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Dear Mr Moore

Examination of Derby City Local Plan Part 1: Core Strategy

Thank for your letter of 27 January 2016 and providing the Council with an opportunity to clarify the points you have raised. I hope you find this information, and the various attached enclosures, helpful. I will try address each of your issues in the same order as your letter.

Duty to Co-operate (DtC) and objectively assessed housing needs

Amber Valley

The HMA authorities have agreed to re-issue the 'Statement of Continued Joint Working'. You will note that this has been signed following withdrawal but still confirms Amber Valley's (AVBC) commitment to a target of 9,770. This target includes the agreed Derby apportionment. This should provide the necessary comfort in terms of meeting the DtC and that the commitment to meet Derby's needs remains in place. It also reaffirms South Derbyshire's (SDDC) long standing position. This is included within Attachment 1.

For completeness, I would also draw your attention to a report that AVBC approved at their Full Council meeting on 27 January 2016 (also included within Attachment 1). The purpose of this was to inform their Members about the withdrawal of their Core Strategy and to seek approval to take whatever steps necessary to secure an up-to-date Local Plan as soon as possible. This includes a description of the potential work needed to achieve this aim. You will note that in paragraph 6.20 the Council concludes that their agreed target of 9,770 dwellings remains in place despite the withdrawal of the Core Strategy.

Paragraph 6.27 of the same report provides an indicative timescale for the adoption of a revised plan. It suggests a Publication date of March 2017, with Adoption in March 2018.

Objectively Assessed Housing Need

I apologise for omitting to add the relevant correspondence from the Amber Valley and South Derbyshire Inspectors within the Submission documents. You are correct in your assumption that the final OAHN for the HMA was agreed as a result of discussions at the Amber Valley and South Derbyshire Examinations based on analysis of GL Hearn's sensitivity testing report (CD23). The relevant correspondence is provided in chronological order in Attachment 2. A brief summary of the context and chronology is provided below for completeness.

The figure of 33,388 was arrived at by Mr Foster following Amber Valley's Examination hearing on 25 March 2014. The sensitivity testing provided by GL Hearn was considered at this session. The 33,388 figure was included with the GL Hearn report but they did not favour this approach themselves; concluding that the sensitivity testing should not alter the 2013 SHMA report's conclusions. However, in his letter of 7 April 2014, Mr Foster determined that it would be appropriate to use a higher headship rate based on tracking the 'mid-point' between the 2008- and 2011-based rates. This resulted in an increase of 1,474 dwellings from the original forecasts; increasing the requirement to 33,388 between 2011 and 2028.

The issue of OAHN was considered again at a Joint Hearing between SDDC and AVBC in November 2014. This considered the further testing provided within document EB41. You will note from Ms Kingaby's letter of 10 December 2014 that while the Inspectors considered this evidence robust, they concluded that the earlier requirement of 33,388 should remain the relevant figure moving forward. The HMA Authorities sought clarification on this on 17 December 2014 and the Inspectors provided further explanation and confirmation of their position on 19 December 2014.

In relation to the 2012-based sub national household projections, GL Hearn was asked to consider the issue but a formal report was not produced. Their conclusions, however, are contained in a letter from the HMA authorities to the Inspectors on 26 March 2015. The view was taken that the new projections would result in an HMA figure of 32,207 dwellings. This figure was extremely close to that produced in November 2014 (32,142). Therefore, in answer to the Inspectors' question as to whether the figure should be revised, the HMA authorities concluded that they did not wish to argue for any amendment to the 'agreed' figure at that time.

Finally, it is our understanding that no formal notes have been provided by the Inspectors on the issues discussed at the Joint Hearing on 23 October 2015. However, for completeness and information, I have included the relevant agenda and copies of the

correspondence that did follow. The fact that both Inspectors were content to allow the individual Examinations to proceed suggests that they were no significant concerns over what had been discussed.

Housing Trajectory and five-year housing land supply

Long Term Delivery

Delivery data going back to 2001 is included within Attachment 3. As this was the adoption date of the last Structure Plan, it seems the most appropriate point to look back to and is in line with your request for an approximate 15 year period.

Delivery over the first half of the period was reasonably strong, particularly between 2004 and 2008 when the market was at its strongest. Between 2001 and 2008 the average number of dwellings delivered was 786 per annum. This is higher than the prevailing Structure Plan target of 775 (which was 'saved' until 2009). It is also considerably higher than the Regional Plan target of 720 dwellings per year between 2006 and 2026. The Regional Plan was revoked in 2013.

Since 2008, delivery has obviously fallen as a result of recession and a very slow market recovery. Over this period average delivery has been 432 dwellings per year. Up until the revocation of the Regional Plan, this was against a requirement of 720. However, since revocation, and in the absence of an adopted Local Plan, there has technically been no target to monitor against. It is accepted, however, that 'under delivery' has continued during this period against any sensible proxy - whether it is the OAHN, the emerging target or revoked Regional Plan target.

Our reasoning for adopting a 20% buffer is explained in paragraphs 6.22 to 6.30 of document CD25. It was decided that the plan's original start date of 2008 would be a sensible approach. The view was taken that it might be difficult to justify a 5% buffer when delivery has been relatively low since the start of the plan period. On reflection, this does not necessarily consider the longer period of peaks and troughs as advised by the NPPF or PPG. Adopting the longer time frame shown on the graph may be more consistent with the guidance. It would also illustrate a more positive picture of longer term delivery that better reflects the longer term housing market cycle.

Windfall Allowance:

We do not believe that there is any double counting in the windfall allowance. Our windfall allowance is based on a robust but conservative assessment of likely future delivery based on our understanding of historic trends and the nature of the City. This is explained

in more detail in paragraphs 2.47 – 2.64 of document CD25. In particular, Derby has seen very high levels of windfalls on small sites which fall below the SHLAA threshold of 10 dwellings. Therefore, unless they form part of an allocation or SHLAA site almost any small site permission would be classed as a 'windfall' and would contribute toward the overall allowance. This is appropriate in Derby when considering the scale and nature of the City's land supply.

The extant developable planning permission figure is based on the position as at 31st March 2015 (in line with our annual monitoring processes). From 1 April 2015 to 2 February 2016 a total of 120 units have been granted permission on small sites not already in the SHLAA and outside allocations, all of which would be classed as 'windfalls'. It is not unrealistic to expect delivery on some of these in the 2016/17 period. Any that are delivered will count toward that year's provision and will not be double counting. Given that they are all for less than 10 dwellings or, in some cases, changes of use then they can be delivered quickly.

Trying to 'guess' what scale of windfalls may come forward in any given year would be largely meaningless as they are, to a great extent, unknown. A view was taken, therefore, that it would make more sense to spread the allowance across the plan period; recognising that in some years actual delivery may be more than 75 and in other years less. This will be addressed in the annual monitoring of delivery and supply. This is, after all, an *allowance* that is added to the supply figures to reflect the likelihood of delivery, rather than a definitive set of sites. We remain confident that our assessment of windfall delivery in both the 5 year and plan periods is a robust assessment of what is likely to come forward.

Buffer Issue

An alternative 5 year supply calculation is provided within Attachment 3 that applies the buffer to the shortfall as well as the annualised requirement. This illustrates that even when using this approach, the Council is confident that it will still have a 5.28 year supply on the adoption of the plan.

Notwithstanding this, we continue to feel that the approach the Council has used is an appropriate and acceptable methodology. There is no prescribed approach in national policy for calculating the five year supply requirement. Since the publication of the NPPF, a number of Inspectors and the Secretary of State (SoS) have come to the conclusion that the methodology we have used is acceptable in both Examinations and appeals. This demonstrates that the issue is open to interpretation and thus it must be reasonable to accept the methodology proposed by the Council. This is backed up by Planning Practice

Guidance (ID: 12-015-20140306) which states that it is acceptable for local authorities to adopt approaches found acceptable elsewhere.

Our approach meets the objectives of the NPPF in terms of providing choice, flexibility and seeking to 'boost significantly' the supply of housing. At any one time, a buffer of some 647 'deliverable' dwellings will be required. This should provide more than sufficient flexibility and choice over any five year period within the City.

Adding the buffer to 'past' requirements also does not make sense in terms of the aims of the policy, which is to provide comfort that future needs can be met. It is equally clear that under-delivery in the first years of the plan period have not been as a result of a lack of choice or flexibility, but as a result of market failure and the wider economic context.

We continue to feel that the Secretary of State's view, as expressed in his Cheshire East decision, should carry considerable weight. The argument that it should be set aside because it was not his 'normal' position is not a strong justification, particularly as he gives clear reasons why he considers 'his' way of doing it appropriate. It does not appear to be an abnormal or ill-considered decision. However, any suggestion of an inconsistency of approach further demonstrates that the issue is not clear cut and there is no reason why one view should be given weight over the other.

In paragraph 14 of the Chester East decision, the SoS notes that adding the buffer to the shortfall is seen as 'double counting'. This is a recognition that having to make up the shortfall within the first five years *and* adding the buffer can only result in an onerous, unnecessary and – in our view – unintended burden that makes it more difficult to find plans sound by artificially increasing the level of deliverable supply that authorities have to identify. This also negatively impacts on the ability of a Council to maintain a five year supply moving forward even where it *is* maintaining an already adequate level of choice. While we are confident that we can achieve this within Derby, it clearly makes it a more difficult task in principle. This is particularly the case in areas of acknowledged supply constraint. In the examples noted in CD25, it is telling that both the Inspector and SoS have alluded to the onerous nature of the 'alternative' approach.

It must also be remembered that the buffer is not about increasing actual delivery over the five years. The number of dwellings that have to be built in the five year period remains the same. We are not required to *deliver* the buffer in the five year; rather we must ensure that sufficient sites are available to provide sufficient choice to assist delivery. Therefore, in returning to the first point, it is unclear what advantage there is to be gained by following an approach that makes adoption of plans more difficult without providing any obvious benefit in terms of boosting housing delivery.

We also do not consider this to be an HMA issue and consistency across the area is not a requirement. The five year supply is calculated from the local authority's individual housing target and is something that is monitored and assessed at a district level. Therefore, it does not follow that all authorities in the HMA need to follow the same approach to calculating the requirement.

Housing Components and 'Part 2' Supply

In relation to your query in paragraph 12, it is probably not appropriate to try and reconcile the housing trajectory information with the component elements of the 11,000 target. They are essentially trying to do different tasks and the approach you have taken will unfortunately lead to some double counting. For example, some of the 1,294 dwellings not identified in the Part 1 plan have already been assessed through the SHLAA as specific 'developable' sites but do not fit into any of the component categories (i.e. they are not within strategic allocations and do not have permission but the SHLAA assessment has determined they are 'developable'). The difference arises essentially from the 427 dwellings referred to in paragraph 13 of your letter; the list of which is provided in Attachment 3. Therefore, while 1,294 is the 'residual' element not identified within the Part 1 plan, some of these are already accounted for in the trajectory as 'developable' sites.

The table below will hopefully clarify the situation:

Component	Dwellings
A: 'Completions' Component	
Past completions (2011-15)	1,509
Anticipated Completions (2015-16)	391
A: Sub-Total	1,900
B: 'Developable' Dwellings Component	
Extant Developable Permissions	587
Strategic Allocations	6,655
'Developable' SHLAA Sites without Permission / not allocated	427
Windfalls	900
B: Sub-Total	8,569
A + B Sub-Total	10,469
C: Losses	-336
A + B +C (TOTAL IDENTIFIED SUPPLY)	10,133

This means that an additional 867 dwellings still need to be identified on developable sites through the Part 2 process. In determining the City's capacity 'cap' an assessment was made of likely levels of delivery over and above the strategic allocations and permissions. This involved a detailed consideration of the 'pool' of sites promoted within the SHLAA and a judgement as to their suitability and certainty of delivery.

The SHLAA contains around 1,871 potential dwellings on sites that have not been identified as 'developable' at this time, but which have not been ruled out as being clearly unsuitable for development at this time. This represents the current pool of sites that we will be able to draw from for the Part 2 plan.

We have made a conservative estimate of the likely delivery from this pool, recognising that not all will be available or viable for development during the plan period. However, this does include sites whose current constraints are based on their existing Local Plan allocations. The Part 2 process may provide an opportunity to remove these barriers to development. For example, the 'Breadsall Hill Top' and 'Allan Avenue' Green Wedge sites were both identified within the 'Preferred Growth Strategy' (EB002) as being 'star' sites. This meant that we recognised they may have potential to be released from the Green Wedge but there were other issues that needed to be resolved before they could be allocated. It was always the intention to consider these in more detail through the Part 2 plan. Together these sites can provide a further 310 dwellings to the supply. Both are currently being considered through planning applications. If these are successful, the residual requirement will be reduced to around 560 dwellings.

As part of the Part 2 process, the Council will also carry out a further 'call for sites'. As is described in document CD25, it is not unusual for unanticipated sites to become available for development in Derby over very short timescales – particularly in relation to areas of older employment land. While we would not expect excessive numbers of opportunities to be identified, the process is likely to lead to a further increase in the size of the 'pool'. This pool may also be increased as a result of the Council's on-going property rationalisation programme of its own land and property and other work that will be carried out as part of the Part 2 plan. This will include reviews of land allocated as 'proposed' open space and smaller non-strategic employment land allocations in the current Local Plan.

Obviously, as the SHLAA is only a snapshot in time. It will be regularly reviewed and updated to reflect new opportunities and evidence. This may also mean that sites currently identified as 'unsuitable' will be reconsidered leading to a further increase in the pool of potential sites from which the residual will be met.

While the scale of opportunities that would come from the above sources is currently unknown, the existing pool of sites, the work that will be done as part of preparing the Part 2 plan and the on-going review of opportunities should provide comfort that there will be sufficient scope to address the residual requirement, including the potential to provide some level of flexibility if need be.

The housing supply situation in Derby is constantly evolving. An example of this is the increasing level of interest being exhibited in City Centre living. Since the Pre-Submission consultation, a number of new opportunities have come to light which has increased the city centre 'pool' to around 2,300 dwellings from the 1,900 identified in Appendix 4 of document CD25. At this stage we are not suggesting any changes to the targets for the City Centre. However, we would still conclude that the increasing optimism around City Centre living should provide even greater comfort that our assumptions are robust and that we will have sufficient developable sites to deliver the 11,000 dwellings required.

Gypsies and Travellers

It is accepted that the wording in the LDS could be misinterpreted. It simply meant to convey that the target and site(s) that would be identified within the Part 2 would be *informed* by the evidence base, not that the evidence would dictate the scope of the plan. I can confirm, therefore, that it is our intention to include both a target and sites in the Part 2 plan. This issue can be clarified if or when the LDS is updated.

Infrastructure

As requested, a list of 'critical' infrastructure requirements is attached as Attachment 4. The majority of such schemes fall within either the education or highways category. We have not included infrastructure which, while clearly important to the delivery of a site, would be provided as part of a statutory duty (for example, utilities). As your question appears to relate to the effectiveness of the plan and viability, it seems more appropriate to focus on issues directly related to the plan and planning obligations.

Many of the infrastructure requirements of the IDP are site specific and can be funded wholly through specific development. The pooling regulations are not an issue with such requirements. Examples here would include the new primary school provision on sites such as Hackwood Farm (AC21) and Rykneld Road (AC20). It should be noted that in many instances, the S106 agreement has already been signed, or is about to be signed to secure this infrastructure.

There are other pieces of infrastructure where the pooling regulations will not be problematic. Examples of this may include additional classrooms at existing schools or

improvements to existing neighbourhood parks, where the scale of funding required would easily be able to be funded by five contributions or less.

Finally, not all infrastructure requirements will be provided through a S106 agreement. For example, recent on-site flood defences provided as part of the development on sites within the OCOR corridor have been secured through condition. Therefore, while they 'contribute' to the OCOR scheme, they are not constrained by the CIL regulations. The costs associated with this would, however, be considered within any viability assessment.

Furthermore, it can be seen from the IDP that we are not expecting or relying on developer contributions to fill every funding gap. While it may not always be possible to identify the exact split, we are clear that other avenues of funding will be required in certain circumstances. This is particularly the case for OCOR and the major road schemes included with the Plan. Again, these avenues will not be restricted by the pooling regulations.

The Council is not currently pursuing the introduction of a CIL but has resolved to keep the matter under review. The NCS CIL Viability Report (CD24) concluded that the level of income likely to be available under CIL would not be sufficient to warrant its adoption. Even taking the pooling regulations and the individual viability of proposals into account, it was felt that negotiating S106 agreements on a case by case basis would still provide greater levels of infrastructure funding and mitigation than CIL would be able to provide. Our view was that we could continue to deliver more sustainable development under S106 than through a CIL regime.

It is our intention to commission a new CIL viability assessment in the near future to determine whether this situation has changed.

Modifications

Your comments on the modifications are noted.

I hope you find this information helpful. We would obviously be happy to provide any further clarification or evidence if necessary.

Yours sincerely



Steven Lee
Policy Team Leader