Re: Land North of Eckington Road, Coal Aston, Dronfield

OPINION

Introduction and Background

1. I am instructed in this matter by James Carpenter, Planning Director of Richborough Estates ("Richborough"). I am asked to advise in relation to a proposed site for residential development on Land North of Eckington Road, Coal Aston, Dronfield ("the site"). The background to this matter is set out in my instructions, and I do not propose to repeat it all here. However, a brief summary of factual matters is helpful:

(i) The site is presently Green Belt land;
(ii) North East Derbyshire District Council ("the Council") has identified the site for release from the Green Belt in its emerging Local Plan (2014-2034) ("eLP").
(iii) The site is allocated under reference DR2.

2. On 18 February 2019, the Inspector examining the eLP wrote to the Council to indicate her initial findings following the hearing sessions in November and December 2018. The Inspector addressed the Spatial Strategy, the Green Belt Review, and allocation DR2, and made the following observations:

   a. Subject to a main modification specifying a less prescriptive approach to the distribution of development, Policy SS2 could be found sound. The modification should identify that the four Level One towns and strategic sites are “priority location” of new development rather than specifying the figure of 50%;
   b. The Inspector considered that the lack of site options following the initial Green Belt assessment indicates that the spatial strategy should have been revisited with particular regard to the 50% figure in Policy SS2. The Inspector also concluded that exceptional circumstances had not been demonstrated to justify the alteration of the Green Belt
boundaries and the removal of land for development on sites DR2 and EC1, nor for the proposal to remove site DR1 in its entirety;

c. Further conclusions in respect of site DR2 are included at paras. 10-11. The Inspector identified material harm to the character and appearance of the Moss Valley Conservation Area, and the landscape character of the local landscape;

d. The Inspector further concluded that insufficient weight had been given to the harmful impact that development would have on the strategic function of the Green Belt in this location as identified in the Functionality Study (2014). It was concluded that the release of the site would cause material harm to openness, and that exceptional circumstances were not demonstrated to justify the boundary alteration in this location and remove the site for development; and

e. At paras. 16-18 the Inspector concluded on the housing land supply. The inspector identified that there is a sufficient supply in relation to the next five years, but that there would not be sufficient housing identified to meet needs in years 5 to 11. It was suggested the Council should identify a supply of site for years 6-10 of the plan, but “only” where possible for years 11-15.

3. I have been provided with the Council’s response to the Inspector’s Initial Findings dated 20 February 2019, which suggests the Council will make the amendments identified, and that it will reduce the number of Green Belt sites allocated in the Local Plan. That will require a further review in due course. Frankly, that seems to be putting the problem off until further down the line.

4. I also have representations from DLP dated 6th March 2019 in which DLP have made representations concerning the direction of the plan in light of the Inspector’s Initial Findings, and in particular, the Inspector’s conclusions in respect of the appeal site. The letter and a summary of the case law that informed it are appended to this Opinion.

5. I am therefore asked to advise in respect of a number of matters both in relation to the progress of the eLP, and the strategy for the site going forward. I address those issues in turn below after a summary of the legal and policy background.
Legal and Policy Background

6. The plan is being examined pursuant to the 2012 NPPF in the context of para 214 of the revised NPPF and the transitional provisions. I will therefore refer to policies in the original NPPF unless otherwise stated.

7. Paragraph 47 of the NPPF requires that in order to boost significantly the supply of housing, LPAs should:

(i) identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing; and
(ii) identify a supply of specific, developable sites or broad locations for growth, for years 6-10 and, where possible, for years 11-15;

8. The assumption is clearly that a supply of sites will be identified in years 11-15 unless it is not possible to do so. It is not merely a suggestion of something that Councils can choose not to do. In respect of that requirement, the PPG confirms:

“Is it essential to identify specific developable sites or broad locations for housing growth for years 11-15?

As set out in the National Planning Policy Framework, local planning authorities should identify a supply of specific, developable sites or broad locations for growth, where possible, for years 11-15. Local Plans can pass the test of soundness where local planning authorities have not been able to identify sites or broad locations for growth in years 11-15.

Paragraph: 027 Reference ID: 3-027-20140306”

9. However, that also has to be read in light of the preceding guidance:
“What happens if the trajectory indicates that there are insufficient sites/broad locations to meet the objectively assessed need?

It may be concluded that insufficient sites/broad locations have been identified against objectively assessed needs. Plan makers will need to revisit the assessment, for example changing the assumptions on the development potential on particular sites (including physical and policy constraints) including sites for possible new settlements.

If, following this review there are still insufficient sites, then it will be necessary to investigate how this shortfall should best be planned for. If there s [sic] clear evidence that the needs cannot be met locally, it will be necessary to consider how needs might be met in adjoining areas in accordance with the duty to cooperate.

Paragraph: 026 Reference ID: 3-026-20140306”

10. In terms of Green Belt policy, NPPF79 explains that the Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. However the NPPF also recognises that Green Belt boundaries may have to respond to changing circumstances, and as such, can be changed though the preparation or review of the Local Plan

11. At that time, authorities should consider the Green Belt boundaries having regard to their intended permanence in the long term, so that they should be capable of enduring beyond the plan period; see NPPF83

12. NPPF 84 explains that:

“When drawing up or reviewing Green Belt boundaries local planning authorities should take account of the need to promote sustainable patterns of development. They should consider the consequences for sustainable development of channelling development towards urban areas inside the Green Belt boundary, towards towns and villages inset within the Green Belt or towards locations beyond the outer Green Belt boundary”.
13. NPPF 85 sets out a number of issues for consideration when defining boundaries. Typically, those matters will be considered through the evidence base to, and the Local Plan itself. They relate to a range of matters including that LPAs should satisfy themselves that Green Belt boundaries will not need to be altered at the end of the development plan period; and that LPAs should define boundaries clearly, using physical features that are readily recognisable and likely to be permanent.

14. The following legal principles are also applicable, as set out my instructions:

(i) whether exceptional circumstances are demonstrated to justify Green Belt release is a matter of planning judgement in the local plan exercise;¹

(ii) it is not the case that Green Belt release has to be seen as a measure of last resort;²

(iii) the planning judgments involved in the ascertainment of exceptional circumstances should, at least ideally, identify and then grapple with the following matters:

a. the acuteness/intensity of the objectively assessed need (matters of degree may be important);
b. the inherent constraints on supply/availability of land prima facie suitable for sustainable development;
c. the consequent difficulties in achieving sustainable development without impinging on the Green Belt;
d. the nature and extent of the harm to the Green Belt (or those parts of it which would be lost if the boundaries were reviewed); and

e. the extent to which the consequent impacts on the purposes of the Green Belt may be ameliorated or reduced to the lowest reasonably practicable extent.³

15. Moreover, Mr Justice Jay in the Calverton case explained as follows:

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¹ IM Properties Development Ltd v Lichfield DC [2014] EWHC 24440 (Admin)
² Ibid
³ Calverton Parish Council v Nottingham City Council & Others [2015] EWHC 1078 (Admin)
“42. The issue in Solihull was whether land could be allocated to Green Belt: in other words, the point was addition, not subtraction. The mere fact that a particular parcel of land happens to be unsuitable for housing development cannot be a Green Belt reason for expanding the boundary. In a case where the issue is the converse, i.e. subtraction, the fact that Green Belt reasons may continue to exist cannot preclude the existence of countervailing exceptional circumstances – otherwise, it would be close to impossible to revise the boundary. These circumstances, if found to exist, must be logically capable of trumping the purposes of the Green Belt; but whether they should not in any given case must depend on the correct identification of the circumstances said to be exceptional, and the strength of the Green Belt purposes. In the present context, one needs to continue to bear in mind paragraph 10 of Hunston (see paragraph 39 above), and to draw a distinction between, on the one hand, suitability without more, and on the other hand, suitability and availability. Suitability simpliciter cannot logically be envisaged as an exceptional circumstance (here, the second sentence of paragraph 36 of Solihull applies); suitability and availability may do, subject to the refinements discussed below. “

16. Accordingly, when considering the release of any particular site from the Green Belt, it is necessary to consider the extent to which the site meets the Green Belt purposes, and whether or not it is suitable and available.

17. In respect of Conservation Areas, the NPPF explains as follows:

“127. When considering the designation of conservation areas, local planning authorities should ensure that an area justifies such status because of its special architectural or historic interest, and that the concept of conservation is not devalued through the designation of areas that lack special interest.”

And:

“137. Not all elements of a World Heritage Site or Conservation Area will necessarily contribute to its significance. Loss of a building (or other element) which makes a positive contribution to the significance of the Conservation Area or World Heritage Site should be treated either as substantial harm under paragraph 133 or less than substantial harm under paragraph 134, as appropriate, taking into
account the relative significance of the element affected and its contribution to the significance of the Conservation Area or World Heritage Site as a whole.”

18. NPPF 134 requires the balancing of harm to the historic environment against the public benefits that would arise from the proposals. The PPG sets out the following in respect of Conservation Areas:

“Do local planning authorities need to review conservation areas?
Local planning authorities must review their conservation areas from time to time (section 69(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990).

A conservation area appraisal can be used to help local planning authorities develop a management plan and appropriate policies for the Local Plan. A good appraisal will consider what features make a positive or negative contribution to the significance of the conservation area, thereby identifying opportunities for beneficial change or the need for planning protection.

Paragraph: 025 Reference ID: 18a-025-20140306”

19. Historic England’s Guidance on Conservation Area Appraisal, Designation and Management explains that:

“18 A character appraisal of the conservation area will have the following enduring benefits:

- Those considering investment in the area for new development, including developers, planners, Council members, the Planning Inspectorate and Secretary of State, are able to assess the impact of proposals on the area’s special interest, character and appearance. The appraisal will be a material consideration in decisions affecting the area

- The area’s special interest is clearly demonstrated allowing robust analysis of the impact of proposals on its significance ....”

20. And in respect of the designation of large areas of open countryside:
“Conservation area designation is not generally an appropriate means of protecting the wider landscape (agricultural use of land falls outside the planning framework and is not affected by designation as a conservation area) but it can protect open areas particularly where the character and appearance concerns historic fabric, to which the principal protection offered by conservation area designation relates.”

21. That is particularly relevant in relation to the Moss Valley Conservation Area, which covers a vast area of countryside with little built development within it. It is likely that the designation would not be considered appropriate pursuant to the prevailing policy and guidance given that the focus of the designation relates to the built environment and the architectural and historic merit it possesses.

The Local Plan and the Council’s Evidence Base

22. The Local Plan makes the following references to Green Belt:

a. “In addition, a revised spatial distribution of development was proposed to give greater focus on development at the main towns of Dronfield, Eckington and Killamarsh in the north of the district and which involves some release of land from the Green Belt in the light of the findings of a comprehensive review of Green Belt boundaries.” (§1.5) emphasis added

b. “The north of the District contains three of the District’s four towns; Dronfield, Eckington, and Killamarsh, and a number of much smaller settlements surrounded by countryside comprising mainly of wooded hills and valleys. The rural area lies entirely in the Green Belt and the towns and other settlements have generally been developed up to their boundaries, meaning that there are few development sites still available within their existing built up areas. All three towns have a coal mining history, although there is little evidence of that today. Each of these towns has its own designated town centre, which in the main are relatively successful in terms of local shopping and service provision. There has however been a need identified to regenerate all three centres in order to improve the quality of the town centre environment. These towns relate closely to the Sheffield conurbation and just under a quarter of people commute out of the District to
work in the city.” (§2.6) emphasis added

c. “In the north of the District lie the towns of Dronfield, Eckington and Killamarsh. **Given that these towns are surrounded by Green Belt, there are issues in balancing the housing needs of these specific areas against the impact on the Green Belt and the countryside.**” (§2.14) emphasis added

d. Under the heading “vision”, “In the North of the District, growth and expansion of the towns of Dronfield, Eckington and Killamarsh, will have met the development needs of communities in the northern part of the district helping to deliver much needed affordable homes, and regenerate and renew their towns’ centres. In planning for growth new high quality housing will have successfully integrated itself into these settlements minimising its impact upon the strategic functions of the Green Belt, and creating strong defensible boundaries for the future.” (§3.5)

23. Further, the Green Belt Review is addressed within the eLP from paras. 4.67-4.70. The section explains that Green Belt release is needed to ensure that the growth required can be planned in a sustainable way, which it can’t without alterations to the Green Belt boundary.

24. The key reasoning is given that: “based upon the fact that three of the District’s four most sustainable settlements are tightly constrained by the Green Belt and evidence shows that:

- Housing land supply in these areas is limited, which combined with high demand has driven up land values and exacerbated housing affordability issues;
- Employment land in these settlements should be retained for employment use,
- Existing sports pitches and recreation facilities within these settlements are all required to be retained
- Increasing supply in other areas of the district would not support the strategy of the Plan”

25. There is therefore, significant justification provided not just for Green Belt release, but for Green Belt release at of Dronfield, Eckington and Killamarsh.

26. Importantly, the section also explains that the sites identified through the
Green Belt Assessment have been taken though the usual site assessment process and the Sustainability Appraisal to ensure that they are suitable for development. Ultimately, the sites proposed to be taken forward through the eLP have been subject to rigorous testing.

27. The Housing Land Availability Assessment considered the site as DRO/704, and arrived at a number of conclusions. The following in respect of the conservation area is particularly relevant, (repeated exactly):

“Entire parcel lies within Moss Valley Conservation Area (CA/20). The Historic Landscape Assessment classifies the central and eastern part as "Ancient Enclosure - Fossilised Strip System", an area in between as "Post-1650 Encl - Regular: Piecemeal/Award, no details". The existing playing fields are classified as "Recreational". Independent heritage advice was provided to the Council by ASpbury [sic] Planning, which concluded the following: This site is located within the Moss Valley Conservation Area and comprises of agricultural [sic] land. There are a number of Grade II listed buildings located in Coal Aston Village which is approximately 400 metres to the west. The settings of these buildings are the settlement of Coal Aston and are also separated from the proposed housing site by existing development [sic] and topography. There will be no impact on the setting of these buildings. The Moss Valley COnservation [sic] Area is extensive where this site is just within the area on the south western part. A Heritage Impact Assessment (Humble Heritage November 2016) has been submitted regarding the potential heritage impact of housing [sic] on the character and appearance of the Moss Valley Conservation Area. This is a thorough and well considered document and they concur with the conclusions of the appraisal [sic] that "the site does not form a significant part of the Moss Valley conservation area, making non specific contribution [sic] to its special character". Therefore there will be little or no impact on the character and appearance of the conservation area. Directly to the west of the proposed housing site is the Coal Aston Conservation Area which is tightly drawn around the historic core of the settlement. The rural land which [sic] historically was undeveloped to the east of the conservation area on the north and south of the Eckington Road contains housing. Therefore I consider the proposed housing site which is beyond these existing housing developments and to the north of this existing housing will have no impact [sic] on the setting of Coal Aston Conservation Area.”

26. It is a sub-area objective in relation to Dronfield that:

“To ensure the vitality and viability of Dronfield, Eckington and Killamarsh
town centres by supporting improvements compatible with their local employment, retail and service functions and reflecting the scope that exists for physical change within them as defined through the Regeneration Frameworks.”

28. Dronfield is a Level 1 town.

29. The eLP identifies a housing target of 330 dpa and 6,600 dwellings over the plan period. Having regard to completions and commitments since the start of the plan period, the balance is 1,764 for the remaining 15 years of the plan period.

30. Two observations can be made about that, first, that is a relatively low figure, and second, given the number of sites with planning permission (3882 dwellings) there is likely to be good delivery in the first 5 years of the plan period, but delivery thereafter might be more challenging.

31. The spatial strategy in policy SS2 is explained in the preceding text of the eLP:

“4.29 Level 1 Settlements in the hierarchy comprise the four towns of Clay Cross, Dronfield, Eckington and Killamarsh. These towns are considered to be the most sustainable locations for new development in terms of the range of services and facilities they provide and support and because they generate the greatest needs for new housing, jobs, services and facilities. In 2011, these four towns contained almost 50% of the district’s housing and 48% of the population.

4.30 The towns also have important roles in providing the economic, commercial and social hearts of the District and growth will be targeted to support and where possible enhance these roles. It is logical and reasonable therefore that we should look to these towns to maintain their importance and prominence and to seek to provide for a significant proportion of the District’s housing growth requirements, to accommodate any required retail growth within their town centres and provide a focus for new employment growth. “ (emphasis added)

32. SS2 seeks to distribute over 50% of new housing development to the four main towns. That is supported not just by the present position of those
towns within the hierarchy as explained in the explanatory text (§4.29, 4.33), but also by the Sustainability Appraisal, which considered 5 spatial options, and settled on the option that focused the vast majority of the remaining growth at Level 1 Settlements with limited growth of 300 dwellings in Level 2 settlements.

33. Table 2.5 of the SA demonstrates the options, and shows that the majority of the growth already delivered has been at Level 2 settlements and on strategic sites. The Level 1 settlements have seen growth comparable with Level 3 and 4 settlement and countryside, which given the sustainability of those settlements is surprising. However, the eLP makes the point that those settlements are heavily constrained by Green Belt, and have limited options for growth.

34. Table 2.6 assesses the growth options, and Spatial option 1 scores more positively against the sustainability criteria than any other option. It is that process of assessment that has led to policy SS2, and the desire to focus the majority of development on the four Level 1 towns over the plan period as well as the strategic sites. Inevitably, and positively, the strategy would rebalance the present pattern of development which is that the majority has been delivered in less sustainable settlements.

35. The deletion of allocations DR2 (200 dwellings), EC1 (400) and the reduction of DR1 (originally for 235) has the potential to seriously undermine the housing distribution shown at Table 4.3 of the eLP such that the majority of housing will in fact be delivered in Level 2, 3 and 4 Settlements and in the Countryside. If that is to be the case, not only are there consequences for the Sustainability Appraisal that has been carried out in respect of the preferred strategy, but also for Dronfield as one of the most sustainable settlements; it is a settlement in need of regeneration, and a changed strategy has adverse consequences for the ambition to deliver growth in the most sustainable areas generally.

Advice

36. Some of the questions posed in my instructions are overlapping and so I will deal with broad topics below.
The Inspector’s Initial Findings

37. I do not understand the Inspector’s Initial Findings on Policy SS2. It is clear from both tables 2.5 and 2.6 of the Sustainability Appraisal, and table 4.3 of the eLP as to how the “majority (over 50%)” figure has been arrived at. The figures are straightforward. Further the allocations within the eLP are plainly focused on achieving what the SA considered the most sustainable distribution of growth, and to reverse the pattern of housing delivery in less sustainable settlements. It is clear that what presently appears in policy SS2 is a concise description of spatial option 1 that has been assessed as the most sustainable option when considered against the alternatives.

38. The Inspector has suggested that the wording should be modified to be less prescriptive and state that the Level 1 settlements should be the “priority locations” for growth, but without any quantification of what that means. The difficulty is that without any benchmark or threshold, such as “majority” or “50%”, the policy is open to wide and varying interpretations that do not accord with the spatial strategy which has been assessed as the most sustainable, and which has informed the development of the eLP.

39. The change to that strategy that would be brought by the deletion of some large Level 1 allocations will undoubtedly require the SA to be revisited. The strategy pursued by the eLP would not longer reflect spatial option 1, and is not the option that has been assessed as the most sustainable. Moreover, if the Inspector’s option 1 is followed (that is to not identify any replacement sites), the starting point is a strategy that focuses the majority of development away from the Level 1 Settlements and Strategic Sites, and into the lower level settlements and countryside. That is not just contrary to what has been assessed by the SA, but it is contrary to sound forward planning principles. It is likely to mean that as soon as the Council fall into housing land supply deficit, then sites within the open countryside and associated with lower level settlements become vulnerable to speculative development. That is particularly so given that three of the Level 1 Settlements are surrounded by Green Belt, which is of course highly restrictive in respect of new housing irrespective of the housing land supply position. It is a far more robust protection that ordinary settlement boundaries.

40. Further, because of the Green Belt constraints in respect of three of the four Level 1 settlements, the use of the proposed phrase “priority location” is
meaningless for the following reason; if the proposed Green Belt allocations are deleted or modified, the majority of the largest and most sustainable settlements (as assessed by the Council) are rendered incapable of delivering new housing in the future without a review of the Local Plan. Clay Cross is the only none Green Belt constrained settlement, and the growth at that location reflects that position; it has the highest growth planned for any settlement given the proximity of the Biwaters Strategic Site. Again, the deletion of large sites elsewhere in Level 1 settlements has the potential to make Clay Cross vulnerable to significantly more development beyond its capacity, with adverse consequences for sustainability. It is simply not a strategy that has been assessed.

41. It will also be noted that the eLP anticipates that Dronfield is to provide 569 over the plan period. However, the deletion of DR2 reduces that figure by 200, and the deletion of DR1 is likely to lead to a further significant reduction. That is entirely at odds not just with the overall spatial strategy, (given that Dronfield is a Level 1 Settlement), but also with the ambition of the eLP that Dronfield should be a location for regeneration. There is no evidence that the strategic aims in respect of Dronfield can be realised without the Green Belt allocations presently proposed.

42. Dronfield evidently has an important role to play in the delivery of sustainable development, which is acknowledged throughout the plan; most notably at section 7 ‘Sustainable Places’ where it is said:

“7.2 Dronfield is the largest town in North East Derbyshire, and the only one with a railway station. Historically, Dronfield developed as two settlements; the principal one being on the hillside around the Parish Church and the secondary, more industrialised township, in the valley below, strung out along the River Drone and Chesterfield Road/Sheffield Road. It is highly constrained by the Green Belt that helps prevent Dronfield from merging with Unstone and in the wider context with Chesterfield, to the south, and Sheffield, to the north. As a retail and service centre it serves the needs of local residents and residents of the villages between the two major centres of Chesterfield and Sheffield. Dronfield also attracts passing trade from the B6057, although this is limited due to the A61 Dronfield-Unstone bypass.

And
“7.4 The Local Plan aims to direct new growth to the district’s most sustainable settlements based on the Settlement Hierarchy, and to Strategic Sites in suitable locations. Dronfield is the largest of the four towns within the district, and is an area of high demand for growth. “

43. However, the Inspector’s Initial Findings neither in their conclusions on SS2, nor in the proposed deletions of allocation DR1 and DR2, acknowledge those matters in any way. What the Initial Findings propose, is to alter the spatial strategy in a way that is not consistent with the SA, and to remove a significant proportion of growth from the largest and one of the most sustainable settlements in the whole district. They do so without adequate reasons, and by failing to have regard to a number of material considerations as addressed below. The proposed modifications are not justified, and compromise the effectiveness of the plan; the plan was originally prepared positively, but would no longer be so if the proposed amendments are adopted. The eLP cannot therefore be found sound.

44. As a consequence, I must agree with the DLP representations dated 6 March 2019, and included within my instructions, that the proposed amendments and course of action proposed by the Inspector have the potential to fundamentally undermine the Local Plan as submitted for examination.

45. It is correct that there is no absolute requirement for LPAs to identify specific developable sites or broad locations for growth for years 11 to 14 where it is impossible to do so; see NPPF47. However, the PPG set out above makes clear that:

“If, following this review there are still insufficient sites, then it will be necessary to investigate how this shortfall should best be planned for. If there is clear evidence that the needs cannot be met locally, it will be necessary to consider how needs might be met in adjoining areas in accordance with the duty to cooperate.”

46. It is not therefore so straightforward as saying, (as the Inspector does at paragraph 22) that the Council can be relieved of identifying sites to meet the 11-15 year requirement. If those sites cannot be identified, then the shortfall will have to be planned for. There is no indication or evidence as to how the eLP presently plans to meet the shortfall, particularly given that the wording of SS2 is to be modified to the extent that a future shortfall could in fact
encourage speculative growth at unsustainable locations; that is the opposite of planning to meet the shortfall.

47. The Inspector will also need to consider whether there is clear evidence that the objectively assessed need cannot in fact be met locally, such that the duty to cooperate is triggered. There is no evidence that any of those matters have been considered in the Inspector’s Initial Findings, in fact the opposite is true; the allocations which are proposed for removal / reduction have been through both Green Belt review and further site selection scrutiny. The requirement for “clear evidence” will likely require the Council to revisit the Housing Land Availability Assessment evidence base, the Green Belt Review, and / or the SA. At present, however, it is clear that the approach is not lawful or sound, and a Plan adopted on the approach suggested in the Inspector’s Initial Findings would be susceptible to legal challenge.

The Approach to Allocation DR2

48. The Inspector’s Initial Findings recommend the deletion of site DR2, which is Land north of Eckington Road, Coal Aston, Dronfield. The site is the subject of a statement of common ground with the Council that agrees the allocation is robust and justified, that its impacts can be mitigated, and that exceptional circumstances have been demonstrated to justify the removal of the site from the Green Belt.

49. There is an evidence base that supports the allocation, including the 2014 Functionality Study as a starting point, the Council’s detailed Green Belt Review, and the Housing Land Availability Assessment, as well as a site specific Landscape Briefing Note (submitted with the regulation 19 representations). It is noted that the site is the only site in the Dronfield area that has been assessed as not robustly meeting the Green Belt purposes (GB Review, Part 2, table 4.1). Other allocations have remained within the eLP following the Initial Findings, that score comparatively worse in Green Belt terms.

50. It is clear therefore that the Inspector accepts that exceptional circumstances have been demonstrated to support Green Belt release in the District, but the problem is in respect of the particular site. Nonetheless, that wider, and accepted context does have a bearing on the acceptance that Green Belt
sites are in fact required in order to meet the housing need. In response to the Initial Findings, the following points are relevant:

a. In reviewing GB boundaries, LPAs and indeed the Inspector should take account of the need to promote sustainable patterns of transport. Dronfield is indisputably one of the most sustainable locations in the District, and thus allocation of the site fulfils that national planning policy requirement. There is no mention of it in the Inspector’s assessment.

b. The Inspector has identified harm to the landscape character, but does not say how this harm arises, or why it is any greater than the harm that would be expected to arise from the development of any greenfield site, which is the nature of the sites relied on by the Council to meet its housing need. The Inspector fails to identify to evidence base she relies on for drawing a conclusion that is not supported by the evidence or the land promoter or the Council. There is an entire absence of reasons, contrary to the requirement set out in South Bucks District Council and another v Porter (No. 2) [2004] 1 W.L.R. 1953, at p.1964B-G that:

“The reasons for an appeal decision must be intelligible and adequate, enabling one to understand why the appeal was decided as it was and what conclusions were reached on the “principal important controversial issues”. An inspector’s reasoning must not give rise to a substantial doubt as to whether he went wrong in law, for example by misunderstanding a relevant policy or by failing to reach a rational decision on relevant grounds.”

c. Even more confusing, is the Inspector’s findings in relation to the Moss Valley Conservation Area. The area is vast, the site is a small part of it. There is no Conservation Area appraisal to identify the heritage significance of the Area itself, and the Inspector does not say what that significance is. Nor does the Inspector state what the site contributes to the significance of the CA, or why its development would lead to harm to that heritage significance. Moreover, the Area does not appear to have been reviewed since 1990 – nearly 30 years ago, in conflict with section 60 of the Planning (Listed Buildings and Conservation Areas) Act 1990. Again, there is an absence of clear reasoning in respect of the finding of harm, particular in light (again) of the evidence base, which included independent advice to the
Council as recorded in the HLAA. It would appear the Inspector has failed to have regard to that material consideration.

d. The reference to the 2014 GB Functionality Study at para. 11 of the Initial Findings are confusing. The Study was the first step in what became a thorough and rigorous review carried out by NLP in 2017. The NLP Review states that it builds on the earlier study. Moreover, the NLP document is much finer grained and is a comparative exercise between a great number of different sites. It is not at all clear that the Inspector has had regard to the later comprehensive work carried out by NLP, and the comparative findings in relation to the site are not dealt with in any detail.

e. It is also correct that the Inspector has not sought to criticise any of the processes or evidence base that led to the allocation of the site. In light of that position, it is incumbent on the Inspector to identify why she disagrees with them. That reasoning is entirely absent from the Inspector’s assessment of the site, and again, it would appear that the Inspector has failed to have regard to a number of material considerations.

f. Moreover, regard must be had to the Judgment in the Calverton Parish Council case where the Judge identified that “In a case where the issue is the converse, i.e. subtraction, the fact that Green Belt reasons may continue to exist cannot preclude the existence of countervailing exceptional circumstances – otherwise, it would be close to impossible to revise the boundary. These circumstances, if found to exist, must be logically capable of trumping the purposes of the Green Belt; but whether they should not in any given case must depend on the correct identification of the circumstances said to be exceptional, and the strength of the Green Belt purposes.”

g. The Inspector appears to identify harm to the openness of the Green Belt together with the harm to the Conservation Area as determinative. I have dealt with the Conversation Area above, and the approach is wrong for the reasons set out. As for identifying harm to openness as a reason to reject the allocation, that is conceptually wrong, and an error in law for the reason set out in Calverton.

h. The Inspector concludes in her Initial Findings at para. 11 that exceptional circumstances have not been demonstrated to justify the
alteration of the Green Belt boundary in respect of the site, but then fails to have regard to any of the benefits of the allocation that might give rise to exceptional circumstances; the Inspector only identifies harm. That is a seriously erroneous approach to the exercise bearing in mind the broader justification for Green Belt release that is accepted to exist, the sustainability of the site in terms of the settlement hierarchy, and the outcome of the site assessment process as part of the Council’s evidence base that indicates the site was suitable for release.

51. Accordingly the Inspector has erred in recommending the removal of allocation DR2, for the reasons set out in paragraph 47 above. Representations should be made to the Inspectorate so that the Inspector can revisit the evidence base in light of those representations, prior to the adoption of the eLP. It would be unfortunate if the Plan were adopted on the basis of what is demonstrated through this Opinion, to be a series of legal errors.

52. Furthermore Green Belt boundaries are intended to have the quality of permanence and be capable of enduring beyond the plan period. The approach taken by the Inspector is likely to necessitate a further Green Belt review in the short term, which not only wastes the thorough work carried out by NLP (which has identified the best performing sites for removal from the Green Belt now), but conflicts with the NPPFs approach to defining new Green Belt boundaries which should not require alteration at the end of the plan period; see NPPF para 85.

Future Strategy

53. I would be happy to discuss the strategy for promoting development on the site with those instructing in due course. It strikes me that I do not have sufficient information to be able to advise on the prospects of success at present; for example, I have not seen all of the evidence that has been gathered and submitted in relation to the site, and I do not know what additional reports have been commissioned. However, at this stage, I would make the following observations:

(i) there is an evidence base in support of removing the site from the Green Belt;
(ii) it cannot harm to update / commission further reports in respect of
the future development of the site. If the site is allocated, then the evidence can be used in support of a future application. If the Inspector does not reconsider the allocation of the site and it remains as Green Belt, it may be advisable to put in an application as soon as possible to the Council prior to adoption of the Plan.

(iii) In respect of securing planning permission from the Council, it should be remembered that the Council itself has promoted the allocation, and there should be some support for it. It is clear from what I have said above that the Inspector’s conclusions in respect of allocation DR2 do not withstand scrutiny. Further granting permission may solve a potential future problem for the Council, given that Richborough may well launch a legal challenge following adoption of the Plan, arising from the particular treatment of the site.

(iv) An application should be made as quickly as possible. It is likely the Plan will be adopted this year.

54. I am also asked to advise in relation to the Conservation Area issue; how that might be addressed and how the boundaries can be amended. Essentially, the Council is under a duty to review the boundary from time to time, to ensure that it continues to meet the criteria for designation. That has not been done here, and arguably, the designation as presently defined does not meet national planning policy, or the guidance issued by Historic England that “Conservation area designation is not generally an appropriate means of protecting the wider landscape.”

55. There is no Conservation Area appraisal, which is problematic, as that is the document that defines the heritage significance of the area, and allows the impact of future development to be ascertained. However, a heritage professional will be able to produce a Report that appropriately identifies the significance of the area, and the impact of the proposals on it. I recommend that document is commissioned / updated as soon as possible (notwithstanding the Council’s own independent advice) and submitted to the Inspectorate in light of the Inspector’s Initial Findings.

56. It is for the Council to initiate the amendment / removal of the Conservation Area.

Conclusions

57. I trust I have covered all those matters on which I am asked to advise. In summary, the approach take by the Inspector in her Initial Findings is legally
defective, undermines the strategy promoted by the eLP, and renders it unsound. The treatment of the site is similarly unlawful. Inadequate reasons have been provided, and the Inspector has failed to have regard to a number of material considerations. In respect of the strategy going forward, I would welcome a conversation and/or conference with those instructing in due course to discuss the best way forward. However, action can be taken to commission the documents required to support a planning application as soon as possible, so that those instructing are in the best possible position to secure planning permission if the allocation is not to be carried forward to adoption.

19 March 2019

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OPINION

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