalanced, with too many large detached properties. This is unsustainable for the village in the medium to long term. However, the policy wording is very vague and does not provide the reader with a clear idea of what level of smaller dwellings would be expected.
POLICY AP 5: AFFORDABLE HOUSING
The lack of affordable housing remains a significant issue across the parish. Whilst the policy contains measures to ensure that affordable homes are allocated to people with a local connection, there is no mechanism for actually increasing the number of affordable homes in the village. The document advises that “The recent planning approval at Narrowleys Lane includes a requirement that 10 of the 26 homes to be provided should be affordable. This should make an important contribution to meeting affordable housing needs in the Parish.” However, it is unclear how any more affordable homes will be delivered (in light of the 10 dwelling threshold) given that the Draft Plan would permit small scale developments only.

POLICY AP9: PROTECTION AND ENHANCEMENT OF COMMUNITY FACILITIES
The protection of local services and facilities, particularly public houses and shops, is clearly very important to the village. In this regard, new residents will help to support such services and facilities.

POLICY AP13: NON DESIGNATED HERITAGE ASSETS
This policy is overly restrictive and inconsistent with paragraph 135 of the NPPF.

POLICY AP 17: IMPORTANT TREES AND HEDGEROWS
This policy is overly restrictive and does not allow for an approach where the loss of such trees, hedges and woodlands should be weighed against the benefits of the proposal in question.

Summary
The policies contained within the Neighbourhood Plan are reliant on a Draft Local Plan which remains in its early stages and is pursuing a strategy of Green Belt release which is highly questionable. Whilst there is a recognition that the parish’s housing market is unbalanced there are sustainable solutions to deal with this issue in the medium to long term.

Please keep me informed with the next steps in the Neighbourhood Plan process.

Yours sincerely,

Richard Pigott BA (Hons) MSc MRTPi
Director
For and on behalf of Planning & Design Practice Ltd