Dear Helen,

Re: Site DR2 Land North of Eckington Road, Coal Aston, Dronfield

Following our meeting on 27th February regarding the Inspector’s Interim Report on the North East Derbyshire Local Plan, this letter has been prepared on behalf of Richborough Estates who have an interest in the site. The letter summarises our discussions and point to relevant, policy and case law in support of our view of the Inspector’s interim findings.

Whilst the Inspector has sought to be clear and concise on these initial findings, leaving the detail to her final report, we have significant concerns in her approach to arriving at these conclusions on soundness. In our view national policy and caselaw provide the necessary clarity for a Local Planning Authority to alter Green Belt boundaries and therefore the same applies to the appointed Inspector when considering the legal compliance and soundness of a Local Plan.

To be clear, we support the Council’s approach to Green Belt release in the submitted Local Plan, we consider it to be sound and legally compliant.

Overall Spatial Strategy of the Plan

We consider the Inspector’s Interim Findings have the potential to fundamentally undermine the Local Plan as prepared.

The Plan’s strategy to meet housing need, including affordable housing need, in the northern towns is, in principle justified as set out in the Inspectors Report, a view which we share. The Inspector indicates that the Local Plan’s spatial strategy is ‘broadly appropriate’ but does not have sufficient evidence, in her letter, to demonstrate why 50% of future development needs allocated to the north is not sound. The Inspector has then considered those benefits against Green Belt and other harms and considered that the approach is not sound. This would mean Policy SS2 was unsound.

We agree with the Council’s approach that the release of Green Belt land is necessary to ensure the delivery of the strategy; focusing on the most sustainable towns 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. This provides the exceptional circumstances to justify Green Belt release on sites which have least impact on the strategic functions of the Green Belt. Without the proposed Green Belt release and if an alternative spatial strategy was pursued, we do not consider the Local Plan would be meeting the Core Planning Principles of the 2012 Framework, nor specifically paragraphs 151 and 152 which concern Plan Making. An alternative spatial strategy would not be one which maximises the opportunities and contribution to the achievement of sustainable development.

The Inspector has accepted that a Green Belt review needed to be carried out. The Inspector must confirm that the overriding case exists for Green Belt release. If it does exist then the question is not simply about the impact upon the Green Belt of these sites now in question, but the impact compared to all other reasonable alternatives considered by the Council through the Plan making process; in
particular those which have been allocated. Simply put, based upon the evidence before the Inspector there are proposed allocations which have a greater impact upon Green Belt and a lesser contribution to the achievement of sustainable development than site DR2. Some of these examples we refer to later in this letter.

The Inspector comments at paragraph 8 of the Interim Findings that

“the lack of site options following the initial Green Belt assessment indicates that the spatial strategy should have been ‘re-visited’ with particular regard to the precision of the 50% requirement as referred to above.”

This approach runs contrary to the judgment in *Calverton Parish Council v Nottingham City Council, Broxtowe Borough Council and Gedling Borough Council* [2015]. That judgment clearly identified the “consequences for sustainable development may require revision of the Green Belt” (see accompanying Annex). Similarly, in *IM Properties Development Ltd v Lichfield DC* [2014] when considering paragraph 84 of the 2012 Framework “…is clear advice to decision makers to take into account the consequences for sustainable development of any review of green belt boundaries. As part of that patterns of development and additional travel are clearly relevant.” Both of these decisions were referenced in the Council’s Green Belt Topic Paper (para 1.13 – 1.15) and an assessment of the approach has taken place against the five tests set out in the Calverton judgment (Section 4). The Council’s process has taken into consideration the relevant case law, whilst it would appear the Inspector’s limited justification for wishing to remove DR2 runs contrary.

**Strategic Function of the Green Belt**

The Inspector deems that insufficient weight has been attributed to the harmful impact that development would have on the strategic function of the Green Belt in this location. She has referenced the Functionality Study (2014) which is not, in our opinion, the correct evidence base through which conclusions on harm to strategic Green Belt function can be drawn.

Figure 2 shows that the strategic Green Belt Parcel 'DR1' covers a large swathe of land to the north of Dronfield. This evidence base was prepared in order to establish a baseline position in terms of Green Belt function to inform the preparation of the Local Plan and was intended only to ‘assess at a general level their individual Green Belt functionality.’ The Functionality Study is a ‘first stage of a proposed two-stage process’. The study assessed the function of the general areas of Green Belt around settlements in the north and part of the west of the District and to identify those areas that are least sensitive to change.
The Functionality Study that the Inspector is reliant on as an evidence base, to justify her soundness conclusions, contradicts her findings in that purpose 4 ‘to preserve the setting and special character of historic towns’ scores 1 on account that little historic settlement pattern is influenced or conserved by the Study Zone Green Belt. The extensive Moss Valley Conservation Area abuts the north-east edge of the settlement, but this is not influential on Dronfield’s historic settlement importance or character per se.

Apart from the cultural and administrative divided between Derbyshire and south Yorkshire, little historic settlement pattern is influenced or conserved by the Study Zone Green Belt. The extensive Moss Valley Conservation Area abuts the north-east edge of the settlement, but this is not influential on Dronfield’s historic settlement importance or character per se.

The Inspector quotes the Functionality Study in that she references the strategic function of this Green Belt area as ‘clearly defining settlement extent and in places affording extensive vistas between these urban areas.’ In terms of encroachment, the study states that there are extensive views across the open countryside to the north of Dronfield. The study does also confirm that the terrain and land cover, particularly woodlands can be important elements in defining visual and perceptual separation between the towns and villages within the Green Belt (para 1.8). The Landscape Briefing Note prepared in support of the regulation 19 report highlights the topographical dip and presence of Winacre Wood to the north-east which acts as screening and enclosure in any case between the site and the open countryside. Beyond this, to the north, the site is afforded further
screening by change in topography with localised undulations providing both localised screening from some locations and highpoints in which to view the site from others. It is clear from the Council’s evidence and Landscape Briefing note that whilst the site exists within a much wider Green Belt parcel, that parcel’s function in terms of Green Belt purpose 4 is poor and that the site would have little impact upon that particular function.

The assessment of sites though the SA process requires that the actual impact of the site be assessed not wider area as applied by the Inspector. This study was further reviewed and the site assessed in DRO/GB/025 and this scored the site at either green or Amber (GB Review part 2 appendix B3). This is a much better score than other sites in the DR1 area and is the only site in Dronfield to be assessed as not robustly meeting Green Belt purposes (GB Review part 2 table 4.1). In Contrast the proposed allocation at Killamarsh which is retained scored red for purpose 3 (encroachment) in GB review part 2 (appendix 6) and is considered to robustly meeting green belt purposes (GB Review part 2 table 4.1).

It is imperative for the Inspector to be consistent in her treatment of Green Belt release. The methodology for Green Belt Study has not found to be unsound or in need of further work so this appears to a difference of opinion on the impact of the Dronfield site on purpose 3 of the green belt. Should the Inspector be indicating that the Green Belt Review is wrong, then it could also be the case for other allocated sites or objection sites. The Inspector has not looked at objection sites but clearly if the evidence base is deemed to be incorrect then all the work is required to be undertaken again.

It should further be noted that purpose 3 of the Green Belt was removed from the assessment as part of the GB review paragraph 3.21 (2). The Inspector’s findings place undue weight upon this function in relation to this site, which undermines the whole approach taken to Green Belt assessment and the results thereof. Thus, the Inspector’s findings actually impact the justification for every proposed Green Belt release and indeed every site not allocated in the Green belt, therefore undermining the evidence base of the Plan. The Inspector by imposing her subjective judgement on one of the sites, explicitly in terms of the weight to be allocated to purpose 3 of the green belt and this completely undermines the approach to the Green Belt review which renders the whole plan unsound.

Site Level Exceptional Circumstances
The Inspector cites the lack of exceptional circumstances on a site specific level as justification for removing the site from the submitted Plan. This relies on the perceived impact to the Moss Valley Conservation area (which we consider in further detail below) and impact on the Nottinghamshire, Derbyshire and Yorkshire Coalfield Wooded Hills and Valleys Landscape Character Area.

In the Gallagher Homes Ltd v Solihull Metropolitan Borough Council (2014) judgment, it was clarified that each case is of its own merits, reached by an exercise in planning judgement, however what is capable of amounting to an exceptional circumstance is a matter of law.

“Whilst each case is fact-sensitive and the question of whether circumstances are exceptional for these purposes requires an exercise of planning judgement, what is capable of amounting to exceptional circumstances is a matter of law, and a plan-maker may err in law if he fails to adopt a lawful approach to exceptional circumstances.
The demonstration of exceptional circumstances by the Council outlined in their evidence base has gone into the necessary level of detail for changing Green Belt boundaries in the plan making process. However, the Inspector has relied upon a basic level of assessment of the impact on the Conservation Area and Landscape Character Area, which has not been substantiated in evidence. Both of these issues, as demonstrated in the evidence base, can be mitigated through policy in line with the Sustainability Appraisal recommendations.

The SA identifies no significant adverse impacts as a result of the proposed development at Cross and Birches Farm. Six of the objectives are deemed to result in major or minor benefits and one is deemed to have a negligible impact. The minor adverse impacts that have been identified can all be mitigated against as part of future development proposals.

The Inspector has not found that the evidence base, in either the Sustainability Appraisal, the Green Belt Review or in terms of process is unsound. The Green Belt Review Part 1 (paragraph 4.21) identifies that there “may be possibilities for choosing ‘clusters’ of parcels where development will round-off the existing built form and new infrastructure could be more easily provided.”

In respect of the site’s performance against the principle of including land with the Green Belt, the following assessment is made against paragraph 80 of the Framework and was provided in the Regulation 19 representations. The Inspector has provided no indication that the Green Belt review is unsound.

To check the unrestricted sprawl of large built-up areas
The scale of this release and the sites well-defined visual boundaries represent a clearly defined urban extension and not unrestricted sprawl. It is acknowledged that the site is partially contained by the urban area and two of the sites boundaries adjoin Dronfield. The release of this site will not impact on the function of the Green Belt.

To prevent neighbouring towns merging into one another
The Green Belt assessment awards a score of green for the width of the strategic open gap between urban areas. It states that the removal of this parcel would leave a gap of above 1km to the urban area of Sheffield and future development would project no closer to the neighbouring urban area to that of the existing built form.

The allocation and development of the site for residential use would not subsequently result in a coalescence of settlements. Considering the strong natural boundaries of the site and its relationship with the settlement, the impact on the openness of the Green Belt would be limited.

To assist in safeguarding the countryside from encroachment
The Green Belt assessment awards the site an overall score of amber because approximately 10% of the site is covered in development. There are a variety of buildings associated with the recreational and agricultural uses of the site. It is considered that future development would neither strengthen or weaken the Green Belt boundary.

To preserve the setting and special character of historic towns
The Green Belt assessment identifies a score of green because although the parcel of land is within the Moss Valley Conservation Area, it is considered to have a limited role in preserving the setting of the Conservation Area.

The development of this site for residential purposes will not impact on the wider townscape
within this area. The allocation of this site for housing is compatible with the character of the area and represents an opportunity to enhance the character of the built form.

To assist in urban regeneration, by encouraging the recycling of derelict and other urban land
The Green Belt review identifies a score of amber because it is considered that all parcels in the Green Belt assist in urban regeneration. This is not considered to be a matter of difference between Green Belt parcels and therefore all Green Belt parcels are awarded a consistent baseline score of amber.

In summary, the detailed assessment of the site concludes that the parcel partially contributes all Green Belt purposes. The review demonstrates that the site is partially contained by the urban area and development of the site would neither strengthen nor weaken the Green Belt boundary. Future development would project no closer to the neighbouring urban area to that of the existing built form. Although part of the site is used for recreation and agricultural purposes, there are a variety of buildings associated with these uses. Therefore, it is accepted that the well-defined nature of the site means that the site will not be seen entirely as an encroachment into the open countryside, as it is semi-rural in character. It is accepted in the Green Belt Review that the special character of the Moss Valley Conservation Area would not be harmed as a result of development and the site has potential to contribute towards urban regeneration.

The site forms a logical extension to the existing urban settlement. The northern boundary to the southern field at the site continues the line of built form at the north of Dronfield from the west of the site. Built form would be kept south of this line of existing built form. The eastern site boundary does not extend beyond the line of built form of Dronfield at the south of the site towards the east.

The proposed allocation DR2 should be identified for allocation for housing and release from the Green Belt as proposed by the Local Planning Authority and supported in the Statement of Common Ground.

At a site specific level, the Inspector’s Interim Report provides the following assessment of the site:

Site DR2
10. Development of this site would result in a prominent extension of the builtup area of Dronfield into open countryside and would have a significant urbanising effect along Eckington Road. The changes to the character and appearance of the site arising from built development, the new access road and changes to vegetation and landform would cause material harm to the character and appearance of the Moss Valley Conservation Area and the landscape character of the Nottinghamshire, Derbyshire and Yorkshire Coalfield Wooded Hills and Valleys Landscape Character Area.

11. Insufficient weight has been attributed to the harmful impact that development would have on the strategic function of the Green Belt in this location, identified in the Functionality Study as ‘clearly defining settlement extent and in places maintaining expansive vistas between these urban areas’. Development of site DR2 would cause material harm to Green Belt openness and would fail to preserve or enhance the character or appearance of the Moss Valley Conservation Area. I conclude that at a site level, exceptional circumstances have not been demonstrated to justify the alteration of Green Belt boundaries in this location to remove the site for development. A main modification is necessary to delete the site allocation together with a change to remove the allocation from the Policies Map.
Conservation Area and Landscape Character Area

It is understood that the Moss Valley Conservation Area was designated in 1990 (only referenced in a Committee Report). There is no description of the Conservation Area or management plan in place to establish what the special features of the Conservation Area are, to which the designation is designed to preserve and enhance. It is an unusual designation and already contains substantial elements of built form in the settlement of Ridgeway and as such residential development is not out of character.

The SA concludes that there is negligible impact on the Conservation Area and confirms that neither the setting or features of any listed buildings are anticipated to be impacted by the development. In line with a Heritage Impact Assessment carried out for the site, DR2 is not considered to form a significant part of the Moss Valley Conservation Area and makes no special contribution to its special character. In any event, the Plan can mitigate against any impact of development on the Conservation Area in accordance with paragraph 152 of the 2012 Framework:

> Local planning authorities should seek opportunities to achieve each of the economic, social and environmental dimensions of sustainable development, and net gains across all three. Significant adverse impacts on any of these dimensions should be avoided and, wherever possible, alternative options which reduce or eliminate such impacts should be pursued. Where adverse impacts are unavoidable, measures to mitigate the impact should be considered. Where adequate mitigation measures are not possible, compensatory measures may be appropriate.

It is important to note that the Inspector does not question the soundness of the SA. Therefore, the Inspector’s assessment of the site as failing to preserve or enhance the character and appearance of the Conservation Area contradicts the evidence base of the Local Plan and does not draw on a suitable assessment of the special character of the Conservation Area given this does not exist.

The Inspector’s perception of the Landscape Character Area is that the development would cause material harm to its character. This is a very wide designation with variations in character. The character is described as having 'sparsely scattered settlements of farmsteads and hamlets with small clusters of houses and villages present. The area actually incorporates built form in Ridgeway, Marsh Lane, Apperknowle and North Eckington. The Landscape Report provided in support of the Regulation 19 representations recommends various mitigation measures and concludes that there are opportunities to bolster the existing woodland block on the northern boundary. This will provide a permanence to the existing boundaries to ensure a defensible settlement edge.

The SA supports the intention that any Local Plan allocation would require mitigation to be incorporated into the development to potentially include native planting and a permeable layout to ensure that adverse impacts on the local landscape are not significant.

Housing Supply and Early Plan Review

The DR2 site was identified as contributing to the five-year supply of housing land in Year 4 as set out in the Statement of Common Ground Trajectory. There is an opportunity for this site to come forward earlier in the Plan period and contribute to the five-year supply of housing as well as bringing forward development in 5 – 11 years stage of the Plan.

We agree with the Local Planning Authority that the appeal developments at Wingerworth (outline permission for up to 180 dwellings) and Hasland (full / reserved matters permission for 160 dwellings) should only be regarded as flexibility within the housing supply over and above the submitted Local Plan supply.
The reduction in housing supply after 5 years is not appropriate and exposes the Local Planning Authority to a risk of planning by appeal. This cannot be a sound approach. Indeed, if an LPA had proposed this approach in the first instance it is considered likely that this would have been challenged as being unsound as not having been positively prepared and would not have been in accordance with paragraph 157 of the 2012 Framework. A particularly relevant and nearby example is Amber Valley Borough Council. The appointed Inspector welcomed the Council’s suggestion of a Green Belt review, part way through the Local Plan Examination, to address housing supply issues and to ensure a five-year housing land supply could be maintained through the lifetime of the plan i.e. 15 years.

To be undermining the land supply position from years to 5 to 11 does not appear to be a plan-led or positively made approach to the Local Plan. The suggestion by the Inspector for an early plan review to establish future housing requirements and land supply appears unreasonable in respect of the strategic objectives of the Local Planning Authority would direct development to those northern settlements. Sites including DR2 would therefore become the focus of development once again. This appears to be delaying the inevitable and opens criticism in respect of ensuring 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 (para 83 of NPPF 2012). It leaves the Council exposed to speculative development.

I have appended some relevant case law to this letter to help inform the arguments contained herein.

In conclusion; the Council’s evidence base supports the spatial strategy to direct 50% of growth to the main towns in the district; that through a review of the Green Belt it would be possible to allocate sufficient land to deliver this strategy; that on a site specific level, the Council’s evidence and that provided at regulation 19 demonstrates the site will make a positive contribution to the three strands of sustainability and where necessary mitigation measures can be utilised; that the wider strategic Green Belt function of ‘DR1’ would not be compromised; and finally that on a site specific level, the proposed allocation contributes little to the function of Green Belt.

As set out in this letter, the Inspector has not found any criticism in the Council’s evidence which justifies Green Belt release; either in terms of methodology or accuracy. Her comments are effectively making a subjective judgement on purpose 3 of the Green Belt in this location. Therefore, because of this additional, subjective layer of site appraisal, this will mean that the plan, nor the evidence it relies upon, has not been prepared on a consistent basis, it has not assessed reasonable alternatives (proposed and rejected site options) in the same way consistent way and therefore adopting the proposed change will have implications to the process of Green Belt release and the soundness of the Plan. Richborough Estates are currently in the process of taking Counsel opinion on this matter.

I hope that you find this information is useful for your decision making moving forward. If you should have any points of clarity, please do not hesitate to contact me.

Yours sincerely,

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