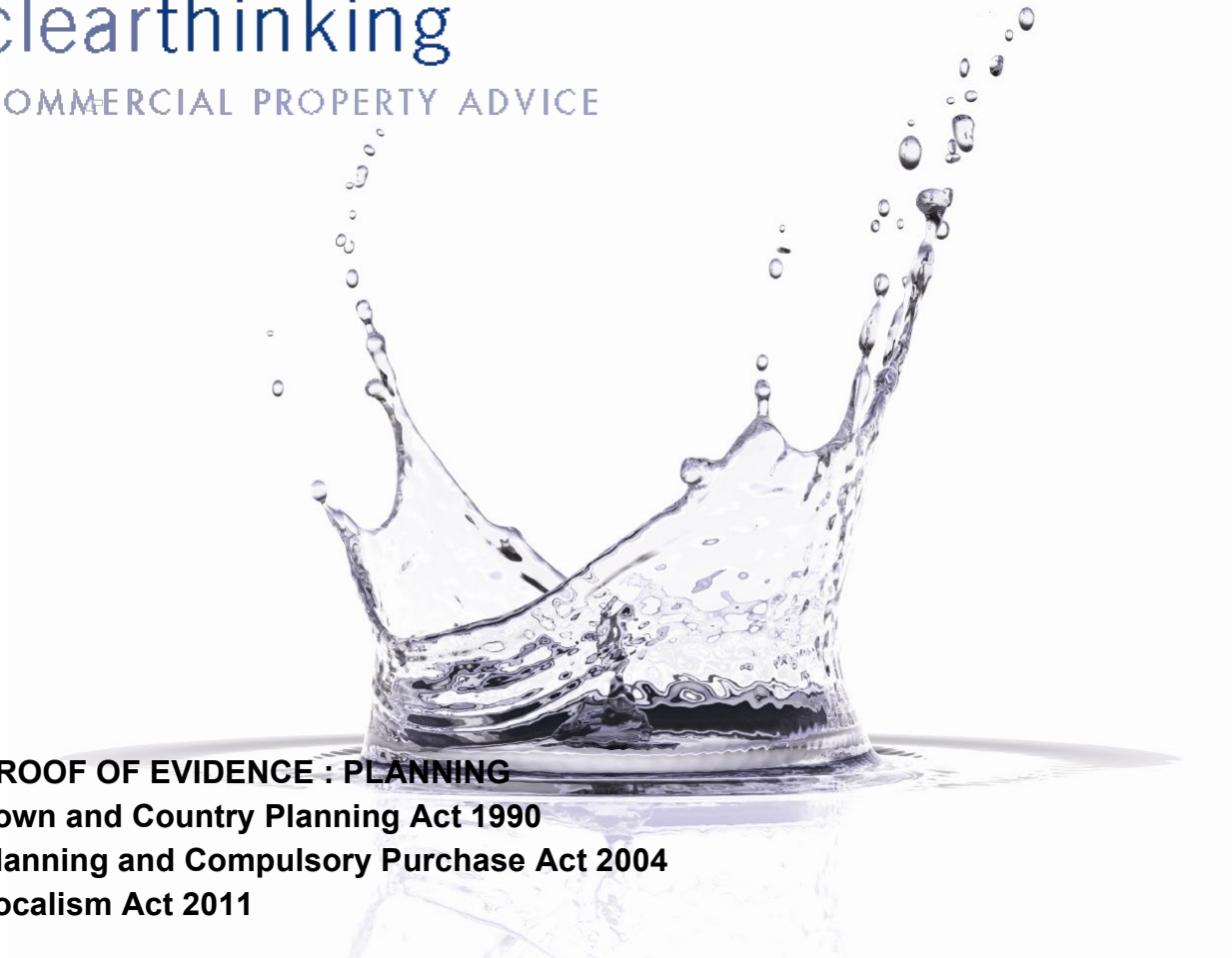


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COMMERCIAL PROPERTY ADVICE



PROOF OF EVIDENCE : PLANNING
Town and Country Planning Act 1990
Planning and Compulsory Purchase Act 2004
Localism Act 2011

Outline Application for up to 196 Dwellings with all Matters Reserved Other than the Means of Access

Land North West of 1 – 12, Twelve Houses, Sowbrook Lane, Stanton-by-Dale, Derbyshire, DE7 4QX

Appeal Ref: APP/N1025/W/23/3319160
Council Application Ref: ERE/0722/0038

On Behalf Of:
Wulff Asset Management Limited

Prepared By:
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Job Ref: P1763

Date: 12th July 2023

PROOF OF EVIDENCE : PLANNING

**LAND NORTH WEST OF 1 – 12, TWELVE HOUSES, SOWBROOK LANE,
STANTON-BY-DALE, DERBYSHIRE, DE7 4QX**

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Issued By



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Date: 12th July 2023

Approved By



Signature:

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Date: 12th July 2023

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EXECUTIVE SUMMARY

- i) Wulff Asset Management Limited have submitted a planning appeal following the decision of Erewash Borough Council to refuse planning application ERG/0722/0038. The planning application is an outline application that proposes the development of up to 196 dwellings with all matters reserved other than the means of access.
- ii) The Development Plan comprises the Erewash Core Strategy 2014 and the saved policies of the Erewash Local Plan 2005. It is an agreed position between the Appellant and the Council that the housing requirements and development strategy in the Development Plan are out of date in their own right and due to the fact that the Council is only able to demonstrate a 2.65 year housing land supply.
- iii) There are no restrictive policy designations that apply to the site. It is “white land” on the Proposals Map. The Appeal Site is located in an area where the Development Plan seeks to focus the majority of the plan’s housing growth. It is located next to the Stanton Regeneration Site, which is a mixed use employment and residential allocation that the adopted Local Plan expects to provide 2,000 dwellings, 20 hectares of employment land, a neighbourhood centre and associated infrastructure including a primary school. Planning permission has been granted for part of the employment element of this site.
- iv) The Decision Notice contains 10 Refusal Reasons. However, it is now an agreed position between the Appellant and the Council that Refusal Reasons 2, 3, 4 and 6 have been overcome. The essence of the Council’s case for refusal of planning permission is:-
 - The site is unsustainably located and remote from services and facilities (Refusal Reason 1)

- The proposed development would lead to the loss of an open landscape which is characteristic to the area and would cause significant harm to the visual amenity of the area (Refusal Reason 5)
 - The scheme would lead to adverse impacts on the setting of the Grade II Listed Buildings, New Stanton Cottages (Twelve Houses) and there are no public benefits to overcome this harm (Refusal Reason 7)
 - The development is of such a substantial scale it would cause harm to the plan making process of the emerging Core Strategy and is contrary to draft Core Strategy policies (Refusal Reasons 8, 9 and 10).
- v) The Refusal Reasons are not justified.
- vi) In his Proof of Evidence of Mr Andrews demonstrates that the site has good access to a range of services and facilities by foot, cycle and car.
- vii) In his Proof of Evidence Mr Hughes demonstrates that the Appeal Scheme accords with the landscape character policies within the Development Plan and concludes that the Scheme would have a limited, localised adverse effect on the local landscape that is not considered to be significant.
- viii) In his Proof Mr Slatcher concludes that the heritage impacts of the development would be less than substantial, and at the lower end of less than substantial scale.
- ix) Whilst the emerging Core Strategy has been submitted for examination there are a significant number of unresolved objections. Following initial questions from the Inspector the Local Authority has had to undertake

a series of undefined work items to inform the emerging Plan. These works items are not completed. There is no certainty if, and when, the draft Core Strategy will be adopted.

- x) The scheme is compliant with the policies in the adopted development plan when read as a whole.
- xi) The ‘tilted planning balance’ (Framework paragraphs 11d) is engaged as the public benefits of the scheme outweigh the less than substantial harm to the Heritage Assets in accordance with the balancing exercise set out in paragraph 202 of the Framework. The benefits for the purpose of the balancing exercises include:-
- Helping to address the Council’s significant five year housing land supply shortfall – significant positive weight
 - Providing much needed affordable housing - significant positive weight
 - Improving public transport opportunities – significant positive weight
 - Improving footpath connections in the locality – moderate positive weight
 - Formalising pedestrian links through the Appeal Site and delivering part of the proposed Local Cycle Network - significant positive weight
 - The provision of public open space – moderate positive weight
 - Enhancing biodiversity net gain - limited positive weight
 - Economic benefits associated with the construction of the scheme and residents using local shops, services and facilities - significant positive weight
 - The development of a non-Green Belt site in an Authority that seeks to place significant reliance on Green Belt land release in

its emerging Local Plan to deliver housing – limited positive weight

- xii) The harm in the planning balance exercise is limited to the less than substantial harm to the heritage asset at the lower end of the scale and the development of a greenfield site that will have a limited localised landscape impact and a minor to moderate effect on views and visual amenity.
- xiii) The scheme is in accordance with the policies in the Development Plan when read as a whole. The tilted balance is engaged and the significant benefits of the Scheme outweigh any limited harm. It is respectfully requested that the appeal is allowed and planning permission granted.

PERSONAL BACKGROUND

- a) My name is Simon Joseph Hawley. I hold a Bachelor of Arts Degree (Honours) in Human Geography from the University of Wolverhampton and a Masters Degree in Town and Country Planning with Distinction from the University of Central England (now Birmingham City University). I am a member of the Royal Town Planning Institute. I am a Director and Head of Planning in the Harris Lamb Planning Department. Our practice undertakes a wide range of professional town planning consultancy work advising private developers, landowners and local authority clients.
- b) Before joining Harris Lamb I was employed between 2006 and 2007 as a Planning Consultant by Barton Wilmore LLP. Prior to that I was employed by Redditch Borough Council as a Planning Policy Officer between 2002 and 2006. I have in excess of 20 years experience working in both the private and public sector. In my planning consultancy work I have undertaken a number of planning projects relating to housing, employment, commercial, leisure and educational development.
- c) I have given evidence at Examinations in Public, Local Plan Examinations and Section 78 planning Inquiries and Hearings. I advise clients on a wide range of planning matters, including the preparation and submission of planning applications, advice on development management matters, policy formulation, and the promotion of land through the Local Plan process.
- d) I regularly advise clients regarding projects involving small and large scale housing developments and housing land supply matters.
- e) I am familiar with the Appeal Site, land north west of 1 to 12, Twelve Houses, Sowbrook Lane, Stanton-by-Dale, Derbyshire ("***the Appeal Site***"), and its surroundings.
- f) I can confirm that the evidence which I have prepared and provided for the appeal (reference APP/N1025/W/23/3319160) is true and has been prepared

and given in accordance with the guidance of my professional institution. I can confirm that the opinions expressed are my true and professional opinions.

1.0 INTRODUCTION

- 1.1 My Proof of Evidence (“**PoE**”) has been prepared in relation to a planning appeal made by Wulff Asset Management Limited (“**the Appellant**”) pursuant to S.78(i) of the Town and Country Planning Act 1990 (as amended) following the decision of Erewash Borough Council (“**EBC**”) to refuse planning application ERG/0722/0038 that proposed the residential-led development of land north west of 1 to 12, Twelve Houses, Sowbrook Lane, Stanton-on-Dale (“**the Appeal Site**”). The planning application was submitted in outline form with all matters reserved for subsequent approval with the exception of access. The description of the development, as it appears on the Decision Notice, is:

“Outline Application for up to 196 dwellings with all matters reserved other than the means of access.” (“the Appeal Scheme”)

Background

- 1.2 Planning application ERG/0722/0038 was submitted to EBC by HLPC. It was validated on 22nd July 2022. The planning application was determined at a meeting of the EBC Planning Committee on 13th October 2022. A copy of the Committee Report and Decision Notice can be found at Core Document **CD H1**. The Decision Notice contains 10 reasons for refusal.
- 1.3 As detailed in the main Statement of Common Ground (“**SoCG**”) (**CD L1**) at paragraph 7.1 following negotiations between the Appellant, EBC and the statutory consultees it is an agreed position between the Appellant and EBC that Refusal Reasons 2, 3, 4 and 6 have now been overcome and no longer form part of EBC’s case for refusal of planning permission.
- 1.4 For ease of reference, the refusal reasons are set out below, alongside a brief commentary where agreement has been reached on the refusal reasons that have been overcome.

- 1) ***The site is unsustainably located, remote from services, with poor options for walking and cycling to services further afield. As such, the proposal is contrary to the requirements of the NPPF, the National Design Guide, Core Strategy Policy 10: Design and Enhancing Local identity and Core Strategy Policy 14: Managing Travel Demand.***

1.5 This Refusal Reason is being advanced by EBC. As detailed in paragraph 1.3 of the Highways SoCG (**CD L5**) agreed between Derbyshire County Council Highways ("**DCC Highways**") and the Appellant it is an agreed position that whilst reason for refusal 1 includes highway elements it was not recommended by the Local Highways Authority "and is not supported by them".

- 2) ***The proposal would result in the introduction of a significant number of pedestrian movements at a location where no footways provision exists requiring pedestrians and other vulnerable users to use the carriageway, resulting in conflict with vehicles contrary to the best interests of highway safety. As such, the proposal is contrary to the requirements of the NPPF.***
- 3) ***The applicant has not satisfactorily demonstrated that approval of the proposed development would not have a significant impact on the operational capacity or condition of safety on the existing transportation network. As such, the proposal is contrary to the requirements of the NPPF.***

1.6 As detailed in the Committee Report (**CD H1**) Derbyshire County Council Highways ("**DCCH**") originally objected to the Appeal Scheme and this resulted in Refusal Reasons 2 and 3. The two Highway's Statements of Common Ground agreed with EBC (**CD L2**) and DCCH (**CD L5**) provides details of the information submitted to resolve Refusal Reason 2 and 3. It is no longer EBC's or DCCH's case that there is a pedestrian highway safety reason or transport network and operational capacity reason to refuse

planning permission. This is also confirmed in the EBC SoC (CD I5) at paragraph 5.2 and 5.3.

- 4) The proposal would result in the loss of a significant amount of hedgerow and trees which provide habitats, food and commuting routes for a range of species. It would result in the loss of habitats for ground nesting birds including skylarks which are a Red List species. As such, the proposal would be contrary to the requirement of the NPPF to minimise impacts on biodiversity. It would fail to satisfy Saved Local Plan Policy EV11 and Core Strategy Policy 17, both of which complement the NPPF in their aims to protect biodiversity.**

1.7 EBC's SoC confirms at paragraph 5.4 that following the submission of additional information by the Appellant EBC have consulted with the Derbyshire Wildlife Trust and on the basis of their advice the Council considers that the mitigation measures proposed are acceptable. Refusal Reason 4 has subsequently been overcome.

- 5) The proposed development would lead to the loss of the open landscape which is characteristic of the area. Development of the site would cause significant harm to the visual amenities of the area. The proposal therefore fails to accord with Section 12 of the National Planning Policy Framework and it would be contrary to Saved Policy H12 – Quality & Design and Core Strategy Policy 10: Design and Enhancing Local Identity.**

- 6) As a result of the proximity to the approved industrial development at Stanton North, the proposal would lead to unacceptable living conditions for future occupiers, contrary to the NPPF, Policy 10 of the Core Strategy and "Saved" Policies H10 and H12.**

1.8 The Appellant submitted a Technical Note prepared by Hepworth Acoustics to EBC in response to Refusal Reason 6. As detailed in paragraph 5.5 of the

EBC Statement of Case EBC consider that the mitigation measures proposed are acceptable.

- 7) The proposal would result in adverse changes to the setting of the Grade II listed building at New Stanton Cottages which would detract from the manner in which it is experienced, appreciated and understood. This meets the threshold of “less than substantial harm” to the designated heritage asset and as no public benefits exist which are sufficient to overcome that harm, the proposal is contrary to the requirements of the NPPF.**
- 8) The site is considered strategic in its scale and the proposed development is considered to be so substantial that granting permission would undermine the plan-making process of the emerging Erewash Core Strategy Review. As such, the proposal is contrary to the requirements of the NPPF.**
- 9) The proposal would be contrary to the emerging Core Strategy, being on a site which is proposed to be included in the Green Belt.**
- 10) The proposal would be contrary to the emerging Core Strategy, compromising the development of land within a proposed Strategic Green Infrastructure Corridor.**

Scope of My Proof of Evidence

- 1.9 My PoE has been prepared to address planning matters relating to the principle of development. I address issues associated with Refusal Reasons 1 (drawing on the evidence of Mr Andrews) 8, 9 and 10. I assess the compatibility of the Appeal Scheme against the relevant Development Plan policies and material planning considerations before undertaking the planning balance. In preparing my assessment of the Appellant’s case I have had regard to and rely upon the evidence produced by:

- Mr Martin Andrews – Director, MAC Pre-planning Engineering – Highways. Mr Andrews addresses Refusal Reason 1 in relation to the proximity to and the quality of the routes to services and facilities.
- Mr Robert Hughes – Director, Incola Landscape Planning – Character and Appearance. Mr Hughes addresses Refusal Reason 5.
- Daniel Slatcher – JTC Heritage Limited – Heritage. Mr Slatcher addresses Refusal Reason 7.

1.10 I also refer to the SoCG which have been agreed with EBC and DCCH where necessary.

Structure of Proof of Evidence

1.11 In order to address EBC's case for the refusal of planning permission my PoE is structured as follows.

1.12 The Appellant's Statement of Case (**CD I5**) provides a description of the Appeal Site and Surrounding Area (Chapter 2), details of the proposed development (Chapter 3) and a summary of the Appeal Site's planning history (Chapter 5). These matters are also summarised in the SoCG (**CD L1**). In order to prevent unnecessary duplication I do not repeat these matters in my PoE.

1.13 In Chapter 2 of my PoE I identify the Development Plan policies that are most relevant to the determination of the appeal and confirm my view on their compatibility with the Framework. I also refer to other documents that are material considerations in the determination of the appeal. I identify the policies which are needed to understand the arguments being put forward that are fundamental to the appraisal of the merits of the scheme. I do not duplicate the policy summary and analysis undertaken in respect of highways, landscape and visual and heritage matters presented in the Appellant's other witnesses PoEs.

- 1.14 In Chapter 3 I set out the case of the Appellant and in Chapter 4 I undertake the planning balance exercise having regard to the material considerations and confirm the weight that should be attributed to the material planning consideration within the planning balance. This includes the fact that it is an agreed position that EBC cannot demonstrate a five year housing land supply (SoCG (**CD L1**) paragraph 7.3 confirms that a 2.65 year supply of housing land is available).
- 1.15 In Chapter 5 I set out my overall conclusions.
- 1.16 In Appendix 1 I undertake a review of the representations made by interested parties which has helped to inform my assessment of the Appeal Scheme and the planning balance.

2.0 PLANNING POLICY REVIEW

2.1 The Development Plan is the starting point for the determination of planning applications as set out in S38(6) of the Planning and Compulsory Purchase Act 2004 (**“the 2004 Act”**) and paragraph 2 and 47 of the Framework. The EBC Development Plan consists of:

- The Erewash Core Strategy (2014) (**“ECS”**) (**“CD B1”**)
- The Erewash Local Plan (2005) Saved Policies (**“ELP”**) (**“CD B2”**)

2.2 Documents that are material planning considerations include:

- The National Planning Policy Framework (**“CD A1”**)
- The Erewash Core Strategy Review Submission Version November 2022 (**“ECSR”**) (**“CD B3”**)
- ECSR Evidence Base Documents
- Developer Contributions SPD (**CD B5**)
- Housing Delivery Test Results

2.3 I set out below a summary of the relevant EBC development plan policies and emerging development plan policies. I do not summarise the requirements of the Framework, as these will be familiar to the Inspector. I refer to the relevant sections of the Framework as necessary in the Case for the Appellant section of my PoE.

The Erewash Core Strategy

2.4 The ECS was adopted in March 2014. It was prepared to set a strategy for development across the Borough between 2011 and 2028.

2.5 It is an agreed position that the ECS is an out of date plan in its own right. This is confirmed in paragraph 7.4 of the SoCG (**“CD L1”**) and the Appeal Scheme Committee Report at page 11 - Status of Local Plan Policies (**“CD H1”**)

- 2.6 The housing requirement in the ECS is based on the requirements of the revoked East Midlands Regional Plan (“**RSS**”). The RSS was adopted in March 2009 and used the Government’s 2003 based household projections as the starting point for establishing its housing requirements. The housing requirement in the ECS is based upon outdated evidence and consequently the ECS housing delivery policies are out of date.
- 2.7 The ECS contains 19 policies. The policies relevant to the determination of the Appeal Scheme are agreed in paragraph 3.2 of the SoCG (**CD L1**). They are:-
- Policy A – Presumption in Favour of Sustainable Development
 - Policy 1 – Climate Change
 - Policy 2 – The Spatial Strategy
 - Policy 8 – Housing Size, Mix and Choice
 - Policy 10 – Design and Enhancing Local Identity
 - Policy 11 – Historic Environment
 - Policy 14 – Managing Travel Demand
 - Policy 16 – Green Infrastructure, Parks and Open Space; and
 - Policy 17 – Biodiversity
- 2.8 A similar list of policies can be found in the EBC SoC at paragraph 4.1. Policies 11 and 14 are not referred to in the EBC SoC, it is assumed this is an omission. EBC’s Statement of Case also suggests that Policy 3 – Green Belt, is a relevant consideration. The Appeal site is not within the Green Belt, it is not a relevant policy.
- 2.9 The refusal reasons suggest that the Appeal Scheme conflicts with ECS policies 10, 14 and 17. There is no suggested conflict with any of the other policies identified as being relevant.

Relevant Policies in the ECS not referred to in the Refusal Reasons

- 2.10 Set out below is a summary of the policies that are agreed to be relevant to the Appeal Scheme but are not referred to in the refusal reasons. Given that the Appeal Scheme was assessed by EBC having regard to these policies it must follow that EBC have concluded that there is no conflict with them.
- 2.11 ***Policy A – Presumption in Favour of Sustainable Development*** - Policy A is consistent with paragraph 11 of the Framework. It provides guidance to decision makers on the application of Development Plan policies and the approach that should be adopted in the determination of planning applications when development plan policies are out of date.
- 2.12 ***Policy 1 – Climate Change*** - Policy 1 requires development proposals to mitigate and adapt to climate change. It provides guidance on sustainable design, adaptation and flood risk and sustainable drainage amongst other matters. Its objectives are consistent with the Framework.
- 2.13 ***Policy 2 – The Spatial Strategy*** - Policy 2 advises that sustainable development in the plan area will be achieved through a strategy of urban concentration and regeneration. Most development will be located in or adjoining the urban area of Ilkeston (including Kirk Hallam) and Long Eaton (including Sandiacre and Sawley). The policy is Framework compliant in so far as it seeks to achieve sustainable patterns of development. The housing requirement and housing distribution are out of date.
- 2.14 The policy requires the provision of a “minimum” of 6,250 dwellings during the course of the plan period and approximately 4,500 homes to be delivered in or adjoining the Ilkeston Urban Area including approximately 2,000 at the Stanton Regeneration site. The Stanton Regeneration site is located to the immediate east of the Appeal Site, as shown on the ELP Policies Map (“**CD B7**”).

- 2.15 Part 7 of the policy advises that sustainable alternatives to using the car will be encouraged. This will include “enhancing both connectivity to and from Ilkeston”.
- 2.16 Supporting paragraph 3.3.3 advises that “significant growth” is proposed in the urban area of Ilkeston due to its role and function as a sub-regional centre within the area, the significant brownfield opportunities and local regeneration needs. Supporting paragraph 3.3.8 advises that the scale of development within and adjacent to the town will help to strength the case for sustainable transport improvements. This includes the aspiration for improved bus services. Reference is made to Appendix D – Erewash Infrastructure Delivery Plan, that identifies the infrastructure items required to support the plans growth strategy. This includes “*The provision of at least three buses an hour each way between Ilkeston and Nottingham via the Stanton Regeneration Site as a sustainable transport alternative to the use of the private car*”.
- 2.17 **Policy 8 – Housing Size, Mix and Choice** – Policy 8 requires residential developments to provide a mix of housing tenures, types and sizes in order to create mixed and balance communities. The mix of dwellings on the Appeal Site will be established through the reserved matters process should planning permission be granted.
- 2.18 Part 4 of the policy requires 30% affordable housing provision on qualifying sites. It is suggested that viability is likely to be constrained to achieving this target in the Ilkeston urban area, where around 10% affordable housing is expected. The policy is Framework compliant.
- 2.19 **Policy 11 – The Historic Environment** – Policy 11 advises that the proposals and initiatives will be supported where the significance of heritage assets and their settings would be sustained or enhanced. Supporting paragraph 3.12.3 advises that when considering applications which impact on heritage assets and their settings, EBC will seek to ensure that their significance is sustained and the ability of development to enhance that value is explored and realised where possible.

2.20 Policy 11 is not a Framework compliant policy. It does not distinguish between the impact on designated and non designated heritage assets. It does not distinguish between the degrees of harm that can occur. Most importantly It does not include the planning balance test for schemes that would result in less than substantial harm to a designated heritage asset (as is the case with the Appeal Scheme) set out in paragraph 202 of the Framework. Policy 11 should be read in accordance with the requirements of the Conserving and Enhancing the Historic Environment section of the Framework (16). It should be afforded limited weight in the decision making process due to its inconsistencies with the Framework. In this regard the heritage asset Refusal Reason (No. 7) does not refer to Policy 11 and instead refers the requirements of the Framework.

2.21 ***Policy 16 – Green Infrastructure, Parks and Open Space*** – The policy advises that a strategic approach will be taken towards the delivery, protection and enhancement of Green Infrastructure through the establishment of a network of Green Infrastructure corridors and assets, particularly focusing on the links between Nottingham and Derby and Ilkeston and Long Eaton as shown on the key diagram, together with corridors and assets to a more local level.

Relevant Policies in the ECS referred to in the Refusal Reasons

2.22 There are three ECS policies referred to in the refusal reasons. Policy 17 – Biodiversity, is referred to in Refusal Reason 4. As explained in the SoCG at paragraph 7.1 (**CD L1**) and the Council's SoC (**CD I5**) at paragraph 5.4 EBC now consider Refusal Reason 4 to have been overcome. Its requirements are summarised below for reference.

2.23 ***Policy 10 – Design and Enhancing Local Identity*** – Policy 10 requires development to, and amongst other matters, create an attractive, safe, inclusive and healthy environment (Part B) and reflect the needs to reduce the dominance of the motor vehicle (Part D). A series of criteria are identified against which development proposals will be assessed, a number of which

related to detailed design matters that fall outside the of confines of an outline planning application.

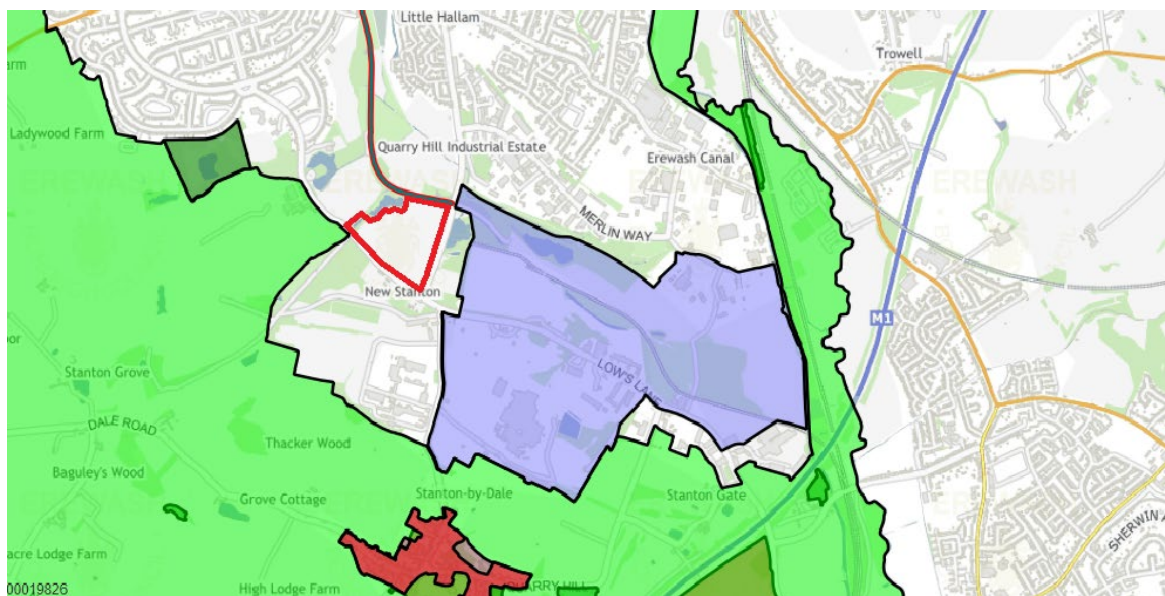
- 2.24 Part H of the policy requires the potential impact on important views and vistas, including townscape, landscape and other individual landmarks, and the potential to create new views to be assessed. Part 3 of the policy advises that outside of settlement boundaries, new developments should protect, conserve where appropriate and enhance landscape character. It requires proposals to be assessed with reference to the Derbyshire Landscape Character assessment.
- 2.25 In so far as part 3 of the Policy could be interpreted as seeking to restrict development outside of settlement boundaries it is an out of date policy as the ECS housing delivery policies and development strategy are out of date and have been unable to maintain a five year housing land supply.
- 2.26 ***Policy 14 – Managing Travel Demand*** – Policy 14 advises that the need to travel, especially by private car, will be reduced by securing new developments of appropriate scale in the most accessible locations following the spatial strategy in Policy 2 in combination with delivery of sustainable transport networks to serve these developments. Development sites should be readily accessible by walking, cycling and public transport. Where accessibility deficiencies do exist these will need to be fully addressed. Managing patterns of growth to support sustainable transport is Framework compliant.

Erewash Borough Local Plan Replacement 2005 (“ELP”)

- 2.27 The ELP was adopted in July 2005. A series of its policies were “saved” in 2014 for the decision making purposes.
- 2.28 Figure 1 – ELP Policies Map Extract, (the complete Policies Map is provided at **CD B7**) identifies the approximate extent of the Appeal Site in red. The Appeal Site is not subject to any specific designation by the Policies Map. The purple shaded land to the east of the Appeal Site is the Stanton Regeneration

site. Policy 20 – Stanton Regeneration Site, of the ECS allocates the site for the development of 2,000 dwellings, a 10 hectare business park, 10 hectares general industry, a centre of neighbourhood importance including a primary school, retail, services, commercial and community uses, strategic green infrastructure, open space, and pedestrian activity. The light green land is the extent of the Green Belt designation. The Nutbrook Canal, located to the north of the application site, (the blue corridor enclosed by red lines) is identified as a Disused Transport Routes Recreational Trails.

Figure 1 – ELP Policies Map Extract



- 2.29 The ELP Inspector's Report (**CD B12**) provides helpful background information behind the status of the Appeal Site in the Plan. It was EBC's intention to include the Appeal Site within the Green Belt in the ELP. This was rejected by the Inspector. It is advised at paragraph 14 on page 183 of the Inspector's Report that:
- 2.30 ***"There is no explanation of why the area of 'protected open land' (in the adopted Local Plan) between Kirk Hallam and Ilkeston has been added to the Green Belt: it should rather be safeguarded to meet development needs between 2011 and 2021 in accordance with Government guidance in PPG2(2.12) and to ensure the avoidance of incremental changes to the Green Belt boundary.***

- 2.31 PPG2, which was adopted Government policy on Green Belt development at that time, advises at paragraph 2.12 that:

“2.12 When local planning authorities prepare new or revised structure and local plans, any proposals affecting Green Belts should be related to a time-scale which is longer than that normally adopted for other aspects of the plan. They should satisfy themselves that Green Belt boundaries will not need to be altered at the end of the plan period. In order to ensure protection of Green Belts within this longer timescale, this will in some cases mean safeguarding land between the urban area and the Green Belt which may be required to meet longer-term development needs. Regional/strategic guidance should provide a strategic framework for considering this issue. In preparing and reviewing their development plans authorities should address the possible need to provide safeguarded land. They should consider the broad location of anticipated development beyond the plan period, its effects on urban areas contained by the Green Belt and on areas beyond it, and its implications for sustainable development. In non-metropolitan areas these questions should in the first instance be addressed in the structure plan, which should where necessary indicate a general area where local plans should identify safeguarded land.”

- 2.32 The ELP Inspector was of the view that the Appeal Site should be considered safeguarded land that may be required to meet longer term development needs.

- 2.33 The ELP policies relevant to the determination of the Appeal Scheme are confirmed in the SoCG (paragraph 3.3) as:-

- H9 – Section 106 obligations
- H12 – Quality and Design
- T6 – Cycling
- EV11 – Protected Species and Threatened Species

- EV16 – Landscape Character

- 2.34 This is the same list as policies that can be found in the Council's SoC, with the exception that the Council's SoC also refers to policy R2 – Rights of Way and policy GB1 – Green Belt, as relevant policy considerations (paragraph 4.1 – **CD I5**), the same list of policies are referred to in the Appeal Scheme Committee Report (**CD H1** – page 2). Whilst reference is made Policy GB1 – Green Belt, the site is not in the Green Belt, it is not a relevant policy.
- 2.35 The refusal reasons suggest a conflict with three ELP policies, EV11, H12 and H10. Saved policy H10 – Conversion to Residential Use, relates to the conversion and adaption of the upper floor shops and commercial premises, which is not applicable to the Appeal Scheme. The refusal reasons do not identify any conflict with any of the other policies identified as being relevant.

Relevant Policies in the ELP not referred to in the Refusal Reasons

- 2.36 **Policy H9 – Section 106 Planning Obligations – Housing Sites** – Policy H9 requires housing developments of 10 or more dwellings to provide a Section 106 obligations to ensure that appropriate infrastructure is delivered to meet the demands arising from the development. This is a Framework compliant policy. The draft terms of the S.106 agreement are set out in section 6 of the SoCG (**CD L1**).
- 2.37 **Policy EV16 – Landscape Character** – Policy EV16 requires developments to recognise and accord with the landscape character within which it is located.
- 2.38 **Policy R2 – Rights of Way** – Policy R2 requires rights of way network will be maintained and improved where opportunities arise. Priority will be given to the urban fringe.
- 2.39 **Policy T6 – Cycling** – In considering application for development facilities for cyclists will be sought by negotiating Section 106 planning obligations with

developers, provided that the obligation is directly related to the proposed development and necessary to make it acceptable.

Relevant Policies in the EPL referred to in the Reasons for Refusal

- 2.40 ***Policy EV11 – Protected Species and Threatened Species*** –Developments that would cause either indirect or adverse impacts to species that are protected by law or are identified as being nationally rare will only be permitted with appropriate mitigation.
- 2.41 ***Policy H12 – Quality and Design*** – Policy H12 advises that in considering applications for housing development the Borough Council will require that proposals are appropriate in scale and character of their surroundings, have regard to distinctive landscape feature and provide supplementary landscape planting where appropriate, provide adequate amenity space, acceptable standard privacy and be located so as to avoid being unduly affected by noise and smells.

Emerging Core Strategy

- 2.42 EBC are in the process of preparing a replacement Local Plan, referred to as the Erewash Core Strategy Review (“**ECSR**”). The draft plan was submitted for examination in November 2022. An Inspector has been appointed, however, Hearing dates have not been set. The Inspector has raised initial questions (**CD B8**) relating to a range of matters including:-
- Statement of Common Grounds with neighbouring Authorities not containing sufficient details to assess whether the duty to co-operate has been met.
 - Why the Council is reliant upon the housing figures included in the Greater Nottingham National Housing Needs Assessment for October 2020, and has queried why this figure can still be considered up-to-date.

- What assessment work has been undertaken to establish whether the housing requirements should be greater than the Standard Method Housing figure.
- Where the evidence base on housing site selection exists.
- Whether exceptional circumstances exist to support the Green Belt changes proposed by the Plan, with reference made to the fact that the strategic plan making authority should be able to demonstrate that it examined fully all reasonable options to meeting the identified needs for development outside of the Green Belt boundary.

2.43 The Council have responded to the Inspector and its questions (28th February 2023) (**CD B9**). The latest update on the progress of the draft plan was published on the EBC website on 5th July where it is advised:

“Following the Inspector’s Initial questions and the Council’s response to them the Council is currently undertaking additional work and a further update will be provided in due course. No other updates including timings for the Inspectors Matters, Issues and Questions or Hearing dates are available at this moment in time.”

2.44 The ECSR website advises that there were 3,250 duly made representations to the pre-submission version of the ECSR, albeit a larger portion of the representations were standardised letter of objection. There are outstanding objections to the proposed Green Belt and Strategic Green Infrastructure Corridor designation proposed to be applied to the Appeal Site and the plans approach to Green Belt land release (SoCG **CD L1** – para 3.4).

2.45 Paragraph 48 of the Framework advises that Local Planning Authorities may give way to relevant policies in the emerging Plans according to:-

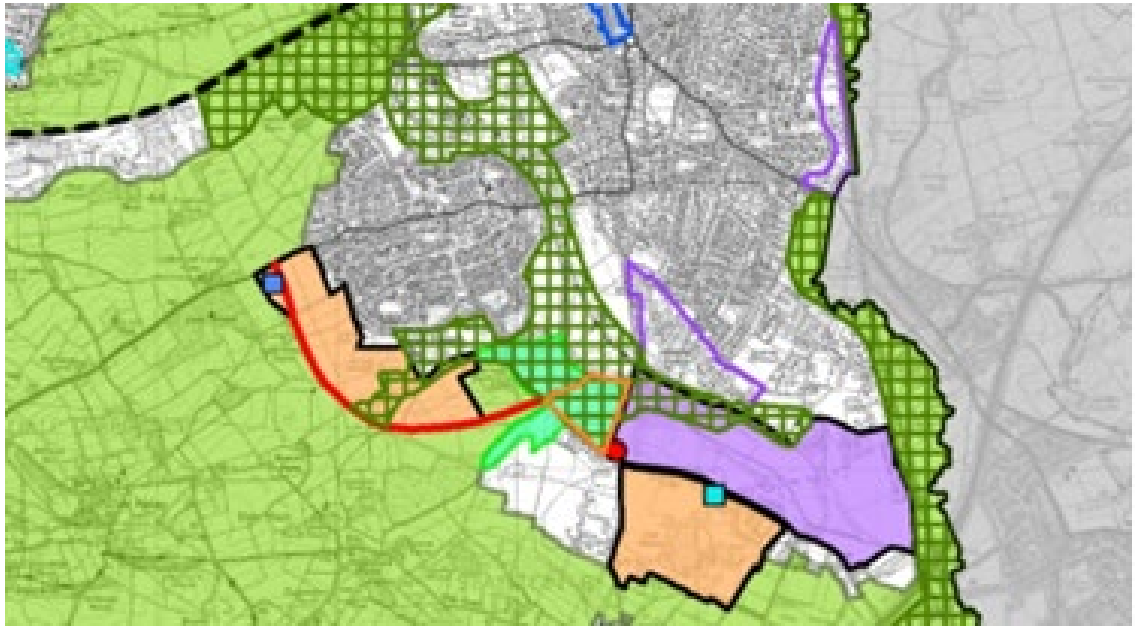
- The stage of the preparation of the emerging plan (the more advanced the preparation, the greater weight that it may be given).
- The extent of which there are unresolved objections to relevant policies (the less significant the objection the greater weight that may be given) and
- The degree of consistency with relevant policies in the emerging plan to the Framework (the closer the policies in the emerging plan to the policy in the Framework the greater weight that may be given).

2.46 In this case whilst the ECSR has been submitted for examination it is in the initial stages of the examination process. The outcome of the additional work being undertaken by the EBC on the ECSR is unknown. There are unresolved objections to the policies in the ECSR including policies that are directly relevant to the Appeal Site. The emerging plan should, therefore, be afforded minimal weight in the determination process. However, as it referred to in three of the refusal reasons it is necessary to review and analyse its policies.

2.47 An extract from the emerging ECSR Policies Map (**CD B10**) is provided at Figure 2. The broad extent of the Appeal Site is identified in a solid orange line. The dark green hatching represents the extent of the proposed strategic green infrastructure corridor, and the light green shading the proposed Green Belt expansion. The purple land to the east of the Application Site is the Stanton Strategic Employment Allocation. The peach land to the south east and west are residential allocation. The emerging ECSR proposes to remove this land from the Green Belt and its allocation for residential development.

2.48 A new local centre is being proposed to the east of the site (the blue square) at the junction of the Stanton Employment and Housing Sites. The red line to the west of the Appeal Site is the proposed Kirk Hallam relief road.

Figure 2 – ECSR Policies Map Extract



2.49 The SoCG (**CD L1**) identifies the emerging ECSR policies that are relevant to the Appeal Scheme. They are:-

- Policy 1 – Housing
- Policy 1.1 – Strategic Housing Sites
- Policy 4 – Transport
- Policy 5 – Infrastructure
- Policy 2 – The Spatial Strategy
- Policy 16 – Green Infrastructure, Parks and Open Space

2.50 Whilst the ECSR propose to revise the Green Belt boundary including extending the Green Belt so that it washes over this site there is no policy in the ECSR on Green Belt development. There is simply a reference in Strategic Policy 1.5 – Southwest of Kirk Hallam, that the land to the southeast

of the proposed allocation is *“added to the Green Belt to ensure it continues the separation of Kirk Hallam from Stanton”* and *“an additional 27ha of open land between Kirk Hallam and the former Stanton Ironworks is allocated as Green Belt.”*

2.51 Refusal Reasons 8, 9 and 10, refer to the conflict of the ECSR. They do not, however, reference any emerging policy numbers. Instead, they relate to matters principally linked to prematurity.

2.52 **Strategic Policy 1 – Housing**, advises that EBC has an objectively assessed housing need for 5,800 net new homes between 2022 and 2037 (this is the minimum standard method figure). The Settlement Hierarchy to accommodate this growth is:-

- a. Growth within Long Easton Urban Area (conurbation)
- b. Growth within Ilkeston Urban Area (town)
- c. Growth within the rural area settlements
- d. New settlements and brownfield land not in the Green Belt (former Stanton Iron Works)
- e. Extension of conurbation into the Green Belt (Derby and Nottingham)
- f. Extension of towns into the Green Belt (Ilkeston)

2.53 The extent of the Ilkeston Urban Area (a.) is not defined by the Policies Map. It is an agreed position between the Appellant and the Council (SoCG paragraph 9.1) that the Appeal Site is either adjoining or adjacent to the Ilkeston Urban Area.

2.54 Part 3 to the policy distributes the housing requirement as follows:-

- Around 700 homes within the Long Eaton urban area
- Around 1,400 homes within the Ilkeston Urban Area
- Around 350 homes within the rural area
- Around 1,000 homes in a new settlement in South Stanton
- Around 800 homes as extensions to the Derby conurbation on land allocated from the Green Belt

- Around 1,550 homes as extensions to the town of Ilkeston, on land deallocated from the Green Belt including around 1,300 home on land southwest of Kirk Hallam and around 250 homes on land north of Cotmanhay

- 2.55 The plan includes five site allocations (Strategic Policies 1.2 – 1.6). Between them these sites are expected to deliver 3,350 dwellings. No allocations are identified to deliver the 700 dwellings directed to Long Eaton Urban Area, 1,400 dwellings to Ilkeston Urban Area and 350 dwellings to the rural area.
- 2.56 **Strategic Policy 1.1 – Strategic Housing Sites.** Strategic Policy 1.applies to strategic housing developments of 200 dwellings or more. The Appeal Scheme proposes a development up to 196 dwellings, so therefore falls outside the confines of this policy.
- 2.57 **Strategic Policy 1.2 – South Stanton,** provides guidance on the development of the South Stanton allocation to the east of the Appeal Site. It is expected to deliver around 1,000 new homes, primary school, village centre and 47 hectares of employment land. It will form a new community associated with the Ilkeston Urban Area.
- 2.58 **Strategic Policy 4 – Transport** – Strategic Policy 4 identifies three transport infrastructure projects. Project 3 is to provide for high quality walking and cycling networks and widen transport choice.
- 2.59 **Policy 5 – Green Infrastructure** – Four strategic green infrastructure corridors are identified on the Proposals Map. The four objectives of the strategic green infrastructure corridors are to provide sustainable flood water management, biodiversity improvement including carbon capture, active travel and open space recreational uses. Proposals within the strategic green infrastructure corridors that further these objectives will be supported. Proposals that detract from these aims will be refused. The ECSR proposes to include the Appeal Site and surrounding land in the Strategic Green Infrastructure Corridor.

Developer Contributions SPD

- 2.60 The EBC Developer Contributions SPD was adopted on 8th April 2015. Contributions covered by this SPD relate primarily to residential developments. The main purpose of the SPD is to identify the infrastructure needs of the Borough, assess the viability of new housing development to meet those needs, and consequently provide guidance on which of these needs developments will be expected to contribute to.
- 2.61 Paragraph 5.11 of the SPD advises that the Borough Council is strongly committed to the long-term regeneration of Ilkeston. The scale of development planned within and adjacent to the town will help to strengthen the case for sustainable transport improvements, including enhancing bus connectivity to and from Ilkeston. Paragraph 5.12 advises that Core Strategy Appendix D identifies the need for at least three buses running per hour between Ilkeston and Nottingham via the Stanton Regeneration site as a sustainable transport alternative to the use of the private car.

3.0 CASE FOR THE APPELLANT

3.1 Planning law requires planning applications to be determined in accordance with the Development Plan unless material considerations indicate otherwise. In this case the Development Plan comprises the Erewash Core Strategy 2016 (“**ECS**”) and Erewash Local Plan Saved Policies (“**ELP**”). There are a series of material considerations relevant to the Appeal Scheme that are identified in paragraph 2.2 of my PoE.

3.2 I set out below a review of the Appeal Scheme’s compatibility with the policies in the Development Plan that are agreed to be relevant to the Appeal Scheme before reviewing the implications of the material planning consideration for the decision making process.

Section 38(6) Development Plan Review

3.3 The Appeal Site is not subject to any specific designation by the Local Plan Policies Map. The Policies Map does not identify settlement boundaries to direct the location of development. Unlike a large proportion of the undeveloped areas within the Borough it is not within the Green Belt (ECS paragraph 2.2.2 advises that 72% of the Borough is within the Green Belt). Paragraph 2.1.2 of the ECS advises that the Green Belt boundaries are “very tightly drawn around Erewash’s built-up areas and a number of the Borough’s settlements”.

3.4 The Appeal Site is not subject to countryside policies or similar designations that would seek to restrict development in non-Green Belt locations. It is a windfall development site for the purposes of applying the Development Plan policies.

3.5 The ELP Inspector, in paragraph 14 page 183 of his report, advises that the site should be considered as safeguarded land to meet longer term development needs.

ECS Policy 1 – Climate Change

- 3.6 Policy 1 requires development proposals to mitigate and adapt to climate change, and comply with national targets on reduced carbon emissions and energy use. The policy contains criteria on sustainable design, the energy hierarchy and flood risk and sustainable drainage. The design based criteria are relevant to the reserved matters process. The refusal reasons make no reference to Policy 1.

ECS Policy 2 – The Spatial Strategy

- 3.7 EBC correctly assert no conflict with Policy 2, it is not referred to in any of the refusal reasons.
- 3.8 Policy 2 sets out the spatial strategy for delivering the ECS development requirements including the housing target. In so far as Policy 2 seeks to achieve the delivery of sustainable development it is Framework compliant. However, the housing target, settlement strategy and the approach to securing residential development within the policy is out of date.
- 3.9 The ECS housing requirement is out of date, it is based on the delivery of the former RSS housing target. As the settlement strategy in Policy 2 is based upon the delivery of an out of date housing target it must also be considered out of date. Furthermore, Policy 2's settlement strategy has been ineffective in maintaining a five year housing land supply in EBC, further demonstrating that it is out of date. I note that in EBC's response letter to the Core Strategy Review Inspectors Initial Questions (**CD B9**) the Council advise:

“The primary justification for carrying out a review of the Local Plan has therefore been the failure of housing related policies (especially Policy 2 – Spatial Strategy) and resultant failure in the supply of new homes coming forward in the Borough to meet LHN”.

- 3.10 The Appeal Site Committee Report advises at page 8 (Status of Local Policies) that the ECS is out of date “particularly in reference to those policies

that influence the scale and location of new housing”. It is, therefore, my view that limited weight should be applied to the settlement strategy in Policy 2 in the decision making process.

- 3.11 Policy 2 states that sustainable development in the plan area will be achieved through a strategy of urban concentration with regeneration. To achieve this, most development will be located “in or adjoining the urban areas of Ilkeston and Long Eaton”.
- 3.12 The “Ilkeston Urban Area” is not identified by the Development Plan Policies Map or the emerging ECSR Policies Map (the emerging ECS continues the concept of the Long Eaton and Ilkeston Urban Areas). It is, therefore, necessary to refer to the text in the ECS to establish whether or not the Appeal Site should be considered to be “within or adjacent” to the Urban Area of Ilkeston and therefore in an area where Part 1 of Policy 2 advises that “most” development (72% of the housing requirement) will be located.
- 3.13 Part 3a of Policy 2 advises that approximately 4,500 homes will be provided “in or adjoining the Ilkeston Urban Area including approximately 2,000 homes at the Stanton Regeneration site”. ECS Policy 7- Regeneration, advises that regeneration in Erewash will be focused “In the Ilkeston urban area, through the redevelopment of the Stanton Regeneration Site, to create a new sustainable neighbourhood.” Policy 8 – Housing Size, Mix and Choice, sets out the plans approach to affordable housing delivery. Part 4a) of the Policy states “In the Ilkeston Urban Area excluding the Stanton Regeneration Site (viability is likely to constrain affordable housing delivery) to around 10%”. Paragraph 2.4.5 of the ECS refers to the Stanton Regeneration site as an “integral part of Ilkeston”.
- 3.14 In Section 9 – Matters of Disagreement, of the SoCG, it is a matter of disagreement between the Appellant and EBC whether or not the Stanton Regeneration Site is part of the Ilkeston Urban Area. In my view the policies in the ECS make it clear that the Stanton Regeneration Site is part of the Ilkeston Urban Area. The Appeal Scheme site is located to the immediate west of the Stanton Regeneration Site.

- 3.15 It is a matter of disagreement in the SoCG between the parties whether or not the Appeal Site is “adjacent to” or “adjoining” the Ilkeston Urban Area.
- 3.16 The north east corner of the Appeal Site is separated from the Stanton Regeneration site allocation on the Development Plan’s Policies Map by the width of Ilkeston Road and the highways verge. The south eastern corner of the Appeal Site is approximately 130m from the Stanton Regeneration site allocation. However, the red line boundary (**CD H2**) for the Stanton Regeneration Site planning permission extends to the Ilkeston Road along its entire length. The Appeal Site Committee Report refers to the Stanton North development as providing strategic industrial development “just a few metres away from the current application sites eastern boundary.” The revised Stanton Regeneration Site boundary included within ECSR adjoins the western edge of the Ilkeston Road and the Appeal sites boundary adjoins the eastern edge of Ilkeston Road.
- 3.17 Given that the Stanton Regeneration site is within the Ilkeston Urban Area it is my view that the Appeal Site should also be considered to be within or adjoining the Ilkeston Urban Area for the purposes of the application of Policy 2. The Appeal Site is geographically closer to the southern built up edge of Ilkeston than a large proportion of Stanton Regeneration site allocation. That being the case, not only does the Appeal Scheme not conflict with Policy 2, it is an area where Policy 2 seeks to direct the bulk of the ECS housing requirements (4,500 dwellings or 72%).
- 3.18 However, even it is concluded that the Appeal Site is “adjacent”, rather than “adjoining” the Ilkeston Urban Area it is a roads width away from the ECS area that is a focus for growth. There is no conflict with this out of date the policy in any event.

ECS Policy 8 – Housing Site, Mix and Choice

- 3.19 The Appeal Scheme is an outline application with all matters reserved for subsequent approval other than access. As such the size and mix of the properties would be matters for consideration at reserved matters.
- 3.20 Part 4 of the Policy sets out the plans approach to affordable housing delivery. The policy requires sites capable of supporting 15 residential dwellings or more to provide ‘up to’ 30% affordable housing. Part ‘a’ of the policy advises that in the Ilkeston Urban Area, excluding the Stanton Regeneration site, viability is likely to constrain this target to around 10%. The Appeal Scheme proposes the development of 30% affordable housing.

ECS Policy 10 – Design and Enhancing Local Identify

- 3.21 Policy 10 addresses a range of matters including design, amenity and landscape character. Policy 10 is referred to in refusal reasons 1, 5 and 6.
- 3.22 Part ‘1’ of the policy requires developments to make a positive contribution to the public realm and sense of place. The Appeal Scheme is an outline application with all matters reserved for subsequent approval other than access. The reserved matters process can be used to ensure that the scheme makes a positive contribution to the public realm and have its own sense of place through a high quality design. The Appeal Site is of a substantial enough size (Refusal Reason 8 refers to the site as being “strategic” and “substantial” in scale) to create its own environment creating a high quality and attractive place to live.
- 3.23 The Committee Report suggests at page 9 that that the scheme cannot accord to criteria ‘1a’ as the application site is *‘largely disconnected from other areas of development found within the wider environment. This makes developing a cohesive relationship with the wider public realm difficult to achieve given the lack of built environment that immediately surrounds the site’*.

- 3.24 This reasoning does not stand up to scrutiny. A development site does not need to be connected to an existing area to create a high quality public realm and sense of place. In any event, the Appeal site adjoins/is adjacent to the Stanton Regeneration site. The ECS requires the Stanton Regeneration site to provide 2,000 dwellings. The emerging ECSR advises that the Stanton Regeneration Site allocation proposes the development of 1,000 dwellings a short distance to the southeast of the Appeal Site (CSRS Proposals Map – **CD B10**). Both the adopted and emerging Local Plan allocate residential development in the vicinity of the Appeal Site that has a similar relationship with Ilkeston and the Stanton Regeneration Site. EBC have no concerns that the residential development directed to the Stanton Regeneration site is disconnected and unable to create a cohesive relationship with the wider public realm.
- 3.25 Criterion “b” requires developments to be designed to create an attractive, safe, inclusive and healthy environment. The reserved matters process can be used to ensure these objectives are met. The Appeal Scheme Committee Report advises at page 9 that whilst layout and appearance are reserved matter it is considered that the “unsustainable location will make it impossible to achieve this”. The site’s location does not in any way prevent it being designed to create an attractive, safe, inclusive or healthy environment. The Design and Access Statement (**CD C1**) submitted with the application explains how a high quality, safe and inclusive development can be created on site.
- 3.26 Criterion “1c” requires developments to be designed to have regard to the local context and reinforce valued local landscape characteristics. This is a matter for the reserved matters process. The Appeal Scheme Committee Report advises that a housing scheme in this location will struggle to achieve this owing to the “largely undeveloped environs” the site is situated within. This is despite the fact that the site is to the west of the Stanton Regeneration Site.
- 3.27 Criterion “1d” requires development to reflect the need to reduce dominance of motor vehicles. The Appeal Scheme Committee Report advises that the

unsustainable location of the site and the Scheme's "remoteness" from shopping and convenience facilities would "inevitably" place reliance on use of motor vehicles. The Highways SoCG agreed with DCCH (**CD L5**) states that the Appeal Scheme would benefit from sufficient footpath and cycleway connections with Ilkeston and Kirk Hallam to allow access to the shops, services and facilities contained within it and that the site would benefit from an improved bus service which offers significant opportunities for sustainable travel (paragraph 2.7).

- 3.28 Mr Andrews concludes that the site Appeal has "numerous" facilities located within a reasonable walking and cycling distance and bus access. The site is sustainably located in terms of access to services and facilities by non-car modes. In terms of sustainability of the location in general, the Appeal Site is located with "adjoining" or "adjacent" to the Ilkeston Urban Area, the preferred location for the delivery of a majority of the plans housing requirement.
- 3.29 Part 2 of policy 10 puts in place design assessment criteria. The provisions of criteria 2a – 2e and 2g are considerations for the reserved matters process.
- 3.30 Part "2f" of the policy advises that developments will be assessed having regard to the impact on the amenity of nearby residents or occupiers. Refusal reason 6 suggested that the proximity of the Stanton Regeneration Site would lead to unacceptable living conditions for future occupiers. As set out in the SoCG this refusal reason no longer forms part of EBC's case. There will be no impact on the amenity of nearby residents or occupiers.
- 3.31 Part "2h" of the policy requires the potential impact on important views and vistas, the landscape, and other individual landmarks to be assessed. Part 3 of the policy advises that outside of settlements, new developments should protect, conserve or where appropriate enhance landscape character. Appraisals will be assessed with reference to the Derbyshire Landscape Character Assessment.

- 3.32 These provisions are dealt with by Mr Hughes in his PoE. Mr Hughes concludes that in his view the Appeal proposals accord to the requirements of Core Strategy Policy H10 (Mr Hughes PoE paragraph 8.49).

ECS Policy 11 – The Historic Environment

- 3.33 To the south of Sowbrook Lane, within the vicinity of the junction of Lowes Road, is the Grade II Listed New Stanton Cottages, also known as Twelve Houses.
- 3.34 Policy 11 advises proposals and initiatives will be supported where the significance of heritage assets and their settings would be sustained and enhanced. It includes a series of strategic approaches which will be used to assist in the conservation and the enjoyment of the historic environment. The impact upon the historic environment of planning policies and decisions should be monitored. As referred to in my policy analysis in the previous section of my PoE Policy 11 is not consistent with the Framework. This policy guidance should be read in conjunction with Chapter 16 of the Framework.
- 3.35 Paragraph 202 of the Framework advises that where a development proposal will lead to less than substantial harm to the significance of a designated Heritage Asset, this harm should be weighed against the public benefits of the proposal. It is an agreed position in the SoCG that the proposed development would result in “less than substantial” harm to the Twelve Houses. The Appeal Scheme Committee Report refers to the level of harm as having a “minor adverse effect” on the setting of listed buildings. It is advised that “the Authorities Heritage Consultant agrees with that assessment”.
- 3.36 Mr Slatcher concludes in his PoE that the overall impact of the proposed development on designated heritage assets is considered to be less than substantial harm and would be at the lower end of that scale.
- 3.37 In accordance with the requirements of paragraph 202 of the Framework it is necessary to weigh the harm of the development against the public benefits of the Appeal Scheme. I undertake this exercise in my PoE following an

analysis of the planning policies and material considerations to help and form the balance.

- 3.38 In deciding how much weight to attached to the harm to the heritage asset I have had regard to paragraph 199 of the Framework that advises that when considering the impact on a heritage asset great weight should be given to the asset's conservation. The more important the asset the greater the weight should be. This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.

ECS Policy 14 – Managing Travel Demand

- 3.39 Part 1 of policy 14 advises the need to travel, especially by the private car, will be reduced by securing new developments of an appropriate scale in the most accessible locations following the spatial approach in Policy 2, in combination with delivery of sustainable transport networks to serve the development. I address the requirements of Policy 2 above.
- 3.40 The second part of policy 14 requires developments to be readily accessible by walking, cycling and public transport, but where accessibility deficiencies do exist these should be fully addressed . Mr Andrews addresses this matter in his PoE and concludes that the site is readily accessible to a range of services and facilities by walking, cycling and public transport (Section 7 - Conclusion).
- 3.41 The Highways SoCG (**CD L5**) agreed with DCCH advises that the Highways Authority agree with the Appellant that:
- The appeal proposal would benefit from sufficient footpath and cycleway connections with Ilkeston and Kirk Hallam to allow access to the shops, services and community facilities contained within it;
 - The site would benefit from an improved bus service which offers opportunities for sustainable travel. In addition to the use by the proposed residential development, it would also provide a credible

means for people to commute to the existing and proposed jobs to the south and east of the appeal site

- In general, there is no local Highway Authority objection to the location of the development in respect of connectivity and access to sustainable modes of transport taking account of the transport mitigation package being provided to support the proposals
- The transport mitigation package which accompanies the application proposal would encourage occupiers of the site not to be reliant on the use of private car

3.42 ECS identify a conflict with policy 14 in refusal reason 1, and suggest that the site is unsustainably located, remote from services with poor options for walking and cycling further afield. This is not the case, the site is in a location where the ECS seeks to direct the bulk of the housing requirement with good access to a range of services and facilities by non car modes.

ECS Policy 16 – Green Infrastructure, Parks and Open Space

3.43 Policy 16 requires a strategic approach to the delivery, protection and enhancement of Green Infrastructure. Mr Hughes addresses Policy 16 in his Proof of Evidence. As Mr Hughes points out, the refusal reasons do not make reference to policy 16. It is Mr Hughes' view that given the location of the site, alongside of Nutbrook Canal, opportunities for the proposal to improve the amenity value and connectivity through the existing GI corridor and associated assets, as well as offsite landscaping, biodiversity and amenity benefits, the proposal meets the aspirations of Policy 16 as part of a wider strategic network of Green Infrastructure (Mr Hughes PoE paragraph 3.23).

ECS Policy 17 – Biodiversity

3.44 Policy 17 seeks to increase the level of biodiversity across Erewash during the course of the plan period. Refusal reason 4 suggests that the Scheme would conflict with strategic policy 17 and result in the loss of a significant

amount of hedgerow and trees which provide habitats, foods and commuting routes for a range of species.

- 3.45 As detailed in the SoCG EBC are no longer supporting refusal reason 4. The Appellant's Ecologist has submitted an indicative net gain calculation that concludes that 10.55% gain in habitats and 56.15% gain hedgerows can be achieved (**CD D5**).
- 3.46 With regard to compensating the loss of habitats and ground nesting birds, the Appellant has an agreement with the same landowner on a parcel of land on Seven Oaks Road, approximately 1.25km from the Appeal Site. A compensation scheme is being prepared for the southern part of this additional piece of land and its delivery will be controlled through the S.106 Agreement. This approach is supported by policy 17 part E and saved policy EV11.

Saved Local Plan Policies

Policy H9 – S106 Planning Obligations – Housing Sites

- 3.47 Policy H9 requires residential schemes of 10 years or more to provide S.106 obligations in order to offset their impacts. The Heads of Terms of the S.016 are agreed in the SoCG (Section 6). There is no conflict with this policy.

Policy H12 – Quality and Design

- 3.48 Policy H12 is referred to in refusal reason 5. It provides five criteria that will be used for assessing residential schemes.
- 3.49 Criterion 1 requires developments to be in scale and character with their surroundings. Criterion 2 requires developments to have regard to distinctive landscape features and provide supplementary landscaping as appropriate. Mr Hughes addresses the provisions of H12 Criterion 1 and 2 in his PoE. Mr Hughes concludes that the Appeal Site is situated in the area that is heavily influenced by the urban context including both residential and commercial

development. Mr Hughes is of the view that that the Appeal proposals are in accordance with the requirements of saved policy H12 (Mr Hughes PoE paragraph 8.49).

- 3.50 The policy requires dwellings to have adequate amenity space (criterion 3) and an acceptable standard of privacy within private gardens (criterion 4). These are both detailed matters that would be considered at reserved matters stage. Criterion 5 requires developments to be located so that there are no undue effects by noise or smells from nearby uses. As detailed in the SoCG refusal reason 6, which suggested that the proximity of the Appeal Site to Stanton North would result in unacceptable living conditions for future occupiers, is no longer being pursued by EBC. An Air Quality Assessment has been commissioned by the Appellant and is provided at Appendix 2 to my PoE. It concludes that there are no air quality reasons that would prevent the development of the Appeal Scheme.

Policy T6 – Cycling

- 3.51 Policy T6 advises that in considering applications for development facilities for cyclists would be sought by negotiating S.106 planning obligations with developers, provided that the obligations are directly related to the proposed development in order to make it acceptable in a land use planning terms. Policy T6 is not referred to in the refusal reasons.
- 3.52 Mr Andrews addresses cycle connectivity within his PoE. Mr Andrews concludes that the site has a variety of services and facilities within a reasonable walking and cycling distance (section 7).

Policy EV11 – Protected Species and Threatened Species

- 3.53 Policy EV11 advises that the development which would cause indirect or adverse impacts on species that are protected by law or identified as nationally rare will only be permitted where one of the series of criteria are met. Policy EV11 is referred to in refusal reason 6.

- 3.54 As detailed in the SoC refusal reason 6 has now been withdrawn. The Appeal Scheme will enhance biodiversity on site.

Policy EV16 – Landscape Character

- 3.55 Policy EV16 is not referred to in the reasons for refusal. It requires developments to recognise and accord with the landscape character within which it is located. As with Saved Policy H10, the focus of the policy is upon detailed matters, including materials, landscaping and roof design. These are not the subject of the appeal proposals, which has all matters reserved except for access. The supporting text to the policy refers to the Derbyshire Landscape Character Assessment that forms part of the evidence base which supports the local plan. Mr Hughes addresses out the character, features and qualities of the area as defined by the Derbyshire Landscape Character Assessment in Section 4 of his PoE.

Conclusions on Development Plan Compliance

- 3.56 For the reasons identified above is my view that there is no conflict with the Development Plan when read as a whole. There is a limited degree of conflict with the first part of ECS Policy 11, that advises that proposals and initiative will be supported where the significant of heritages assets and their settings would be sustained or enhanced. This is, however, an out of date policy that is not compatible with the requirements of paragraph 202 of the Framework and other sections of Section 16 of the Framework. I therefore afford it limited weight. I note that the EBC do not refer to Policy 11 in the refusal reasons. Paragraph 11c of the Framework is engaged and there is a presumption that planning permission should be granted.
- 3.57 Even if it is concluded that there is a conflict with the development there are a series of significant material considerations in support of the grant of planning permission.

Material Planning Considerations

- 3.58 The most recent version of the Framework was adopted in July 2021. Paragraph 2 and 218 of the Framework confirm the Framework is a material planning consideration that must be taken into consideration in planning decisions.
- 3.59 Paragraph 11 of the Framework requires the application of a presumption in favour of sustainable development. For decision making this means:
- c) Approving development proposals that accord with an up to date development plan without delay; or
 - d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:
 - i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
 - ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole
- 3.60 Footnote 8 confirms that for applications involving the provision of housing, in situations where the local planning authority cannot demonstrate a five year supply of deliverable sites, relevant Development Plan policies should be considered out of date. It is an agreed position that the Council cannot demonstrate a five year housing supply (SoCG paragraph 7.3).
- 3.61 Furthermore, the housing policies within the Development Plan are out of date as the housing target within the ECS is derived from the now abolished East Midlands RSS. It is an agreement position that the Development Plan is also out of date for this reason (SoCG paragraph 7.4)
- 3.62 Footnote 7 provides a closed list of the policies within the Framework that protect 'areas or assets of particular importance' referred to in Paragraph

11.d)i. This includes the policies on ‘designated heritage assets’. That being the case if a conflict with the Frameworks policies on heritage assets provide a clear reason for refusing the development proposed the tilted balance is not engaged. It is necessary to undertake the planning balance exercise referred to in paragraph 202 of the Framework to establish if the tilted balance is engaged. The public benefits of the scheme should be weighed against the harm to the heritage asset.

- 3.63 I set out below the material considerations relevant to the proposed development and whether they are benefits or adverse impacts. I confirm the weight that I believe can be afforded to each benefit/adverse impact in the planning balance exercise.

1) Housing Delivery

- 3.64 It is a Government objective to significantly boost the supply of homes (Framework paragraph 60). It is an agreed position that EBC cannot demonstrate a five year housing land supply. The SoCG confirms at paragraph 7.3 that there is a 2.65 year supply of housing land available. Appendix 1- Consultation Response During Appeal Relating to 5 Year Housing Land Supply – EBC Planning Policy, of EBC’s Statement of Case (**CD I5**) confirms that the five year housing land supply requirement is a minimum of 2,316 dwellings based on the Standard Method. There is a total supply of 1,228 dwellings. A shortfall of 1,008 dwellings.
- 3.65 The 1,228 dwellings supply figure includes a windfall allowance. Appendix 1 to the EBC SoCG advise that information on the windfall allowance can be found in the Erewash Borough Council Five Year Housing Land Supply Position Paper (**CD B11**). Paragraph 23 of the paper advises that the EBC windfall data ‘helps justify’ a windfall allowance figure of 231 dpa. Two years’ worth of windfall allowance is included in the five year housing land supply calculation, 462 dwellings in total.
- 3.66 EBC therefore currently need 1,550 dwellings (1,008 dwelling shortfall + 462 dwelling windfall allowance) to come forward on unidentified windfall sites in

order to be able to demonstrate a five year housing land supply. The housing shortfall is significant. The Appeal Scheme, at 196 dwellings, is the equivalent of 12% of the shortfall.

- 3.67 The EBC Response to the ECSR response to the Examiners Initial Questions (**CD B9**) advises that there has been a *“record of persistent under delivery across recent years, resulted in the Council being unable to demonstrate a five year housing land supply in 2019”* and *“Erewash has failed the Housing Delivery Test every year since its introduction”*. The most recent Housing Delivery Tests 2021 (published January 2022) measurement EBC is 79%.
- 3.68 As EBCs housing delivery test concludes that delivery has fallen below 95% EBC have prepared an action plan to identify actions to increase delivery in future years as required by paragraph 76 of the Framework. The most recent action plan was produced by EBC in August 2019 (**CD B13**). The Appeal Scheme Committee Report advises at page 8 that in December 2019 there was a 3.43 year supply of housing land available based on the Standard Method. EBC are now reporting a 2.65 year supply of housing land.
- 3.69 The under delivery of housing in EBC has been a longstanding issue. The EBC Annual Monitoring Report (interim) 2021/22 (**CD B14**), the most recent AMR produced by ECS, provide information on housing completions on an annual basis since 2011/12, the start of the ECS plan period, to 2021/22. Policy 2 of the ECS requires the provision of a minimum of 6,250 dwellings during the course of the plan period, the equivalent of an annual requirement of 368 dpa. Appendix C – Housing Trajectory, of the ECS advises by the 2021/22 monitoring year a total of 4,084 completions were expected. Table 1 below is based on Table 8.3.1 of the AMR and identifies the actual completions between 2011/12 and 2021/22.

Table 1 – Completions V ECS Housing Requirements

Year	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	Total
Housing Requirement	368	368	368	368	368	368	368	368	368	368	368	4048
Completions	222	198	257	222	369	179	173	321	246	208	243	2638
Annual shortfall /oversupply	-146	-170	-111	-146	1	-189	-195	-47	-122	-160	-125	-
Rolling shortfall /oversupply	-146	-316	-427	-573	-572	-761	-956	-1003	-1125	-1285	-1410	

3.70 As of March 2021 housing completions stood at 65% of the 4,048 homes ECS plan target (pro rata). The shortfall was 1,410 dwellings between 2011/12 and 2021/22. The annualised housing requirement was met in a single monitoring year.

3.71 Provided at appendix 1 is Appeal Decision APP/K2420/W/21/3284379 – Land South of Hinckley Road, Crabtree Farm (June 2022). Like the Erewash Development Plan the Hinkley and Bosworth Local Plan was an out of date plan that took its housing requirement from the revoked Regional Spatial Strategy. At the time of the Appeal Hinkley and Bosworth were reporting a 4.46 year supply of housing as detailed in the Statement of Common Ground (Appendix 2), this figure was not contested by the Appellant. The Inspector afforded the shortfall significant weight (paragraph 62).

3.72 Provided at Appendix 3 is appeal Decision APP/K2420/W/22/3311038 – Land off Workhouse Lane, Burbage (March 2023). In this case Hinkley and Bosworth were able to demonstrate between a 4.89 and 4.76 year supply of housing land, which the Inspector concluded was “not a considerable shortfall”. However, the Inspector afforded “significant positive weight” to the contribution the scheme would make towards the housing stock. At the time of the decision Hinkley and Bosworth had completed Pre-Submission constitution on their emerging Local Plan and were preparing it for submission for examination. The housing land supply position in Hinkley and Bosworth was substantially healthier than it is in EBC.

3.73 Housing delivery in EBC has been consistently poor. The five year housing land supply position has been deteriorating rather than improving despite the

preparation of the action plan. The current housing shortfall is significant. I afford significant positive weight to the five year housing land supply shortfall in the planning balance. In doing I acknowledge the two Hinkley and Bosworth Appeal decisions referred to above significant weight was attached to addressing housing needs with a 4.46 – 4.89 year housing land supply shortfall.

- 3.74 There is currently no remedy to address the five year housing land supply shortfall. It is the intention for the emerging ECSR to put in place new residential allocations to boost the supply of housing. However, there is no certainty if or when the ECSR will be adopted or what changes may need to be made to its policies, strategy and allocations. As I explain below the ECSR can be afforded highly limited weight in the decision making process. In any event the ECSR is based on a housing delivery strategy that relies on significant windfall development.

2) Affordable Housing Delivery

- 3.75 Policy 8 – Housing Size, Mix and Choice of the ECS sets out the plan’s affordable housing requirements. Supporting Paragraph 3.9.5 of the ECS advises that the Strategic Housing Market Assessment – Affordable Housing Needs update 2012, that informed the ECS, identifies the level of affordable housing need at 422 dpa. However, as the total housing requirement in the plan is the equivalent of 368 dpa the level of affordable housing provision is “clearly” not viable. A target of 1,200 affordable homes (70 dpa) is considered appropriate. Chart 8.2.3 of the AMR confirms the number of annual affordable housing completion between 2011/12 and 2021/22. Table 2 below compares the affordable housing competitions figure to the actual need and affordable housing target figure set out in the ECA

Table 2 – Affordable Housing Completions and Affordable Need

Year	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	Total
ECS Actual Affordable Need	422	422	422	422	422	422	422	422	422	422	422	4642
ECS Target Affordable Requirements	80	80	80	80	80	80	80	80	80	80	80	880
Affordable Completions	36	19	82	71	34	28	74	54	78	53	74	603

3.76 The AMR identifies a 227 dwelling affordable housing shortfall against the annualised target by 2021/22 (800 – 603). The shortfall against the = affordable housing need figure identified in paragraph 3.9.6 of the ECS is 4,039 dwellings (4,842 - 603).

3.77 More up to date information on affordable housing need can be found in the Greater Nottingham and Ashfield Housing Needs Assessment (October 2022) (“*HNA*”). It is advised at page 80 the affordable housing requirements in Erewash is calculated as 271 dpa. On average there have been 54.8 affordable completions during the course of the AMR monitoring period. The rate of affordable housing delivery would need to increase by over 215 dpa to meet the most recently identified level of need identified by the HMA.

3.78 The draft ECSR requires the development of at least 5,800 dwellings between 2022 and 2037 (386 dpa). An affordable housing need of 271 dpa is the equivalent of 70% of the total housing target. There is a pressing need for affordable housing delivery EBC.

3.79 I noted that the emerging ECSR does intend to replace Policy 8, it will remain saved. There is no proposal to include a revised affordable housing policy in the ECSR. There are, however site specific affordable housing requirements for the five Strategic Housing sites, the emerging plans only housing allocations. These are:

- 1.2 – South Stanton – 1,000 dwellings – 10% affordable subject to viability (c100 affordable dwelling in total)
- 1.3 – Acorn Way – 600 dwellings - 10% of the homes provided to be for on-site affordable home ownership, and a financial contribution

towards off-site affordable housing in lieu of providing up to 20% of the homes as additional affordable housing, subject to viability. (c60 affordable dwellings on site and off site contribution)

- 1.4 North of Spondon – 200 dwellings - 10% of the homes provided to be for on-site affordable home ownership, and a financial contribution towards off-site affordable housing in lieu of providing up to 20% of the homes as additional affordable housing, subject to viability. (c20 affordable dwellings on site and off site contribution)
- 1.5 – South West of Kirk Hallam – 1,300 dwellings - 10% affordable subject to viability (c130 affordable dwellings in total)
- North of Cotmanhay – 250 dwellings - 10% affordable subject to viability (c25 affordable dwellings in total)

3.80 The 3,350 dwellings, over half the plan's housing requirement, directed towards the proposed strategic allocations are expected to deliver 335 affordable dwellings on site, subject to viability, with two of the proposed allocations making a financial contribution for offsite provision. The emerging ECSR will not boost affordable housing delivery. It does not include a strategy that will deliver the 271 affordable houses that are needed each year as identified by the HNA. The proposed development will provide 30% on site affordable housing, outperforming affordable delivery from the emerging strategic sites and making an extremely valuable contribution of 81 affordable dwellings.

3.81 Given the significant unmet need for affordable housing I afford the provision of 30% affordable housing delivery significant positive weight in the planning balance.

3) Improved Public Transport Opportunities

3.82 Mr Andrews explains in his proof of evidence that as part of the proposed development, new bus stops will be provided on the Ilkeston Road so that at reserved matters stage the scheme could be designed so that the properties are located less than 400m from a bus stop. The existing No.14 bus service will be improved to provide an hourly bus service from 7am- 7pm Monday to

Saturday with an enhanced 30 minute frequency between 7am and 9am and 4pm to 6pm.

- 3.83 The existing of No.14 bus services connects Sandiacre to Ilkeston. At the moment the bus service operates an hour service between 10 am and 5pm. The proposed improvements will introduce the service to peak commuting times. It is an agreed position in the DCCH Statement of Common Ground that the “site would benefit from an improved bus service which offers significant opportunities for sustainable travel.”
- 3.84 The benefits of the improved bus service go beyond serving the Appeal Site. The Committee Report for the adjoining Stanton Ironworks (Stanton Redevelopment Site) redevelopment planning permission (ERE/1221/0002) (CD H4) advises in the Sustainable Transport and Highways section that:

“Bus services around the site are relatively infrequent, with the No.14 bus service running from Ilkeston to Sandiacre with a stop at Twelvehosues being the closest route. This is an hour service between 10am and 5pm. The County Council, in their consultation response, has raised the lack of an appropriate bus service as being a constraint to sustainable travel to the site and suggests developer contributions are sought to facilitate improvements. However, despite requests for further information, they have been unable to suggest any actual schemes that such a contribution could fund. It is noted that attempts to address a similar request for the nearby Elkas’s Rise housing development site has been thwarted by the similar failure of the County Council to provide an appropriate scheme supported by bus operators despite a financial contribution having been secured. The proposed estate road within the development site would be suitable to accommodate buses in the future should the County Council and/or operators progress a scheme for service enhancement. In the current circumstances, however, it would not be reasonable to seek a developer contributions where no service enhancements have been identified.”

- 3.85 Appendix D – Erewash Infrastructure Delivery Plan, of the ECS identifies seven ‘main’ infrastructure items that EBC will support to deliver the Core Strategy’s growth agenda. They include ‘the provision of at least three buses an hour each way between Ilkeston and Nottingham via the Stanton Regeneration Site as a sustainable transport alternative to the private car”.
- 3.86 Service improvements to the No.14 bus service have been identified by the Appellant and will be secured through the S.106 Agreement. The Stanton Regeneration Site, that is expected to create 500 jobs each year during construction and approximately 4,000 new jobs on site (ERE/1221/0002 Committee Report – Potential Significant Public Benefits section) will benefit from an improved bus service as a consequence of the development of the Appeal Scheme.
- 3.87 Existing residents along the route of No.14 bus services will also benefit from an improved service.
- 3.88 I afford the provision of an improved bus service significant positive weight in the planning balance.

4) Improving Footpath Provision on Sowbrook Lane

- 3.89 Sowbrook Lane connects the Appeal Site to Kirk Hallam. The proposed development will result in the footway to Kirk Hallam being upgraded to a typical width of 2m, but no less than 1.8m. Uncontrolled crossings with pedestrian refuges will be provide across Sowbrook Lane to access the footway. It is an agreed position with DCC Highways that the Appeal Proposal would benefit from sufficient footpath and cycleway connections with Ilkeston and Kirk Hallam to allow access to the shops, services and community facilities contained within it.
- 3.90 The improved footpath would also improve footpath connectivity between Kirk Hallam and the Stanton Regeneration Site, which as referred to above, is expected to create 4,000 new jobs. The Committee Report for the Stanton

Regeneration Site planning permission ERE/1221/0002 (CD H4) advises in the Sustainable Transport and Highways section that:

“Due to its sustainable location, the site is accessible by walking. It is generally accepted that a 2km distance is an acceptable distance to walk to work. This would encompass residential areas of south Ilkeston, Hallam Fields, Stanton by Dale, southern Kirk Hallam and northern areas of Sandiacre and Stapleford”

- 3.91 The Appeal Scheme will improve the footpath connection available between the Stanton Regeneration Site and Kirk Hallam. I afford the improved footway connections to Sowbrook Lane moderate positive weight in the planning balance.

5) Formalising of existing pedestrian link through the appeal site and delivering part of the proposed Local Cycle Network.

- 3.92 An informal pedestrian route runs along the northern and western boundary of the site connecting Public Rights of Way FP15, FP18 and FP20A. This route forms part of the Local Cycle Network proposed by Derbyshire County Council in their Transport Plan to encourage active travel. The existing and proposed Local Cycle Network within the proximity of the site is shown in Figure 3.1 of Mr Andrews Proof of Evidence.
- 3.93 The Appeal Scheme proposes the development of a 3m wide footway/cycleway to replace this informal link that can be secured by condition. It will provide cycle and pedestrian connectivity to Sowbrook Land and Ilkeston Road. This will be a benefit to the residents of the development and users of the existing informal route. This link will deliver part of Derbyshire Council's Local Cycle Network proposals. I attached significant positive weight to the delivery of this link.

6) Economic Benefits

3.94 As detailed in Appendix 2 – Updated Socio Economic Infographic (Lichfields), of the Appellants SoC the Appeal Scheme would have a number of economic benefits. These includes:

- 111 constructions jobs over the 4 year build period
- 132 supply chain jobs
- £1.1m of first occupation expenditure as residents move in
- £1.2m of residents expenditure within local shops and services per annum
- 17 supported jobs from increased expenditure in the local area
- £347,000 in Council Tax revenue per annum
- £456,000 in planning contributions

3.95 In the Land at Crabtree Farm, Hinckley Road, Barwell, Leicestershire appeal (APP/K2420/W/19/3222850) (**CD K4**) the Inspector concluded that:

“30. In addition, although not quantified anywhere, the development would bring benefits in terms of construction expenditure, employment and consumer expenditure. These economic benefits carry significant positive weight.”

3.96 This conclusion was reached for a scheme of 25 dwellings, public open space and land for a new burial ground. In an appeal on the same site for 25 dwelling with associated public open space and infrastructure (APP/K2420/W/21/3284379) (**CD K1**) the Inspector concluded:

“I accord significant weight to how the scheme could address the continued under supply of housing in the Borough together with its economic, environmental and social benefits.”

3.97 I afford the economic benefits of granting planning permission for the Appeal Scheme significant positive weight in favour of the grant of planning permission.

7) Provision of Public Open Space

- 3.98 The proposed development will provide onsite public open space. It will be accessible to the residents of the development, nearby houses, and the workforce on the Stanton Regeneration Site. It will also increase the accessibility of the site for uses of the footpath link through the site. It is an agreed position in the SoCG that the provision of Public Open Space attracts positive moderate weight.

8) Biodiversity Net Gain

- 3.99 The Appellant's Ecologist has submitted an indicative net gain calculation that concludes that a 10.55% gain in habitats and 56.15% gain in hedgerows can be achieved. It is an agreed position in the SoCG that limited positive weight can be attached to biodiversity net gain improvements.

9) Development of a Non Green Belt Site

- 3.100 ECS paragraph 2.2.2 advises that 72% of the Borough is within the Green Belt. Paragraph 2.1.2 of the ECS advise that the Green Belt boundaries are "very tightly drawn around Erewash's built-up areas and a number of the Borough's settlements". The ELP Inspector concluded that the Appeal Site should be safeguarded to meet longer term development needs, rather than be included within in the Green Belt,
- 3.101 The emerging ECSR proposes the removal of land from the Green Belt to accommodate 2,350 dwellings on draft allocations that are currently within the Green Belt (Strategic Policy 1 – 3.e and 3.f). The EBC Response to the ECSR Inspectors initial questions advises (Q2) that *"The Erewash Strategic Housing Land Availability Assessment (SHLAA) 2019, a key part of the Council's evidence, concluded that there was insufficient land to accommodate housing need within the Borough's settlements and outside of the Green Belt"*

3.102 The Framework (paragraph 141) requires “exceptional circumstances” to exist to justify changes to the Green Belt. Before concluding that exceptional circumstances exist all other reasonable options for meeting identified development needs should be fully examined. The Appeal Site is a non Green Belt site. In my view the development of this site would not conflict with the policies in the adopted development plan when read as a whole. There are no technical constraints to the development of the site. The development of the appeal site could reduce the pressure for Green Belt land release though the Local Plan process.

3.103 In my opinion the fact that the site is deliverable non Green Belt development opportunity in an authority that is proposing significant Green Belt release should be afforded limited positive weight. I afforded only limited positive weight to the fact the site is a non Green Belt development opportunity as:

- 1) Minimal weight can be afforded to the emerging ECSR given its stage in the preparation process as there are unresolved objections, and
- 2) The ECSR places a reliance on the delivery of windfall sites such as the Appeal Site. Under the proposed ECSR strategy significant Green Belt land release would still be required if planning permission is granted for the Appeal Site.

Conflict with the Emerging Core Strategy Review

3.104 Refusal reasons 8, 9 and 10 are all based upon a conflict with, or undermining, the emerging Erewash Core Strategy Review. In my view as a matter of principle, minimal weight should be afforded to the emerging ECSR in the determination of the Appeal Scheme. In any event, the conflicts identified in the refusal reasons are unfounded.

3.105 The Framework provides guidance on the weight that can be given to relevant policies in emerging plans and prematurity matters in paragraphs 48 to 50. Paragraph 48 advises that Local Authorities may give weight to relevant policies in the emerging plans according to three criteria.

- 3.106 Criterion 'a' advises that the more advanced the plan in its preparation the greater the weight it may be given in the decision making process. The ECSR has been submitted for examination. The Inspector has raised a number of questions to the EBC (**CD B8**) including queries regarding the Duty to Cooperate. EBC responded to these questions on 28th February 2023 setting. EBC posted an update on the Local Plan review process on its website on 5th July 2023. The update advises:-

“Following the Inspector’s initial questions and the Council’s response to them the Council is currently undertaking additional work and a further update will be provided in due course. No other updates including timings for the Inspector Matters, Issues and Questions or Hearing Dates are available at the moment in time.”

- 3.107 There is no information on the Council’s website what additional work is being undertaken by EBC. It is not clear what effect this will have on the emerging ECSR and its policies, or even if the examination can continue. This creates a position where there can be no certainty as to if and when the plan will be adopted and what form its policies may ultimately take. In my view the ECSR should be afforded minimal weight in the decision process for this reason alone.
- 3.108 Criterion 'b' of paragraph 48 advises that the weight that can be given to relevant policies in an emerging plan is affected by the extent to which there are unresolved objections to relevant policies. The less significant the unresolved objection, the greater the weight may be given.
- 3.109 There were a total of 3,250 duly made Representations to the pre-submission version of the ECSR (albeit a large proportion were a standard letter of objection). These objections included the objections to the plans Green Belt, Strategic Green Infrastructure Policy, approach to housing delivery and the failure to allocate the Appeal Site for residential development. The planning merits of these objections are yet to be tested by the Local Plan Inspector

through the plan making process. There is no way of knowing how the Inspector will resolve these objections and what modifications they will require to the plan for it be found sound, or capable of adoption. This diminishes any weight that can be attached to the emerging plan's policies.

3.110 Criterion 'c' of the policy advises that weight may be given to relevant policies in emerging plans based on the degree of consistency with the relevant policies in the Framework. There are, in the Appellant's view, a number of conflicts between the policies in the Framework and the approach with the emerging plan. For example, the Framework requires "exceptional circumstances" to exist to justify changes to the Green Belt boundary and for the Authority to be able to demonstrate that it has examined fully all other reasonable options to meeting this identified need. EBC have not produced a Green Belt assessment to inform the emerging plan despite significant changes being proposed to the Green Belt to allow for large scale housing allocations. It is my view that the proper place for testing the compatibility of the policies in the plan to the policies of the Framework is the Local Plan examination, rather than through this S.78 Appeal. However, there is nothing before the Inquiry that can be drawn upon to conclude that the policies in the ECSR can be considered consistent with the Framework and consequently they cannot be afforded weight in the decision making process.

3.111 Paragraph 49 of the Framework advises that arguments that an application is premature are unlikely to justify the refusal of planning permission other than in the limited circumstances where "both": -

- a) The development proposed is so substantial, or its cumulative effects would be so significant, that to grant planning permission would undermine the plan making process by predetermining decisions about where the scale, location or phasing of new development that are central to an emerging plan;
- b) The emerging plan is at an advance stage but is not yet formally part of the Development Plan for the area.

- 3.112 For reasons referred to above, whilst the plan has been submitted for examination there can be no certainty if or when it will be adopted or the form its policies will ultimately take.
- 3.113 Refusal reason 8 suggests that the site is “strategic in its scale” and the proposed development is “so substantial” the grant of planning permission would undermine the plan making process in the emerging Core Strategy review.
- 3.114 The EBC SoC advises that paragraph 6.17 that it will be demonstrated how the scale of the proposal is comparable to the scale of the strategic growth sites proposed with the emerging Core Strategy review and the consequential impact the Appeal Scheme would have on the proposals in that review. The Appeal Scheme Committee Report, in the Emerging Core Strategy’s Policy sections, simply advises that the site is of a similar scale to the north of the Spondon and north of Cotmanhay allocations:

“These sites are considered to be strategic in their scale and vital in boosting housing delivery in Erewash. As the site is of similar scale it would undermine the plan making process as if the site were considered to represent a sustainable location for new housing and acceptable in other respects, then it would have been considered as a residential allocation in the Core Strategy review. Its development would also undermine the strategic and sustainable approach to the site allocation set out in the emerging Core Strategy review”.

- 3.115 Nowhere within the Committee Report, or the Council’s SoC, does it explain what the harm there would be to the ECSR should the Appeal Scheme be granted. It is not suggested that allocations would need to be removed or amended or their delivery rates affected. Whilst the Committee Report advises that the development would undermine the strategic and sustainable approach to site selection set out in the emerging Core Strategy the Appeal Site is in a location where the emerging ECSR seeks to direct development.

- 3.116 Proposed Strategic Policy 1 – Housing, sets out a settlement hierarchy to accommodate the plans housing requirement. The Ilkeston Urban Area is a focus for growth, with 1,400 homes directed to the Ilkeston Urban Area, with a further 1,550 homes delivered as an extension to the town of Ilkeston. It is an agreed position between the Appellant and the Council in the SoCG that the Appeal Site is either adjoining or adjacent to the Ilkeston Urban Area.
- 3.117 Furthermore, the strategic approach to residential development in the ECSR has been formulated in such a way that it actively relies upon the development of sites such as the Appeal Site for the housing target to be met.
- 3.118 Emerging Strategic Policy 1 – Housing, requires the provision of a minimum of 5,800 dwellings between 2022 and 2037 in the plan area. Strategic Policies 1.2 – 1.6 put in place the plans only residential allocations. Between them these five sites expected to deliver 3,350 dwellings, meaning that the plan strategy is reliant upon 2,450 dwellings coming forward on an unallocated site.
- 3.119 In the ECSR Inspector’s Initial Questions (**CD B8**) the Inspector asks without making allocations will the plan be effective in meeting the housing requirement and spatial strategy? (Q11).
- 3.120 In EBC’s response to the Initial Questions (**CD B9**) the Council confirmed that no non-strategic allocations are planned that would contribute towards the housing requirements set out in the proposed distribution within the ECSR’ spatial growth strategy. It is advised that the Borough has a strong historic record of managing the continued delivery of non-strategic housing growth within its urban areas and insert settlements.
- 3.121 EBC also advise the Inspector that the EBC Five Year Housing Supply Paper - November 2022 highlights the role of windfall development.

“The information presented helps to demonstrate a healthy and sustained rate of windfall housing coming forward in Erewash. The long term contribution of windfall schemes as part of the annual housing completions can be attributed to the existence of a planning policy

framework which has offered strong encouragement towards the reuse of land mainly in the Borough's urban areas across several adopted Local Plans. Importantly, this will continue to occur as a result of saved policies within the Development Plan, but notably saved policies H1 – Urban Concentration and H3 – Village Housing Development.”

- 3.122 This statement is someone at odds with the fact that EBC have been unable to demonstrate a five year housing supply since 2019 and housing delivery has consistently deteriorated.
- 3.123 The Erewash Five Year Housing Land Supply Position Paper – November 2022 (CD B11) advises.

“Erewash Borough's windfall data can be found in Erewash's joint SHELAA Methodology Report 2022 Update. This sets out the contribution made by windfall development across previous years and helps to justify annual windfall allowance figure of 231 homes.”

- 3.124 To summarise the position, the emerging ECSR is a plan that has a strategy that is reliant upon windfall development meeting 32% of the plans housing requirement. The plan requires the provision of 5,800 dwellings, with the 5 strategic sites providing 3,350. As such 2,450 dwellings are required on unallocated sites. The Appeal Scheme, at up to 196 dwellings, would deliver 8% of the unallocated housing requirements.
- 3.125 The reality of the situation is that a scheme of this size is likely to deliver around 60 dwellings per annum, including affordable provision. It could, therefore, make a valuable contribution of 26% of the windfall housing supply for just over a three year period.
- 3.126 Whilst refusal reason 8 suggests that granting planning permission would undermine the plan making process in the ECSR, to the contrary, the delivery of sites such as the Appeal Site are essential in delivering the ECSR housing requirement.

- 3.127 Refusal Reason 9 advises that the proposal would be contrary to the emerging Core Strategy as it is proposed to be included within the Green Belt.
- 3.128 In the first instance, as detailed in paragraph 2.29 – 2.32 above, the Council has previously tried to propose the inclusion of the Appeal Site in the Green Belt as part of the Local Plan process. This approach was rejected by the previous ELP Inspector, who instead concluded in his report that the site should “rather be safeguarded to meet development needs between 2011 and 2021 in accordance with the Government’s guidance in PPG2”.
- 3.129 Paragraph 140 of the Framework advises that Green Belt boundaries should only be altered where “exceptional circumstances” are fully evidenced and justified through the preparation or updating of plans. Strategic policies should establish the need for changes to the Green Belt boundaries, having regard to their intended permanence in the long term, so they can endure beyond the plan period.
- 3.130 The exceptional circumstances test exists for both including and excluding land from Green Belt. EBS has not produced any exceptional circumstances evidenced to justify the inclusion of the Appeal Site and the surrounding land in the Green Belt. In any event, paragraph 140 makes it clear that the place to test exceptional circumstances is through the Local Plan review process and, as things stand, the site is outside of the Green Belt.
- 3.131 The only justification for the inclusion of the site in the Green Belt can be found within the Committee Report (**CD H1**) where it is advised that “action is deemed necessary as a response to major proposed development on each side of the Application Site, emphasising the need to maintain openness between the Borough’s largest residential and employment developments.” This was exactly the same position that existed when the ELP Inspector concluded that the site should be treated as safeguarded land and not included within the Green Belt. The Stanton Regeneration Site allocation was in place and the built extent of Kirk Hallam was broadly the same as it is now

when the ELP Inspector concluded that the site should be treated as safeguarded land.

3.132 The development of the Appeal Site will not result in the removal of a gap between Kirk Hallam and the Application Site, a green gap will remain. Furthermore, paragraph 138 of the Framework advises that the five purposes of the Green Belt include “preventing neighbouring towns emerging into one another”. Kirk Hallam, the Stanton Regeneration Site and Ilkeston are all part of the Ilkeston Urban Area. EBC’s justification for the proposed inclusion of the site within the Green Belt is not a Green Belt purpose. There is no explanation as to why the site should remain ‘open’ or what the harm to the relationship between Kirk Hallam and Ilkeston would be if the appeal site were to be developed.

3.133 Refusal Reason 10 advises that the proposal will compromising the development of land within the proposed Strategic Green Infrastructure Corridor. Mr Hughes considers the compatibility of development with the strategic green infrastructure requirements in paragraphs 3.49 to 3.52 of his PoE. He notes that draft Strategic Policy 5 – Green Infrastructure, identifies four objectives of Green Infrastructure. These are:-

- To provide substantial flood water management – this will be achieved by the Appeal Scheme through the provision of SuDS.
- Biodiversity improvement, including natural carbon capture – as referred to above the scheme will deliver biodiversity net gain.
- Active Travel – New pedestrian and cycling opportunities will be created through the site connecting existing footpaths around the edge of the site.
- Open Space and Recreational Uses – The site is in private ownership. The redevelopment of the site will result in new areas of public open space.

3.134 The policy advises that proposals within the strategic Green Infrastructure corridors that further these objectives will be supported. It’s my view that no

weight can be afforded to this policy given the status of the draft plan. However, in any event the policy supports the principle of the proposed development.

Proposals affecting Heritage Assets

- 3.135 Part 16 of the Framework provides guidance for proposals affecting Heritage Assets. Twelve Houses, a row of Grade II Listed Cottages, is located on Sowbrook Lane to the south east of the Appeal Site. As set out in the SoCG, it is an agreed position that the Appeal Scheme would have a “minor adverse effect” on the setting of the Grade II Listed Building. It is a matter of disagreement where the level of harm sits in the less than substantial scale. Mr Slatcher concludes in his PoE that the overall impact of the Appeal Scheme on the designated Heritage Asset is less than substantial harm at the lower end of that scale. There is no principal heritage reason why the development should not go ahead (Mr Slatcher’s PoE paragraph 5.15).
- 3.136 It is, therefore, necessary to undertake the balancing exercise required by paragraph 202 of the Framework. The less than substantial harm, at the lower end of the scale, should be weighed against the public benefits. The public benefits, as identified above, are:
- 1) Housing Delivery – **significant positive weight**
 - 2) Affordable Housing Delivery – **significant positive weight**
 - 3) Improved Public Transport Opportunities - **significant positive weight**
 - 4) Improving Footpath Provision on Sowbrook Lane - **moderate positive weight**
 - 5) Formalising of existing pedestrian link through the appeal site and delivering part of the proposed Local Cycle Network - **significant positive weight**
 - 6) Economic Benefits - **significant positive weight**
 - 7) Provision of Public Open Space – **moderate positive weight**
 - 8) Biodiversity Net Gain - **limited positive weight**
 - 9) Development of a Non Green Belt Site – **limited positive weight**

- 3.137 It is my view that the public benefits significantly outweigh the harm. As a consequence the tilted balance in paragraph 14.d of the Framework is engaged.
- 3.138 In applying the titled balance in the following chapter of my PoE I have had regard to the requirements of paragraph 199 of the Framework. When considering the impact of the Appeal Scheme on the significance of the heritage asset “great weight” should be given to the assets conservation. The more important the asset the greater the weight should be.

4.0 PLANNING BALANCE

- 4.1 Paragraph 11 of the Framework puts in place a presumption in favour of sustainable development. For decision making this means, in the first instance, approving development proposals that accord with the Development Plan without delay (11.c). As referred to in the previous Chapter of this report, I am of the view that the Appeal Scheme is in accordance with the development plan when read as a whole and there are no material considerations that would support the refusal of planning permission.
- 4.2 However, in this case it is also an agreed position that the Development Plan is out of date, in its own right, and due to the fact that EBC is unable to demonstrate a five year housing land supply. Paragraph 11.d of the Framework advises that where there are no relevant development plan policies, or the policies which are most important in determining the application are out of date, planning permission should be granted unless:-
- i) The application of policies in the Framework that protects areas or assets that are of particular importance provide a clear reason for refusing the development proposed; or
 - ii) Any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
- 4.3 Footnote 7 of the Framework advises that the policies in the Framework that protect areas that are of particular importance include the policies in relation to heritage assets.
- 4.4 It is an agreed position between the Appellant and EBC that the Appeal Scheme will have less than substantial harm to the Grade II Listed Twelve Houses. Mr Slatcher concludes in his PoE that the less than substantial harm will be at the lower end of the scale. In accordance with provisions of paragraph 202 of the Framework it is, therefore, necessary to weigh this less than substantial harm at the lower end of the scale against the public benefits of the proposal. As detailed in the previous chapter of my PoE I have identified

a range of significant public benefits that outweigh the limited harm of the scheme. The requirements of paragraph 202 of the Framework are, therefore, satisfied and the policies on designated heritage assets do not provide a clear reason for refusing the development proposed. Consequently the tilted balance is engaged.

- 4.5 As part of the planning balance exercise I identify the Appeal Schemes benefits and harm and the weight that can be attached to each matter in Table 3 below.

Table 3 – Planning Balance

Matter	Commentary	Weight
S(38)6 – Development Plan compliance	As detailed in my analysis in paragraph 3.3 to 3.56 of my PoE the scheme is compliant with the development plan when read as a whole.	Significant Positive Weight.
Housing Delivery	EBC have a significant five year housing land supply shortfall (2.65 years) and have failed the HDT delivery test every year since it was introduced. An action plan was put in place in 2019 to boost the supply of housing. The housing land supply position has deteriorated since then.	Significant Positive Weight.
Affordable Housing Delivery	There is a significant under supply of affordable housing in EBC compared to the actual affordable housing need identified in paragraph 3.95 of the ECS, the target affordable housing requirement identified in Policy 8 of the ECS, and the latest evidence of affordable housing need included within the Greater Nottingham and Ashfield Housing Needs Assessment (October 2022). The emerging ECS identifies strategic allocations which are unlikely to deliver significant affordable housing on viability grounds. The Appeal Scheme would provide 30% affordable housing.	Significant Positive Weight.
Improved Public Transport Opportunities	The Appeal scheme will make a financial contribution towards the improvement of the N0.14 bus service which will introduce a peak hour service. This will be of benefit to the residents of the Appeal Scheme and workers/residents on the Stanton Regeneration Site and those located along the existing route. The Committee Report for Stanton Regeneration Site planning permission (ERR/1221/0002) identifies the lack of an appropriate bus service as a constraint to sustainable travel. An upgraded bus service was not secured as part of this development as a scheme could not be identified. The improvements to the number 14 bus service will put parts of the western edge of the Stanton Regeneration Site within easy walking distance of a peak hour bus service	Significant Positive Weight.
Improved Footpath Provision on Sowbrook Lane.	The Appeal Scheme proposes improvements to the footpath at Sowbrook Lane to widen it to 2 metres, but no less than 1.8 metres. This footpath will benefit the residents of the Application Site. It will also improve footpath connectivity between Kirk Hallam and the Stanton Regeneration Site.	Moderate Positive Weight.

Formalisation of existing pedestrian link in the Appeal Site and delivery of part of a Local Cycle Network.	An informal pedestrian route runs through the site connecting existing public rights of way. This route is proposed to form part of the Local Cycle Network proposed by Derbyshire County Council in their Transport Plan to encourage sustainable travel. The Appeal Scheme will secure the delivery of a 3 metre wide combined footway/cycle way to replace this informal link helping to deliver improved pedestrian cycle connectivity.	Significant Positive Weight.
Economic Benefits.	It is estimated that the scheme will create 111 construction jobs over a four year build period, 132 supply chain jobs, £1.1m first occupation expenditure and £1.2m residential expenditure in local shops and services per annum. It is expected that there will be 17 supported jobs from increased expenditure in the local area. £347,000 in Council Tax Revenue. £456,000 in planning obligations.	Significant Positive Weight.
Provision of Public Open Space.	New public open space will be provided on site that will be available to the residents of the site and people working on the Stanton Park Regeneration Scheme.	Moderate Positive Weight.
Biodiversity Net Gain	The scheme will deliver a net increase in biodiversity net gain post development.	Limited Positive Weight.
Development of a Non-Green Belt site.	The site was outside of the Green Belt. The emerging replacement Core Strategy places significant reliance on the delivery of housing on sites that are currently on the Green Belt. Granting planning permission for the appeal site could reduce the pressure for Green Belt land release.	Limited Positive Weight.
Loss of the Greenfield Site.	The Appeal Site is currently greenfield. If planning permission is granted once the scheme is built out it will become previously developed land. It is, however, inevitable that in order for EBC to achieve and maintain a five year housing land supply and to meet future growth requirements greenfield development will be required.	Limited Negative Weight.
Landscape Impact	Mr Hughes concludes that the Appeal Scheme would result in limited, localised and minor adverse effects on the local landscape. This is not considered to be significant.	Limited Negative Weight.
Impact on visual receptors	Mr Hughes is of the view that the visual receptors identified are likely to experience no greater than minor to moderate adverse effects on views and visual amenity. This is not considered to be significant.	Limited Negative Weight
Impact on Heritage Assets.	The Appeal Scheme will cause less than substantial harm, at the lower end of the scale, to the Grade II Listed Twelve Houses. However, paragraph 199 of the Framework requires "great weight" to be given to heritage assets conservation linked to the importance of the asset.	Great Negative Weigh at the Lower end of the Great Weight Scale
Air Quality.	An Air Quality Assessment has been undertaken to establish the impact on development. There are no air quality reasons for planning permission to be refused	Neutral Weight.
Harm to emerging ECSR.	Minimal weight can be afforded to the emerging ECSR. It is in the early stage of the examination process, there are a significant number of unresolved objections. The Council are currently in the process of undertaking further work to support the plan in the examination process and the timetable for the completion of the work and its consequences for the plan are unknown. Furthermore, the emerging plan is reliant upon significant windfall development coming forward to deliver the housing requirement.	Neutral Weight.

- 4.6 It is my view that the benefits of the Appeal Scheme significantly outweigh the limited adverse impacts. The scheme therefore represents sustainable development and planning permission should be granted.

5.0 CONCLUSION

- 5.1 My PoE has been prepared to support an Appeal following the decision of EBC to refuse outline planning application ERE/0722/0038, which proposed the development of 196 dwellings with all matters reserved other than access, on land to the north west of Twelve Houses, Sowbrook Lane, Stanton by Dale.
- 5.2 I have identified the policies in the Development Plan most relevant to the determination of the Appeal Scheme alongside relevant material planning considerations. In my view the Appeal Scheme is compliant with the Development Plan when read as whole. Furthermore, there are a number of material considerations that support the grant of planning permission.
- 5.3 Twelve Houses, to the south east of the Appeal Site, are Grade II listed. The Appeal Scheme will result in less than substantial harm to the significance of these heritage assets and Mr Slatcher concludes in his PoE that the less than substantial harm is on the lower end of the scale. There a series of public benefits associated with the development that outweighs the harm meaning that the heritage balance test in paragraph 202 of the Framework is passed. The tilted planning balance in paragraph 11.d of the Framework is engaged due to the fact that EBC is unable to demonstrate a five year housing land supply and its adopted Development Plan is out of date.
- 5.4 The Decision Notice identifies ten reasons for refusal. It is an agreed position between the Appellant and EBC that refusal reasons 2, 3, 4 and 6 have been overcome and no longer form part of EBC's case for the refusal of planning permission.
- 5.5 Refusal Reason 1 suggested that the site is unsustainably located, remote from services, with poor options for walking and cycling to services that are further afield. This refusal reason is being advanced by EBC. DCC Highways have agreed in their SoCG with the Appellant that they do not support this refusal reason. Mr Andrews explains in his PoE that the site has access to a range of services and facilities by foot and cycle and public transport

opportunities. The Appeal Site is located in an area where both the adopted and emerging Development Plan seek to focus development. The site adjoins/is adjacent to the Stanton Regeneration Site, a significant mixed use regeneration scheme, which has a similar relationship to Ilkeston town, Kirk Hallam, and the surrounding area as the Appeal Site.

- 5.6 Refusal Reason 5 suggests that the Appeal Scheme would lead to the loss of an open landscape which is characteristic of the area and the development of the site would cause significant harm to the visual amenities of the area. Mr Hughes concludes in his PoE that the Appeal Site is situated in a well contained landscape and it is heavily influenced by the development on the edges of Ilkeston including the Stanton Regeneration Site. The Appeal Scheme would have a limited, localised adverse effects on the landscape. The visual receptors identified are likely to experience greater than minor to moderate adverse effects on views and visual amenity. None of these effects are significant.
- 5.7 Refusal Reason 7 suggests that the proposal will result in adverse changes to the setting to Grade II Listed Building at New Stanton Cottages (Twelve Houses). It is an agreed position that the impact will result in “less than substantial harm” to the heritage asset. Mr Slatcher in his PoE concludes that this less than substantial harm is on the lower end of the scale. The benefits of the scheme outweigh this harm.
- 5.8 Refusal Reasons 8, 9 and 10 suggest that the Appeal Scheme could undermine the emerging Core Strategy and is contrary to its emerging Green Belt and strategic green infrastructure policies. The emerging plan can be afforded minimal weight in its decision making process. There are a significant number of unresolved objections to the plan. It has been submitted for examination and the Inspector has posed a series of questions to EBC which have resulted in the Council having to undertake additional work. There is no timetable for the completion of this work.
- 5.9 There are a substantial number of benefits that support the grant of planning permission. The benefits include:-

- Helping to address the five year housing land supply shortfall and boosting the supply of housing
- The delivery of much needed affordable housing
- Improved public transport opportunities
- Improving the footpath on Sowbrook Lane
- Formalising pedestrian links through the Appeal Site and delivering part of the proposed Local Cycle Network
- Provision of public open space
- Biodiversity net gain improvements
- Economic benefits associated with the construction of the scheme and its residents using local shops, services and facilities.
- The development of a non-Green Belt site in an authority that seeks to place significant reliance on Green Belt land release in its emerging Plan to meet the housing requirement.

5.10 The harm associated with the development is limited. The site is currently greenfield. Residential development will change the site from greenfield to previously developed land and introduce built development where there is none. However, EBC are unable to deliver a five year housing land supply without significant greenfield development. The Appeal Scheme will cause less than substantial harm, at the lower end of the scale, to the Grade II Listed Twelve Houses. Paragraph 199 of the Framework requires “great weight” to be given to heritage assets conservation linked to the importance of the asset.

5.11 Any harm generated by the Appeal Scheme falls well short of outweighing the wide reaching and significant benefits. Accordingly, the Inspector is respectfully requested to allow the Appeal.

APPENDIX 1

REVIEWING OF INTEREST PARTIES COMMENTS

APPENDIX 1 - RESPONSE TO MATTERS RAISED BY INTERESTED PARTIES

Set out below is the Appellants responses to the main issues raised by the interested parties in relation to the Appeal Scheme. They are addressed on a topic basis. A number of the comments raised have been addressed in the Appellant's main Proofs of Evidence. The Proofs of Evidence should be referred to for a full response.

The Case of Development

Comments raised – The location of the proposed development is not in accordance with the adopted Core Strategy and is contrary to the emerging Core Strategy.

It's the Appellant's view that the proposed development is in accordance with the requirements of the adopted Local Plan when read as a whole. In addition, the Council are unable to demonstrate a five year housing land supply and acknowledge that its current development strategy for delivering housing has been ineffective. As such an alternative approach to housing delivery is required.

The emerging Core Strategy can be afforded minimal weight in the decision making process. It is the subject of a significant number of unresolved objections, including matters directly related to the Appeal Site. Following the submission of the Plan for examination the Council have concluded that additional work is required to support the Plan. The details of this work are not known, nor are its implications for the emerging Plan.

Air Quality

Comments raised – Increased traffic will produce more noise and air quality pollution.

Attached to Appendix 2 is an a Air Quality Report. This report concludes that there will no adverse impacts to air quality, and an appropriate air quality environment exists to support the development.

Refusal Reason 6 suggested that proximity of the proposed industrial development at Stanton North would lead to an unexceptional livingg conditions for future occupiers of the site. In order to resolve this matter the Appellant has provided a Noise Assessment. The Council has now concluded that the proposed development is capable of providing appropriate living conditions for future occupiers. This refusal reason is no longer being pursued by the Council as they are satisfied that there are no air quality or noise grounds to refuse planning permission.

Traffic and Highways

Comments raised – The proposed development will result in additional cars and HGV movements. Concerns regarding pedestrian safety on the surrounding roads. There is limited access to services and facilities. The location is not on a regular bus route. It is queried whether the improved footpath connection between the Ilkeston Road and Nutbrook Trial is deliverable.

Response - These matters are dealt with in the Proof of Evidence of Mr Andrews. Refusal Reason 2 suggests that the proposed development would require pedestrians and other users to use the carriageway resulting in a conflict with vehicles contrary to the best interests of highway safety. Refusal Reason 3 suggest that the development would have had a significant impact on the operational capacity or conditions of safety on the existing transport network. Following the submission of additional information the Council are satisfied that this is no longer the case and that these matters have been resolved.

The proposed development will result in conurbations to upgrading the number 14 bus service that will benefit the residents of the development and workers on the Stanton Regeneration Site. Footpaths will be improved. It has been agreed with the Council and County Council that a financial contribution should be made towards upgrading the footpath between the Nutbrook Canal and Nutbrook Trial. Neither party has any concern regarding its deliverability. In any event, this is not considered to be a key walking or cycling route given a greater range of services and facilities are available in closer proximity in Kirk Hallam.

Character and Appearance and Visual Amenity

Comments raised – The development would be out of character and result in the loss of open land and harm the visual amenity of the area.

Response - As detailed in the Proof of Evidence of Mr Hughes, the landscape and visual impacts of the scheme are highly limited, there are no landscape, character or visual impact matters to support the refusal of planning permission.

Heritage

Comments raised – The proposed development would affect the setting of Twelve Houses Cottages, which are Grade II Listed Buildings.

Response - The heritage impacts of the proposed development have been considered by Mr Slatcher in his Proof of Evidence. Mr Slatcher has concluded that the heritage impact on Twelve Houses would be less than substantial, and at the lower end of the scale.

Ecology

Comments raised – The development will result in the loss of significant hedgerows and trees, which provide habitats, food and commuting routes for a range of species. Resulting in the loss of habitats for ground listing birds including skylarks.

Response - Refusal Reason 4 suggests that the proposed development would result in the loss of a significant amount of hedgerow and trees which provide habitat, food and commuting routes for a range of species. It would result in the loss of habitats or nesting birds including skylarks.

The Appellant has submitted additional information to address Refusal Reason 4 which the Council have accepted. Refusal reason 4 is no longer being contested. The biodiversity net gain calculation submitted by the Appellant has concluded that a 10.55% net gain in habitats, and 56.15% gain in hedgerow is achievable. The Appellant has an agreement with the same landowner of a parcel of land on Seven Oakes Road, approximately 1.25 kilometres from the Appeal Site that will be used for mitigation. This land will be managed by a Management Company. The mitigation will be secured through the S.106 and/or conditions.

Green Belt

Comments raised – Erewash is struggling to deliver housing supply targets set by the Government and are being prepared as part of its Core Strategy review. Green Belt area should be protected. Land should only be removed from the Green Belt in exceptional circumstances. The Emerging Plan proposes to include the site within the Green Belt and the Appeal Scheme is contrary to the emerging Green Belt designation.

Response - The site is not within the Green Belt. As it provides the opportunity to deliver housing on non-Green Belt land.

Minimal weight can be afforded to the emerging Local Plan given the stage of the preparation process and the number unresolved objections.

Flooding and Drainage

Comments raised – There is a canal nearby this can result in drainage issues. The angling facility at Roughs Pond will be seriously compromised.

Response - There is no objection to the proposed development from the Derbyshire County Council flood team. A minor part of the site along its northern boundary is located within Flood Zone 2. It is the view of the local lead Flood Authority that additional information will be required at the Reserved Matters stage. However, there are no objections to the principle of development.

There is nothing to suggest that the angling facility will in any way be compromised.

Infrastructure

Comments raised – The schools are at capacity. It is difficult to register with the GP or a dentist. Water supplies in the locality are at a critical level.

Response - It is agreed that a financial contribution of £727.63 per dwelling will be made to SEND education improvements. In response to the Application Derbyshire County Council S.106 contributions team advised that primary and secondary schools would have capacity for the demand generated by the proposed development.

Contributions have not been sought for healthcare improvements. No evidence has been presented to the Appellant that there is a shortfall in healthcare capacity.

There has been no response from Severn Trent Water, or any other relevant body, suggesting that floor risk or drainage are a constrained to development. There is no objection from the Derbyshire County Council flood team.

APPENDIX 2

AIR QUALITY ASSESSMENT



AIR POLLUTION SERVICES

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**Planning Objection Support: Land Northwest of 1 to 12 Sowbrook Lane,
Stanton by Dale, Derbyshire**

Appeal Ref: APP/N1025/W/23/3319160

Planning Application Ref: ERE/0722/0038

Date: 11 July 2023



Quality Assurance

Client: Harris Lamb

Reference: APS_S1042A_B1_1

Date Published: 11 July 2023

Rev.	Date	Description	Prepared	Reviewed	Authorised
01	03/07/2023	Issued	KL	CH	KL

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1. Introduction

- 1.1. My name is Kieran Laxen. I have worked in the field of air quality management as a consultant for over 15 years. I am currently Director and co-founder of KALACO Group Ltd, the parent company of Air Pollution Services and several related consultancies. Previously, I worked for Air Quality Consultants Ltd for approximately 11 years. I have a first-class Master of Engineering degree in Mechanical Engineering and am a full member of the Institute of Air Quality Management (IAQM). I am also currently vice chair of the IAQM having contributed to the drafting of several IAQM positions statements and have also been a key contributor to air quality guidance documents published by the IAQM.
- 1.2. During my career I have undertaken and supervised a large number of air quality studies of major development proposals for planning and permitting applications, including residential and mixed-use developments. I am a very experienced air quality modeller and am currently leading the development of new IAQM guidance on modelling good practice. I have been responsible for many hundreds of air quality assessments.

Instruction

- 1.3. I am instructed by Harris Lamb to provide this statement on behalf of the Appellant on the air quality impacts of the Appeal Development.

Scope of Statement

- 1.4. The reasons for refusal of the planning application were not related to air quality. Air quality was, however, identified as a key concern in an objection from Sally Castle, a local resident, (the 'Objector') on the 8th June 2023 (Sally Castle, 2023). The objection also highlighted concerns regarding dust from heavy duty vehicle (HDV) movements associated with nearby industrial facilities. The resident is concerned that the additional traffic from the Appeal Development will increase air pollution levels in the area. There is also concern that the area is not suitable for the proposed land use due to the existing air quality concerns identified in the objection.
- 1.5. This statement utilises guidance from the Institute of Air Quality Management and Environmental Protection UK (IAQM/EPUK, 2017), which draws on the National Planning Policy Framework (there



have been no relevant/material updates regarding air quality since 2017). There are no air quality related policies saved from the 2014 Core Strategy, and the replacement local plan is at an early stage of development.

- 1.6. I have not described the development, as the Inspector and others interested in this Appeal will be aware of what is proposed. I have, however, included a map to show the location of the Appeal Development (Figure 1). All my other figures I refer to in this statement are in my Appendix.

Figure 1: Location of the Application Development in Relation to the Location of the Objector



- 1.7. The guidance from IAQM /EPUK (2017) sets out the following air quality considerations:
- *“compliance with national air quality objectives and of EU Limit Values;*
 - *whether the development will materially affect any air quality plan or strategy;*
 - *the overall degradation (or improvement) in local air quality; or*
 - *whether the development will introduce new public exposure into an area of existing poor air quality.”*
- 1.8. I have used this IAQM/EPUK guidance to inform my opinion.
- 1.9. This statement discusses the following:
- Regulatory thresholds for air quality;
 - Current air quality in Stanton by Dale;

- Factors which influence local air quality;
- The impacts of the Appeal Development on local air quality;
- Dust nuisance; and
- Summary and Conclusions.

2. Regulatory Thresholds for Air Quality

- 2.1. The Environment Act 1995 established the Local Air Quality Management (LAQM) regime in which local authorities have a duty to review and assess air quality in their area against a series of Air quality objectives (AQOs). Detailed statutory technical and policy guidance is issued by Defra on how this regime should be applied.
- 2.2. The AQOs have been set for a number of air pollutants but due to improving air quality since the LAQM regime was established only nitrogen dioxide (NO₂) and particulate matter (PM₁₀ and PM_{2.5}) are currently considered. The AQOs are set out in The Air Quality (England) Regulations, 2000. They are policy targets and local authorities are not mandated to achieve them.
- 2.3. In addition, legally binding Limit Values (LVs) have also been set, which originated from EU legislation, and are set out in the Air Quality Standards Regulations 2010 and the Environment (Miscellaneous Amendments) (EU Exit) Regulations 2020.
- 2.4. The current AQOs and LVs for NO₂, PM₁₀ and PM_{2.5} are set out in Table 1. Although they have the same numerical value compliance with the LVs is assessed nationally by Defra.

Table 1: Air Quality Objectives and Limit Values

Pollutant	Time Period	Criteria Type	Concentration, and the number of exceedances allowed per year (if any)	Date AQO / LV to be Achieved From and Maintained After
NO ₂	1-hour Mean	AQO / LV	200 µg/m ³ not to be exceeded more than 18 times a year	31 st December 2005 / 1 st January 2010
	Annual Mean	AQO / LV	40 µg/m ³	31 st December 2005 / 1 st January 2010
PM ₁₀	24-hour Mean	AQO / LV	50 µg/m ³ not to be exceeded more than 35 times a year	31 st December 2004
	Annual Mean	AQO / LV	40 µg/m ³	31 st December 2004
PM _{2.5} ^a	Annual Mean	AQO / LV	25 µg/m ³ / 20 µg/m ³	2020 / 2020
Table notes: a. AQOs are set in the Air quality (England); LVs from the Air Quality Standards Regulations.				

- 2.5. The Environmental Targets (Fine Particulate Matter) (England) Regulations (HM Government) sets out two targets for PM_{2.5}:
- A maximum annual mean concentration of 10 µg/m³ to be achieved by 2040; and
 - A population exposure reduction target of 35% compared to 2018 to be achieved by 2040.
- 2.6. Joanna Averley, the Chief Planner, issued a newsletter on the 3rd March 2023 which provides updates from the Department for Levelling Up, Housing & Communities on how to address the new PM_{2.5} targets in the planning system (2023). It states:

“The new targets will also need to be integrated into the planning system, and in setting out planning guidance for local authorities and businesses, we will consider the specific characteristics of PM_{2.5}. The guidance will be forthcoming in due course, until then we expect local authorities to continue to assess local air quality impacts in accordance with existing guidance.”

2.7. I therefore will not consider the PM_{2.5} targets in this statement.

3. Local Air Quality

3.1. In order to consider the impact of the development on local air quality and the suitability of the site for residential development I have reviewed relevant information on local air quality, and local factors which influence the dispersion of air pollution in the atmosphere and thus air quality.

3.2. I have considered the following sets of information:

- Information on existing air quality from the local authority;
- Background concentrations of NO₂, PM₁₀ and PM_{2.5} from the national pollution maps published by Defra (2023a). These provide annual average concentrations for the whole of the country on a 1x1 km grid.
- Predicted local roadside concentrations of NO₂ in the study area produced by Defra (2022b) as part of its 2017 Air Quality Plan. This provides data for the baseline year, 2015, and for 2017 to 2030. These maps are used by the UK Government, to report exceedances of the LV. The national maps of roadside PM₁₀ and PM_{2.5} concentrations (Defra, 2023c), which are available for the years 2009 to 2015, show no exceedances of the LVs anywhere in the UK in 2015.
- Industrial and waste management sources that may affect the area have been identified using the UK Pollutant Release and Transfer Register (PRTR) (Defra, 2022). Local sources have also been identified through examination of maps and the Council’s Air Quality Review and Assessment reports (Erewash Borough Council, 2022; Erewash Borough Council, 2018).
- Aerial and street view photography from Google Satellite.

Measured Concentrations

Nitrogen Dioxide

3.3. Erewash Borough Council (EBC) have monitored NO₂ concentrations at 17 locations since 2013 and 18 since 2018. Measured concentrations at EBC/1 (Derby Road) exceeded the annual mean NO₂ AQO (40 µg/m³) between 2013 and 2017. Exceedances were also measured at EBC/2 (Cairnsmore Close) in 2013, and at EBC/4 (Copeside Close), EBC/5 (Brendon Way) and EBC/14 (Nottingham Road) in 2015; no other exceedances were recorded, as shown in Table 2.

3.4. The table clearly shows that there has been significant improvement to air quality in the borough over the past five years. However, the measures taken to reduce the impacts of the Covid-19 pandemic resulted in much lower than normal traffic levels in 2020 and 2021 and therefore the air quality in these years cannot be considered representative of the air quality in 2023. Data from 2022 monitoring is not currently available. However, there was a notable reduction from 2015 to 2019 and in 2019 the highest concentration measured in the borough was 36.7µg/m³. Defra’s

trends in annual mean NO₂ concentrations from 1990 to 2022 suggests that at all types of location (roadside, urban background and background) concentration in 2022 are below 2019 levels¹.

Table 2: NO₂ concentrations in Erewash between 2013 and 2021

Site ID – Name (Type)	2013	2014	2015	2016	2017	2018	2019	2020 ^a	2021 ^a
EBC/1 – Derby Road, Sandiacre (Kerbside)	58.4	57.1	58.9	57.7	49.9	36.9	36.9	31.5	34.5
EBC/2 – Cairnsmore Close, Long Eaton (Suburban)	40.1	38.0	39.5	37.2	35.0	23.3	24.3	14.7	20.3
EBC/4 – Copeside Close (Suburban)	38.6	39.0	40.5	39.7	34.8	22.1	24.1	18.9	19.2
EBC/5 – Brendon Way (Suburban)	39.7	38.9	40.9	38.9	32.0	22.7	21.8	18.9	21.5
EBC/6 – Guinea Close (Suburban)	30.4	31.0	31.7	30.6	27.8	18.8	19.5	15.6	16.1
EBC/7 – Heath Gardens (Suburban)	22.9	23.5	20.8	22.6	18.8	14.6	14.7	11.9	12.5
EBC/8 – Bracken Road (Roadside)	34.5	33.9	34.4	34.4	32.5	22.4	22.5	18.3	19.3
EBC/9 – Hadstock Close (Suburban)	33.2	32.9	32.9	33.0	30.8	20.2	22.8	18.2	18.6
EBC/10 – Bostocks Lane (Suburban)	25.6	25.6	23.3	25.6	21.8	17.2	18.4	13.0	13.7
EBC/11 – Bronte Close (Suburban)	34.5	33.3	34.6	35.3	30.8	20.9	21.7	17.8	18.0
EBC/12 – 128 Derby Road (Roadside)	37.9	37.1	39.2	39.7	37.4	26.7	26.9	18.2	21.7
EBC/13 – 215 Derby Road (Roadside)	38.9	36.9	40.0	39.6	36.3	26.2	23.8	20.1	21.4
EBC/14 – Nottingham Road (Roadside)	36.5	33.3	32.2	34.5	31.9	25.1	21.5	19.1	22.8
EBC/18 – Richmond Avenue (Suburban)	32.9	32.5	32.2	32.1	30.8	21.8	27.7	17.0	17.4
EBC/20 – Chalons Way (Roadside)	37.1	36.2	35.5	37.4	34.9	26.9	21.8	22.1	24.0
EBC/21 – Russell Court (Suburban)	29.4	28.0	28.5	39.4	28.6	20.9	20.0	15.6	17.2
EBC/22 – Borrowdale Drive (Suburban)	32.1	32.1	34.4	34.2	32.3	20.4	22.8	17.3	17.6
EBC/23 – Langdale Drive (Suburban)	-	-	-	-	-	20.0	20.4	16.3	17.6

Table Notes: Data from Erewash Borough Council's Air Quality Annual Status Report (2022)
 Exceedances of the AQO shown in bold.
 a. Air quality monitoring carried out includes periods of national travel restrictions due to the COVID-19 pandemic; measured concentrations are therefore not likely to be representative of typical conditions.

¹ <https://www.gov.uk/government/statistics/air-quality-statistics/summary>

- 3.5. Measured annual mean concentrations of NO₂ are shown in Figure 2 (see my Appendix). Concentrations generally follow a downward trend from 2013 to 2019. The locations are shown in Figure 3 and Figure 4 (see my Appendix).
- 3.6. There are no monitoring locations in the vicinity of the Appeal Development, the closest is EBC/14 (Nottingham Road) which is approximately 1.5 km northeast of the Appeal Development. Measured annual mean NO₂ concentrations were below the AQO in all years presented in the Table.
- 3.7. Erewash Borough Council declared two Air Quality Management Areas in 2002 for exceedance of the annual mean NO₂ AQO. Both were revoked in 2022. This suggests that air quality is not an issue in the borough.

PM

- 3.8. Erewash Borough Council does not currently monitor PM₁₀ or PM_{2.5}.

Predicted Concentrations

Background Concentrations

- 3.9. The background concentrations in 2019 and 2026 for the grid cell that covers the Appeal site are presented in Table 3. They are also presented in Figure 5, Figure 6 and Figure 7 for NO₂, PM₁₀ and PM_{2.5} respectively (see my Appendix). These figures also include the area to the north of the Appeal Site mentioned by the Objector.

Table 3: Defra Predicted Background Mapped Concentrations (µg/m³)

Year	Location	Pollutant		
		NO ₂	PM ₁₀	PM _{2.5}
2019	Appeal Site	12.0	12.8	8.2
2026	Appeal Site	9.6	11.9	7.5
AQO		40	40	25 ^a
LV		40	40	20
Table notes:				
a. Not in Regulations and there is no legal requirement for local authorities to meet it.				

- 3.10. Background concentrations of all three pollutants were low in 2019 and are estimated to be even lower in 2026. In 2026 the background NO₂ concentration will be one quarter of the national standard of 40 µg/m³ and the background PM concentrations will be well below the legally binding thresholds (LVs).

Roadside Concentrations

- 3.11. Defra has also predicted roadside concentrations of NO₂ alongside main roads in the UK for the years 2017 to 2030 as part of Defra's commitment to report exceedances of the LV (Defra, 2022b). the predicted concentrations for the roads modelled by Defra are shown in Figure 8.
- 3.12. These are all well below the LV.



- 3.13. Defra's model is a generic model that does not take full account of the local conditions. Close to the roads the concentrations may be higher depending on a number of factors including how open the roads are. Buildings or thick vegetation on both sides of a road can cause the air pollution from the traffic emissions to buildup, depending on the porosity of the buildings/vegetation and orientation of the road to the wind direction.

Industrial and waste management sources

- 3.14. Defra maintains the UK Pollutant Release and Transfer Register, a database of industrial sites which are at risk of contributing significantly to local air pollution (Defra, 2022). A search of the 2021 database found four facilities within a 1 km the Appeal Site. There are two facilities which treat and dispose of non-hazardous waste at Griffon Road, which is located approximately 500 m northeast of the Appeal Site. St Johns Packing (UK) Ltd which conducts surface treatment with organic solvents is located approximately 1 km northeast of the Appeal Site. Ilkeston Waste Facility treats and disposes of hazardous waste and is located approximately 1 km northeast of the Appeal Development. The operator of these sites will have an Environmental Permit which will include conditions limiting air emissions including impacts dust emissions.

4. Screening for potential air quality impacts

Traffic Trip Generation

- 4.1. The IAQM/EPUK guidance on Planning for Air Quality (2017) recommends that an air quality assessment should be produced if a development results in a change of Light Duty Vehicles (LDV) flows of more than 100 annual average daily traffic (AADT) within or adjacent to an AQMA, or more than 500 AADT elsewhere. As described in paragraph 3.7 the Appeal Site is not located within or adjacent to an AQMA.
- 4.2. A Transport Assessment for the Appeal Development was produced by MAC Pre-Planning Engineering (report reference: 450-TA-01-A) (MAC Pre-Planning Engineering, 2022). This estimated that the Appeal Development will generate 751 AADT at the site access to Ilkeston Road, and 404 AADT at the site access to Sowbrook Lane. These vehicles will distribute over the local road network (see Appendix M of the transport assessment (MAC Pre-Planning Engineering, 2022)).
- 4.3. The transport consultant confirmed in July 2023 that the only local road where the AADT from the Appeal Development will be greater than 500 is Lows Lane between Ilkeston Road and Littlewell Lane, as shown in Figure 9 and Figure 10 and referred to as Link 1. The flows along this section of the road are estimated to be 508 vehicles as an AADT. The development related AADT for Ilkeston Road between the site access and Merlin Way then Quarry Hill Road from Merlin Way to Little Hallam Hill are estimated to be 497 vehicles as an AADT. I have referred to this as Link 2 which is shown in Figure 9 and Figure 11. While this AADT is below the screening threshold I have still considered the potential for impacts. The other road Links are well below the screening threshold.
- 4.4. These roads are:
- Link 1: Lows Lane between Ilkeston Road and Littlewell Lane.
 - Link 2: Ilkeston Road between the site access and Merlin Way then Quarry Hill Road from Merlin Way to Little Hallam Hill.

- 4.5. Based on the baseline air quality (see section 3), I consider that locations more than 50 m from these roads will be unlikely to experience a significant impact due to the traffic from the Appeal Development or be at risk of a breach of a regulatory threshold due to the Appeal Development. Within 50m there may be a potential for a significant impact.

5. Factors which influence local air quality

- 5.1. The background concentrations are calculated taking account of all sources of pollution to provide an average over a 1 x 1 km grid. It is generally considered to represent the air quality away from the influence of local sources, such as a busy road.
- 5.2. In general, poor air quality in England is due to emissions from road traffic. These depend on depend on:
- Traffic flows including number of vehicles and fleet composition
 - Vehicle speeds
 - Road gradient
- 5.3. The air quality that these emissions give rise to depends on:
- Meteorology
 - Surface parameters which influence the meteorological conditions
 - Topography (i.e. terrain)
 - Road width (inc. obstacles – e.g. parked cars, chicanes)
 - Road elevation / tunnels
 - Streetscape parameters (street canyons)
- 5.4. These factors, in the context of the Appeal Development, are discussed below.

Influences on road traffic emissions

Traffic Flows

- 5.5. Department for Transport (DfT) traffic flow data in the wider area have been presented in Figure 12. These are 2019 AADT flows at the count points.
- 5.6. The 2019 DfT count point AADT flows near to NO₂ diffusion tube monitor EBC/20, see Figure 4, were 29,453. The 2019 counts are expected to increase into the future.
- 5.7. Traffic flows along Link 1 and Link 2, i.e. those roads where the Development traffic is close to or exceeds 500 AADT (see Paragraph 4.3) are shown in Table 4. These have been provided by MAC Pre-planning Engineering in July 2023.

Table 4: Traffic Flows on Roads exceeding 500 AADT Threshold ^a

Link		2021	AADT 2026 without Appeal Development	AADT 2026 including Appeal Development	AADT Appeal Development
Link 1	Ilkeston Road to Littlewell Lane	15,077	16,401	16,909	508
Link 2	Between Site Access A onto Ilkeston Road and Little Hallam Hill	11,953	13,002	13,499	497
Table notes: a. The traffic data was provided by the Transport Consultant on 11 th Jul 2023 via email.					

- 5.8. The traffic flows in central Ilkeston north of the Appeal Site (such as near NO₂ monitoring site EBC20, see Figure 4) are likely to be significantly higher than those along either Link 1 or Link 2.

Vehicle Speeds

- 5.9. Average vehicle speeds influence pollutant emissions with emissions typically being greatest in areas of congestion. Figure 13 to Figure 16 shows the typical AM-peak, inter-peak, PM-peak and off-peak traffic speeds on local roads available on the Google traffic maps. These show that during the AM-, inter- and PM-peak, the speeds along Nottingham Road are slow and the speeds along Stanton Road are also very slow. The speeds along Quarry Hill Road/Ilkeston Road (adjacent to the Appeal Development) are also slow but not as consistently slow as the other roads.

Fleet composition

- 5.10. The fleet composition in terms of the types of vehicles affects the total emissions along a road. Traditionally heavy-duty vehicles (HDVs) had higher emission per kilometre compared to LDVs (cars and vans). Additionally, a series of increasingly stringent emission limits for new vehicles has resulted average traffic emissions reducing in recent years.
- 5.11. Due to a supply shortage of semi-conductors as a result of the pandemic, the vehicle fleet turnover in the UK has been slower than expected. New vehicle sales were reduced, with higher rates of private vehicle owners retaining their existing vehicles, leading to predicted reductions in emissions not materialising. However, electric vehicles have increased over the same period, accounting for more than one in ten new car registrations in 2020 and a 90% increase of plug-in hybrid cars, albeit much low numbers of new vehicles were sold. While there may be some uncertainty in Defra's estimate (in its Emission Factor Toolkit) of the current and future emissions from road traffic is considered to be broadly representative of emissions.

Road Gradients

- 5.12. The road gradients result in vehicles working hard to drive up or down (where engines are used to slow vehicles) hills. As a result, the emissions on roads with steeper gradients are greater. This is particularly relevant for roads where the slope is 2.5% or greater.

Influences on Dispersion

Meteorology

- 5.13. Wind speed and direction are key to dispersion along with other atmospheric characteristics.

- 5.14. There are a limited number of sites in the UK where this data is measured and recorded. The nearest meteorological station to the Appeal site is Nottingham Watnall, 7.4 km to the northeast of the Appeal Development. The wind roses for years 2017 to 2021 for this station are shown in Figure 17.
- 5.15. As an alternative to observational data, numerical weather prediction ([NWP](#)) prognostic data for the meteorological conditions at the Appeal site are available. APS have produced NWP data across the entire UK at a 3x3 km² resolution using the widely accepted Weather Research and Forecasting ([WRF](#)) Model and reanalysis data (data which includes measured observational information). Wind roses showing the frequency of wind speeds and directions for the 3x3 km² grid in which the Appeal Development is located, for the years of 2017 to 2021 are shown in Figure 18.

[Surface Characteristics](#)

- 5.16. In addition to the meteorological data, land-use and surface characteristics have an important influence in determining the stability of the atmosphere and dispersion. This includes:
- Surface roughness. Figure 19 shows the values assigned to current land-use across the local area.
 - The surface albedo also depends on the land use.
 - The Monin-Obukhov length is a measure of the stability of the atmosphere. In very stable conditions in a rural area its value would typically be low. In urban areas, where a significant amount of heat is generated from buildings and traffic, the air above the town/city is warmer. For large urban areas this is known as the 'urban heat island'. It has the effect of preventing the atmosphere from ever becoming very stable influencing the dispersion of pollutants.

[Terrain](#)

- 5.17. Complex topography (e.g. hills and valleys) affects air flows which can result in elevated pollutant concentrations. These effects are most pronounced when the terrain gradient exceeds 1 in 10, i.e. a 100 m change in elevation per 1 km in the horizontal plane. The local terrain data is based on Ordnance Survey Terrain 50 data and shown in Figure 20.

[Roads and Streetscape](#)

- 5.18. The road geometries, widths, and heights affects the proximity of traffic emissions, and hence air quality, to specific locations such as residential properties.
- 5.19. For example,
- Narrow roads or roads where traffic has to stop to allow on-coming traffic to pass (such as, due to parked cars) can result in elevated emissions in specific 'pinch points'.
 - Narrow pavements with facades of residential properties abutting to the pavement can both limit dispersion and also results in exposure being near to the emission source where concentrations are likely to be higher.
- 5.20. The Appeal Site is located on a greenfield space with a hedgerow between the land and the road. When roads are enclosed by buildings or vegetation (any massing), a barrier is formed, restricting the dispersion of pollution away from the roads leading to higher concentrations close to the roads; this is often known as a 'street canyon' effect. When such canyons are comprised of vegetation, it is important to consider the height, type, and porosity of the vegetation as this can have an impact

on dispersion. For example, canyons formed of deciduous vegetation as opposed to evergreen vegetation would allow for increased dispersion during times of leaf shedding.

- 5.21. The restriction of dispersion or recirculation of pollutants within the streetscape zone can lead to an issue where there is sensitive exposure relevant to the assessment thresholds within the streetscape zone.

6. The impacts of the Appeal Development on local air quality

- 6.1. To confirm, I am focusing my review on the area up to 50m from the roads where traffic associated with the Appeal Development increases traffic by more than or close to 500 LDVs as an AADT, defined in the IAQM/EPUK guidance (Link 1 and Link 2 identified previously).

Vehicle Emissions

- 6.2. Emissions are dependent on the factors discussed above. Table 5 shows my opinion on the likely net impact the Appeal Development will have on each aspect.

Table 5: Emissions

Parameter	Comments
Vehicle flow	Increase in traffic relatively small (at and below the IAQM/EPUK threshold). The traffic flows on the nearby roads are significantly less than those in Erewash near to NO ₂ monitoring sites which achieve the AQOs and LVs.
Vehicle speeds	Broadly similar, small potential for additional queuing along Link 1 and 2 during busy periods but unlikely to significantly increase emissions to level which risk breaching the AQOs or LVs.
Fleet composition	Similar to national projections i.e. cleaner over time.
Road gradients	Key road links have <2.5% gradients and therefore are unlikely to result in significant additional emissions in emissions.
Table notes: n/a	

- 6.3. While I accept there is a potential for a small increase in emissions due to the additional vehicles associated with the Appeal Development, as the fleet composition changes and cleaner vehicles use the roads, the overall increase in emissions is likely to be minimal and thus not significant.

Influences on Dispersion

- 6.4. Following a review of the available datasets, it is considered that the dominate wind direction for the local area is from the southwest and a lower proportion from the northeast. Where the emission source is traffic (rather than an elevated source such as a chimney) the wind direction has the greatest influence on concentration where the street is obstructed by massing along the sides. In these cases when the wind is perpendicular to the street direction, there is a risk of dispersion being restricted and the pollution being recirculated within the streetscape zone. Based on the wind direction, the receptors on the east and northeast of the roads of concern have the potential for experiencing the greatest impacts.
- 6.5. It is my opinion that the change in land-use from greenbelt to housing will have a small influence of the surface albedo values at the development site although it is considered unlikely to

significantly change the dispersion of road traffic pollutants in the area. Similarly for the urban heat island effect, while the land-use is changing, it is my view that as the Site is located on the boundary of existing built-up area and the atmospheric conditions are unlikely to change.

- 6.6. The gradients in the area surrounding the Appeal Development are relatively flat within 8 km of the Appeal Site. Therefore, the terrain is considered to not have a significant impact on atmospheric flows along the two road links.
- 6.7. The development will not result in a change to any road elevation, and there are no tunnels to consider.
- 6.8. The movement of vehicles along a road affects the dispersion of traffic emissions. In my opinion, the traffic associated with the Appeal Development is unlikely to result in a significant change in vehicle induced dispersion.
- 6.9. Adjacent to Link 1 there are few residential properties. The Objector's property is adjacent to the western end of Link 1 (shown as receptor R1 on Figure 21 in my Appendix). This is located opposite the junction which is relatively open and dispersion is unlikely to be significantly restricted here, furthermore the façade is approximately 7.5 m back from the kerb.
- 6.10. The residential properties along Link 2 are generally set back from the kerb (more than 5 m) as shown in Figure 22 in my Appendix. There are, however, two properties where the façade is closer (receptor R3 is approximately 4.3 m from the kerb, and receptor R5 is approximately 2.7 m from the kerb as shown in Figure 23 in my Appendix. The latter appears to be a garage). The roads are relatively wide and while there is some massing (trees, low walls etc., see Figures 22 to Figure 24 in my Appendix) which could restrict dispersion in the streetscape zone, generally pollutant emissions are likely to disperse reasonably well.
- 6.11. Figure 25 shows the hedgerow along Sowbrook Lane which runs along the southern edge of the Appeal Site. It is my opinion that this hedgerow will have a minor effect on the dispersion of the traffic emissions. The construction of houses, however, on an open field, would disrupt dispersion in the future and could thus lead to higher concentrations than without the houses (although if these are set back from the kerb this might be minimal). Despite this, in my opinion, the air quality will remain good at the Appeal Site, well below the AQOs and LVs.
- 6.12. Table 6 provides a summary of my conclusions regarding the effects of the Appeal Development on dispersion of the traffic pollutants on the two road links of interest.

Table 6: Influences on Dispersion

Parameter	Comments
Meteorology	The meteorology is unlikely to result in significantly elevated concentrations at relevant receptor locations near to the two road links.
Surface Characteristics	Unlikely to have a significant impact on the dispersion of emissions from the two road links.
Terrain	Unlikely to have a significant impact on the dispersion of emissions from the two road links.



Roads Streetscape	The construction of the Appeal Development will affect air flows in the area, but these I consider this to have minimal effects on the dispersion of emissions from the two road links.
Table notes:	

- 6.13. While I accept there is a potential for a small change in dispersion of pollutants to due land-use change, I consider this will have a negligible impact on concentrations. Furthermore, the two road links where there is a potential for impact are relatively open and do not restrict dispersion. Therefore while the additional traffic may increase concentrations, it is unlikely to increase concentrations at relevant location adjacent to these roads to a level near to or above the regulatory thresholds.

Air Movement

- 6.14. A concern expressed by the Objector is that due to the area's geography, "air movement in this area is poor". It is worth noting that the movement of air at a specific receptor location, i.e., at a resident's home, might be 'poor'. My review of the factors that affect dispersion of traffic emissions, however, have provided no evidence that the movement of air in the local area is unusually 'poor'. The Erewash Valley is wide where the Objector lives, but does narrow further to the north. As noted in paragraph 6.4 this is not considered likely to affect the dispersion of low level release of emissions from traffic on the two road links of interest.

Nitrogen Dioxide

- 6.15. I consider air quality in terms of the national AQOs and LVs .
- 6.16. Paragraph 1.7 of the current statement details the key considerations for air quality in planning as recommended by the IAQM/EPUK.
- 6.17. Measured concentrations of NO₂ have not exceeded the national AQOs at any monitoring locations since 2018. Predicted background concentrations were well below the AQO in 2019 and even lower in 2026. As air quality is improving it can be inferred that NO₂ concentrations in the area around the Appeal Site will also be well below the AQOs and LVs.
- 6.18. Erewash Borough Council does not have an air quality action plan as it does not have any air quality management areas. The Appeal Development, therefore, cannot be inconsistent with the action plan.

Particulate Matter

- 6.19. There are no PM measurements sites in Erewash Borough. Estimates of the local background concentrations of both PM₁₀ and PM_{2.5} were low and are forecast to be even lower in 2026. Road vehicle exhaust emissions are a small source of these pollutants
- 6.20. Excavation site identified in objection on Lows Lane.

Compliance with Local Policy

- 6.21. Erewash Borough does not have an up to date local plan. It has saved a number of policies from its 2014 Core Strategy but none are related to air quality. The emerging local plan is at an early stage.

Relief Road/Other Infrastructure

- 6.22. The previously mentioned Kirk Hallam Relief Road which has been proposed in the EBC Core Strategy Review (2022) would divert traffic from driving through Ilkeston. The objector raised a concern that congestion is already an issue in this area and that any traffic generated by the Appeal Development would worsen it. The possibility of such a road would

Overall Site Suitability

- 6.23. The air quality at the Appeal Development location is likely to be well below the regulatory thresholds.

Summary and Conclusion

- 6.24. Overall, it is my opinion that the Appeal Development will be unlikely to have a significant effect on local area quality in the context of both the LAQM regime (AQOs) and legally binding LVs. Furthermore, the conditions within the Appeal Site are likely to be well below the regulatory thresholds. Therefore, air quality is unlikely to be a material consideration in relation to the Appeal Development.

7. Dust Nuisance

- 7.1. The Objector has also raised the issue of dust in the local area. This is generally regarded as an amenity issue, although dust can contribute to PM, particularly PM₁₀. The assessment of PM₁₀ in the local area is part of the local authority's duties under the Local Air Quality Management regime.
- 7.2. Dust from existing industrial and waste operations in the local area is also not a planning issue. If the dust is causing a nuisance the local authority has a statutory duty under the Statutory nuisance provisions of the Environmental Protection Act 1990 to investigate complaints. This includes 'track out' of dust from commercial operations onto local roads which are then re-suspended by traffic using the roads.
- 7.3. Dust can also be a concern during the construction works. It is common practice for the planning authority to include a condition requiring a dust management plan to be agreed with the local authority before works commences. If the Appeal is successful it is recommended that such a condition is imposed.
- 7.4. The Objector suggests that 'dampening down' is not sufficient. In my experience the use of water can be very effective at reducing airborne dust, but this has to be used in conjunction with a range of other best practice methods to control dust emissions.
- 7.5. In my opinion the issues of dust raised by the Objector relates to nuisance and environmental protection rather than planning. The exception is the need for a dust management plan during

construction. I would expect the Developer to follow good practice to minimise any risk of dust due to construction activities and accept a suitably worded planning condition.

Summary and Conclusions

- 7.6. I have reviewed the existing air quality in the area and found that air quality is currently well below the AQOs and LVs. It is forecast to improve in the future.
- 7.7. The Appeal Development is forecast to generate traffic that just exceeds or is close to the IAQM/EPUK criterion for an air quality assessment. The criterion was designed to be precautionary when the guidance was published in 2017, and as the vehicle fleet has become cleaner since then, it has become even more precautionary.
- 7.8. I have also reviewed the main factors that influence vehicle emissions and the subsequent dispersion of these emissions. I have found nothing to suggest there are abnormal conditions locally that would result in the traffic from the Appeal Development causing an exceedance of an AQO or LV. Nor is there any reason to believe that the Appeal site is unsuitable for residential development due to poor air quality.
- 7.9. In conclusion, I have not found any reason to believe that there will be a material impact on air quality as a result of the Appeal Development.
- 7.10. The Objector also raised several issues related to dust from existing development in the area. I do not regard this as a material planning issue. The local authority has a legal duty to investigate potential nuisance in its area.
- 7.11. If planning consent is granted there should be a planning condition requiring a dust management plan to be submitted for agreement by the local authority prior to works commencing.

8. Glossary

AADT	Annual Average Daily Traffic
AQO	Air Quality
ASR	Annual Status Report
DfT	Department for Transport
EBC	Erewash Borough Council
EPUK	Environmental Protection UK
HDV	Heavy Duty Vehicles
IAQM	Institute of Air Quality Management
LDV	Light Duty Vehicles
LV	Limit Value
NO₂	Nitrogen Dioxide
NPPF	National Planning Policy Framework

NWP	Numerical Weather Prediction
PM₁₀	Particulate Matter of Less Than 10 Microns in Diameter
PM_{2.5}	Particulate Matter of Less Than 2.5 Microns in Diameter
PRTR	Pollution Release and Transfer Register
WHO	World Health Organization
WRF	Weather Research and Forecasting Model
µg/m³	Microgrammes per cubic metre

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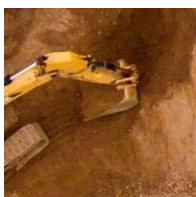
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**Appendices: Land Northwest of 1 to 12 Sowbrook Lane, Stanton by
Dale, Derbyshire**

Appeal Ref: APP/N1025/W/23/3319160

Planning Application Ref: ERE/0722/0038

Date: 11 July 2023



Quality Assurance

Client: Harris Lamb **Reference:** APS_S1042A_B2_1 **Date Published:** 11 July 2023

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Figure 1: Location of the Application Development



Figure 2: Measured Annual Mean NO₂ Concentrations 2013-2021

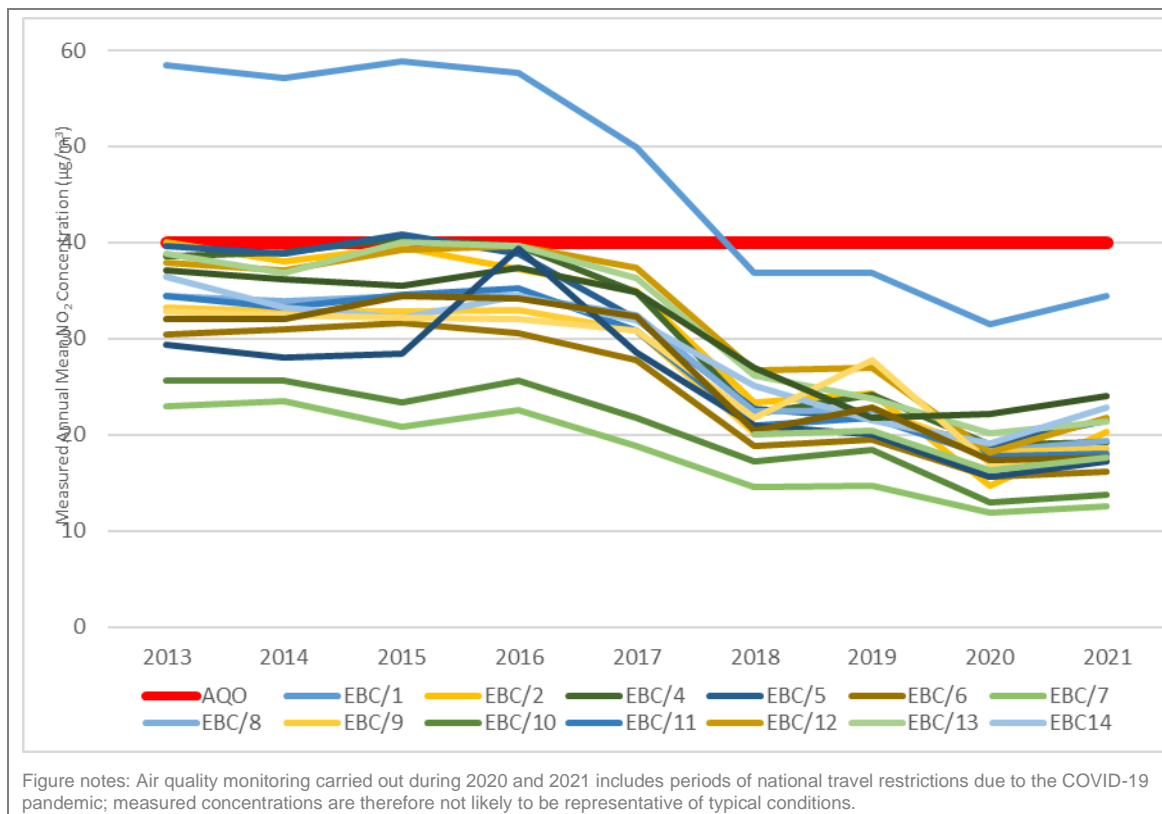




Figure 3: Locations of Monitoring Sites

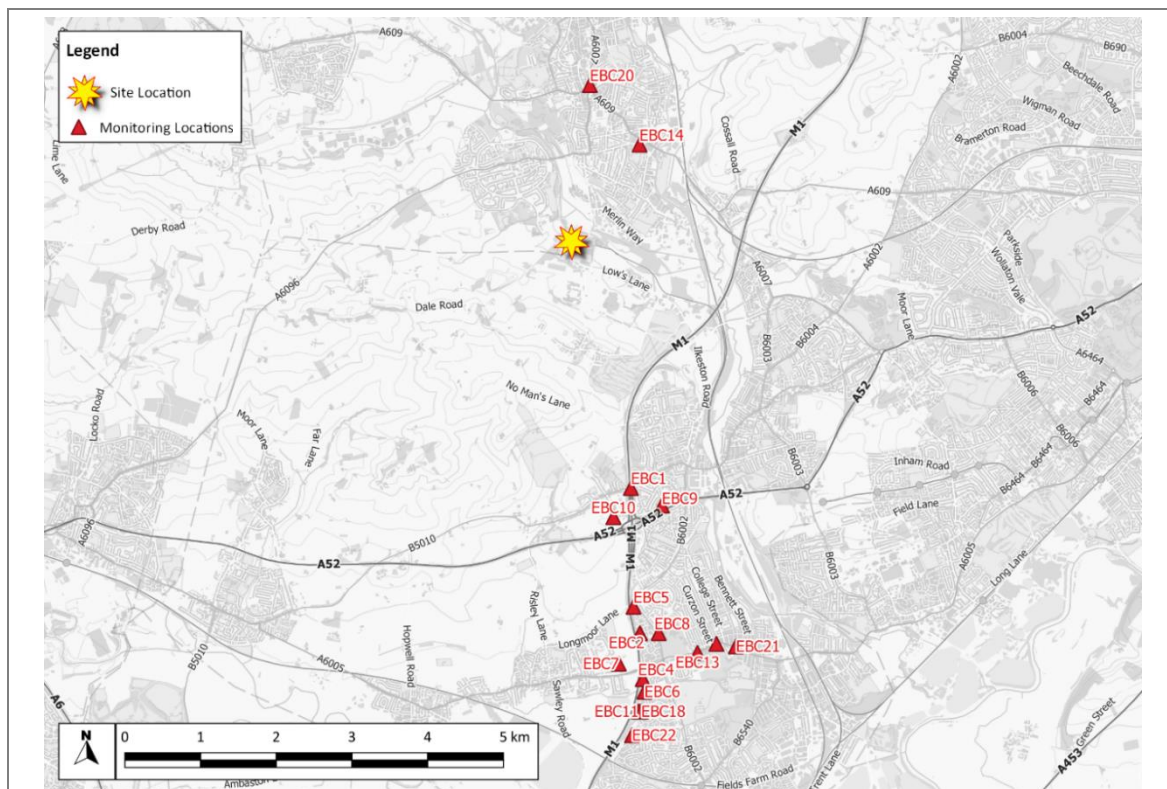


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Figure 4: Locations of Monitoring Sites – EBC14 and EBC20 – in relation to the Appeal site

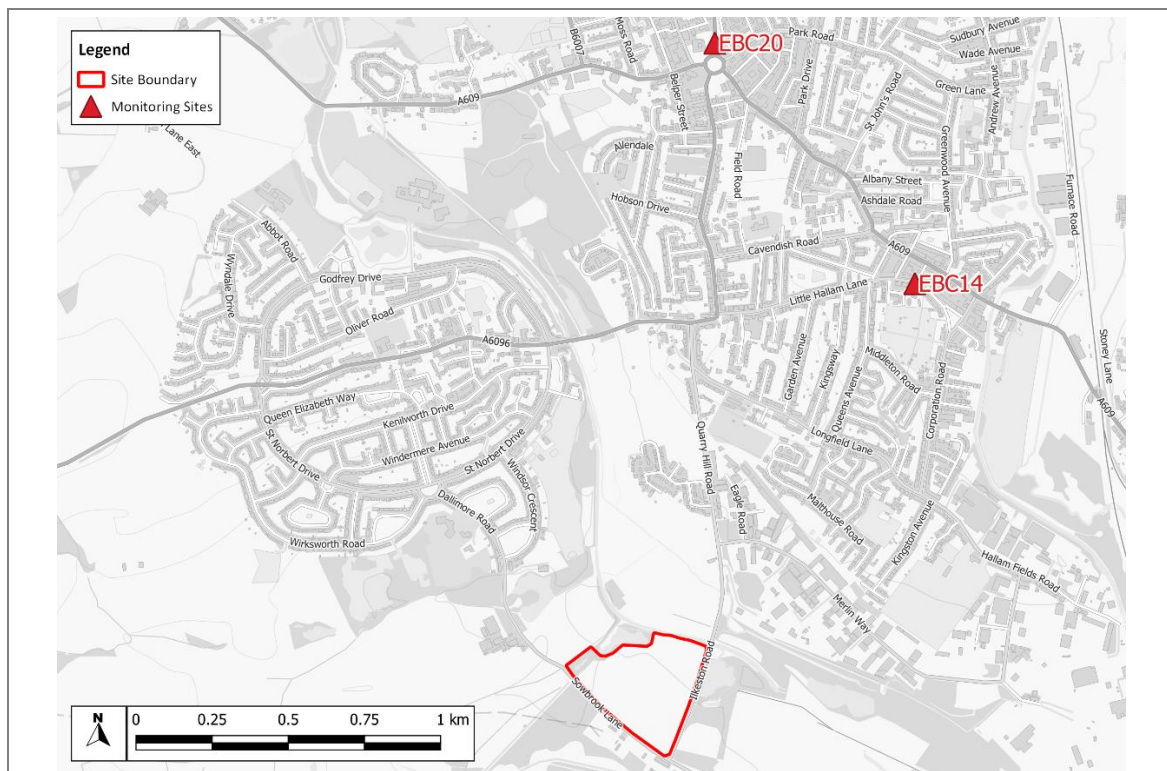


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Figure 5: Predicted Background NO₂ Concentrations for 2026

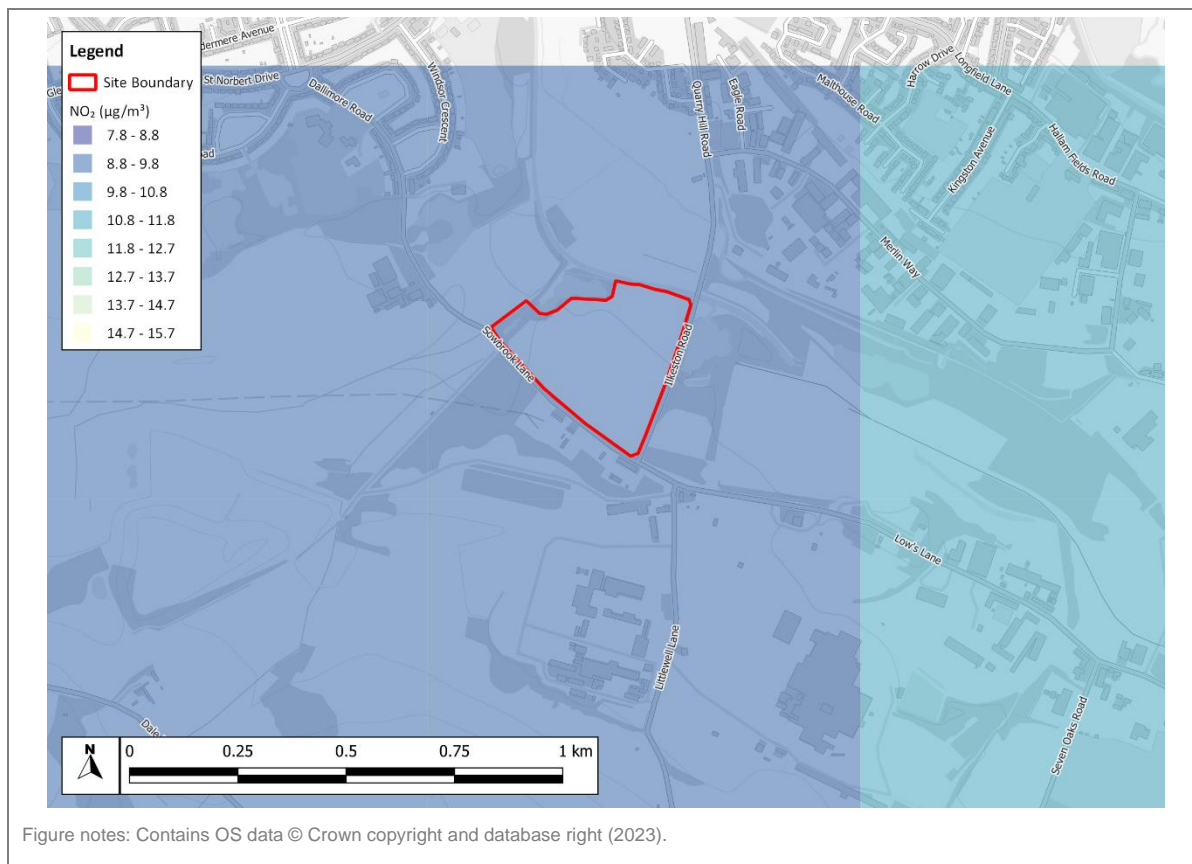


Figure 6: Predicted Background PM₁₀ Concentrations for 2026

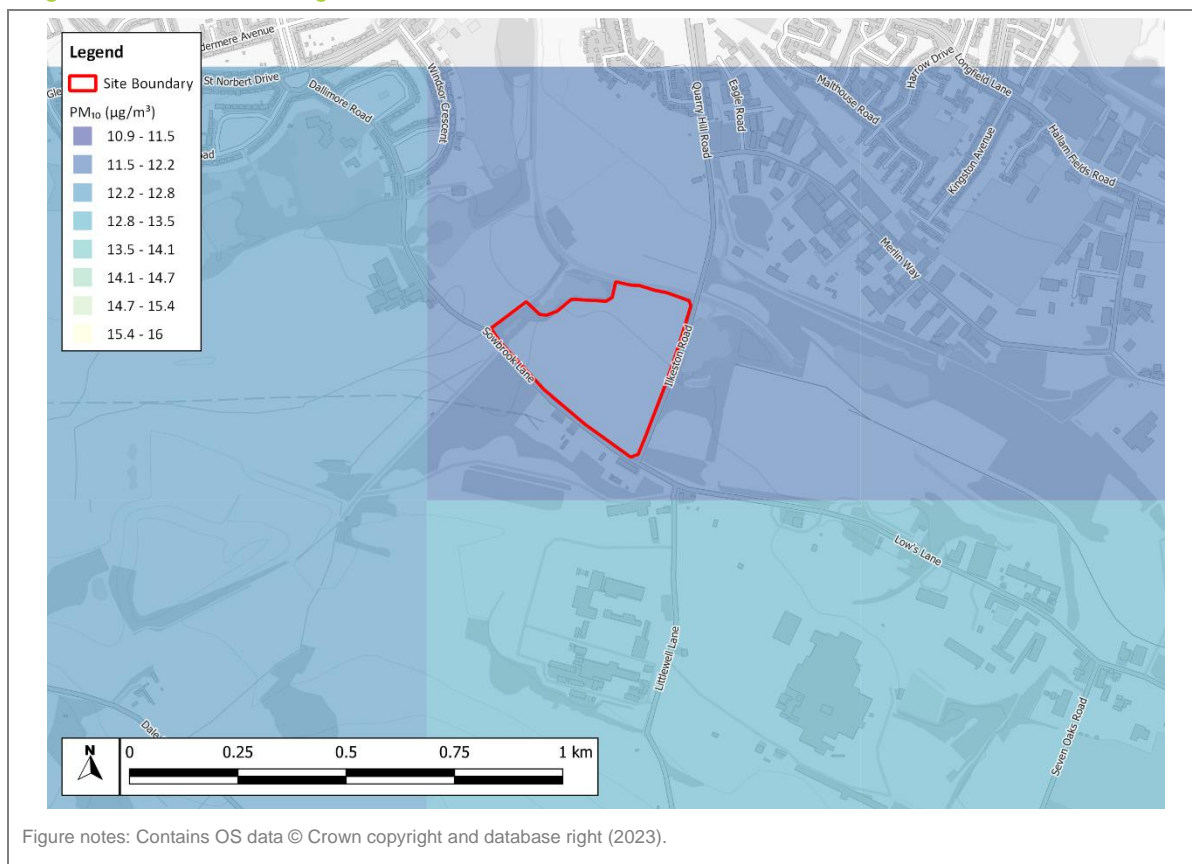




Figure 7: Predicted Background PM_{2.5} Concentrations for 2023

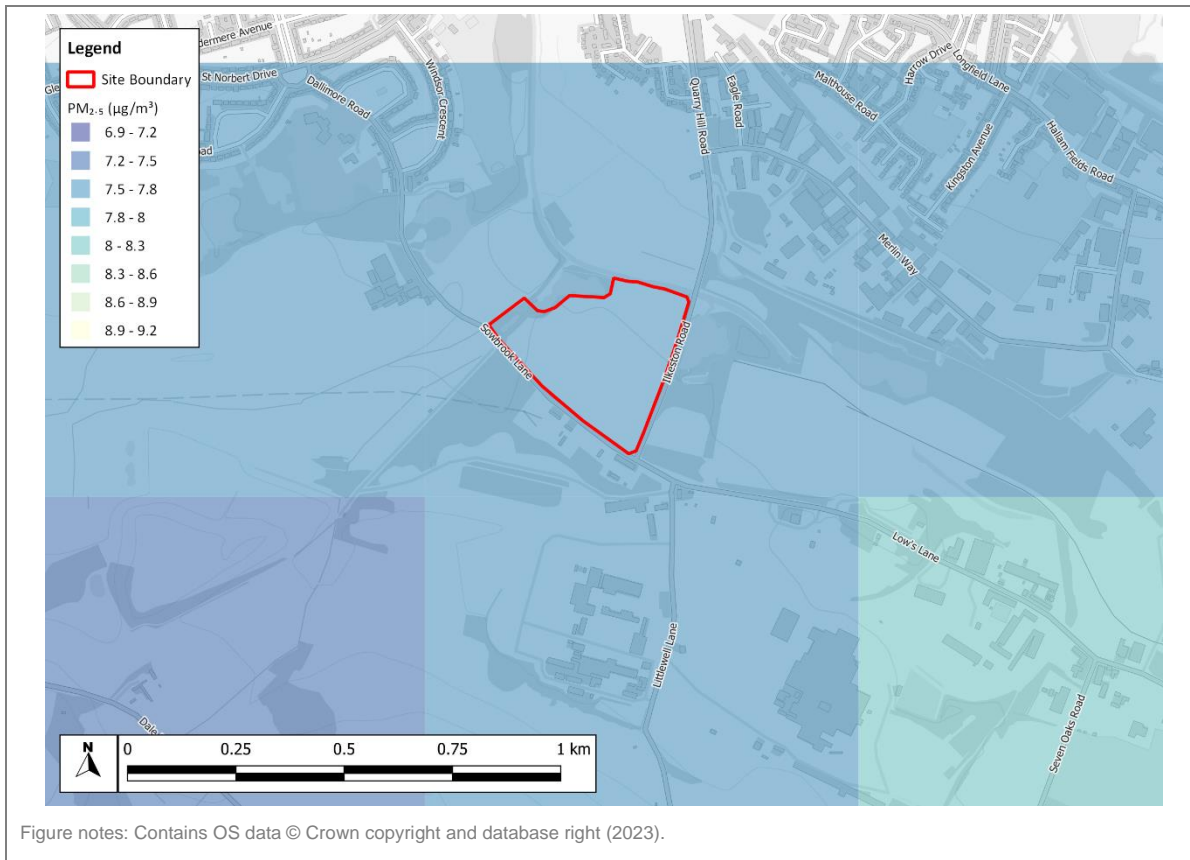


Figure 8: Predicted Roadside Concentrations for 2026





Figure 9: Roads Exceeding 500 AADT due to the Appeal Development



Figure 10: LDV AADT >500 at Lows Lane (Link 1) due to the Appeal Development

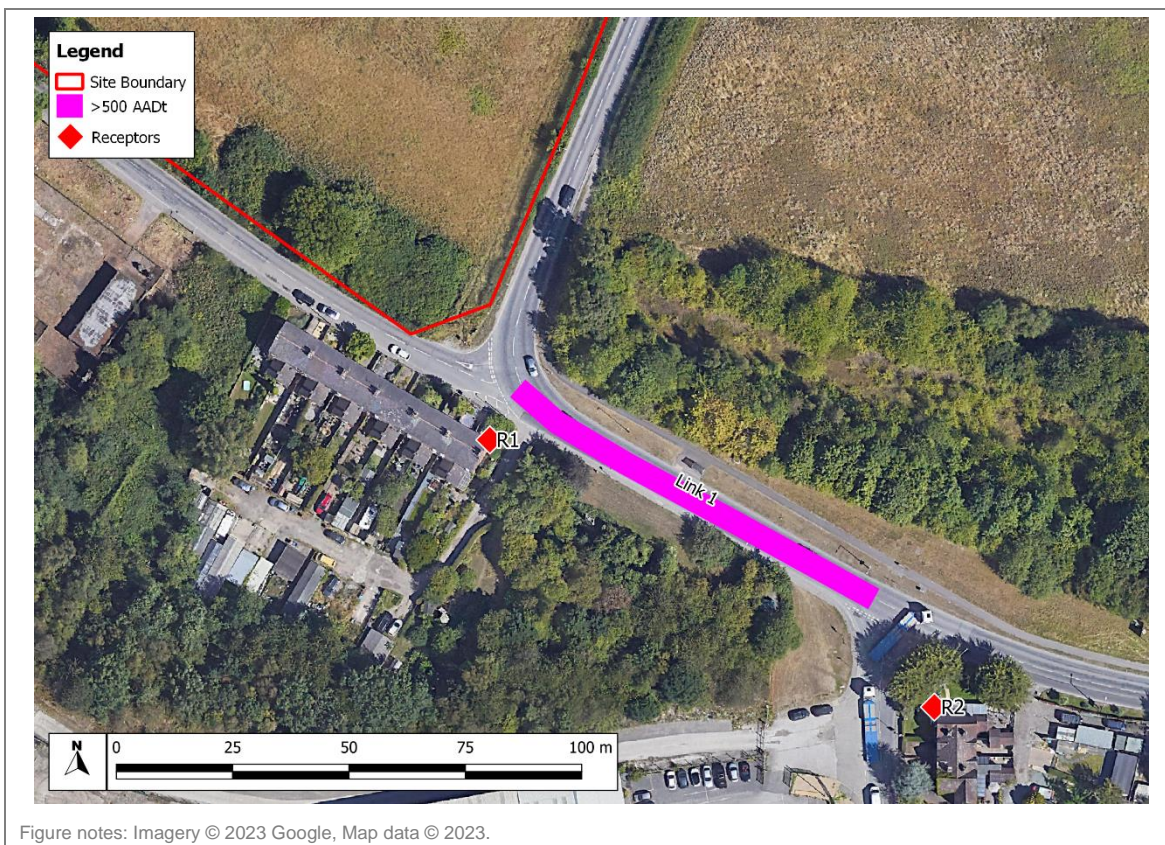




Figure 11: LDV AADT 497 North of Site Entrance (link 2) due to the Appeal Development



Figure 12: 2019 Traffic Flows at DfT Count Points





Figure 13: AM Peak Traffic Speeds in the Local Area

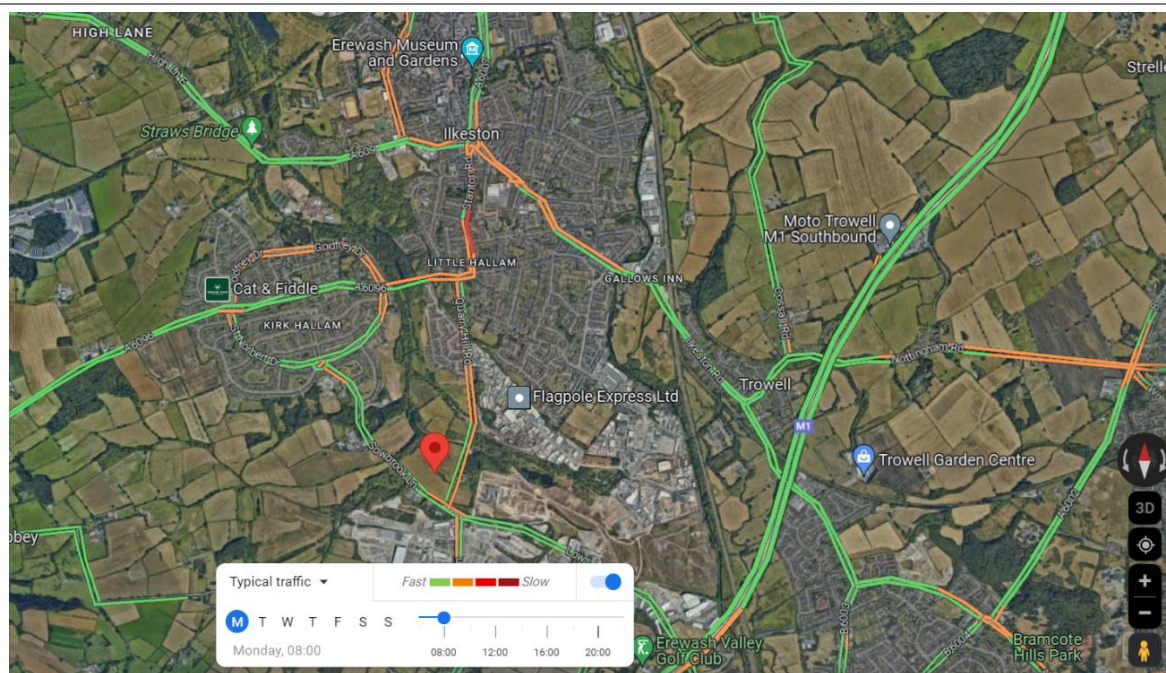


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Figure 14: Inter-peak Traffic Speeds in the Local Area

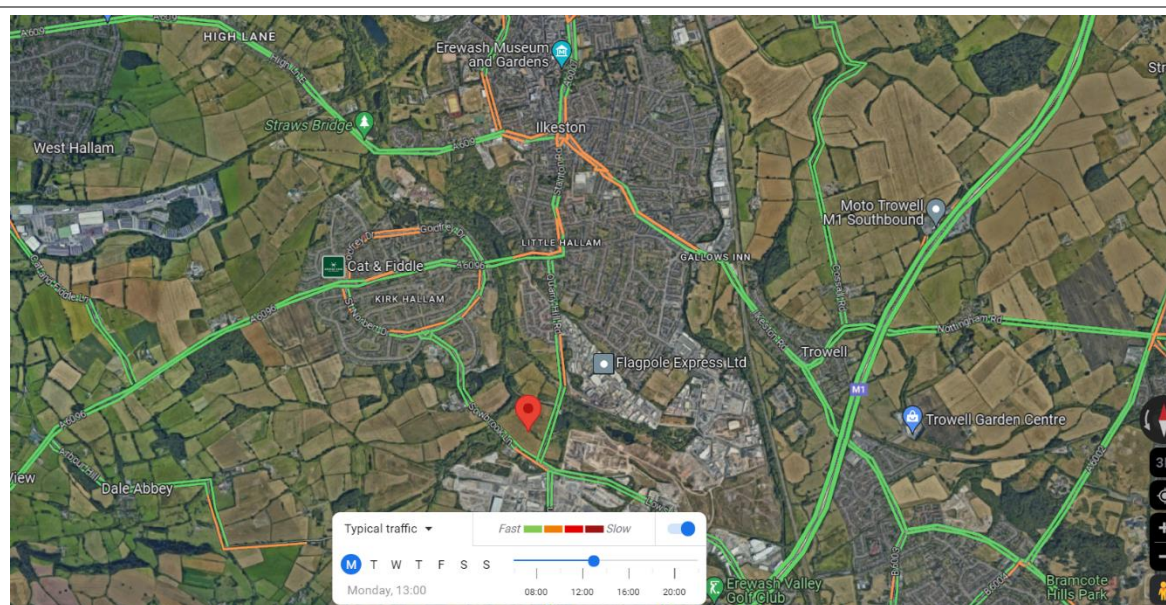


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Figure 15: PM Peak Traffic Speeds in the Local Area

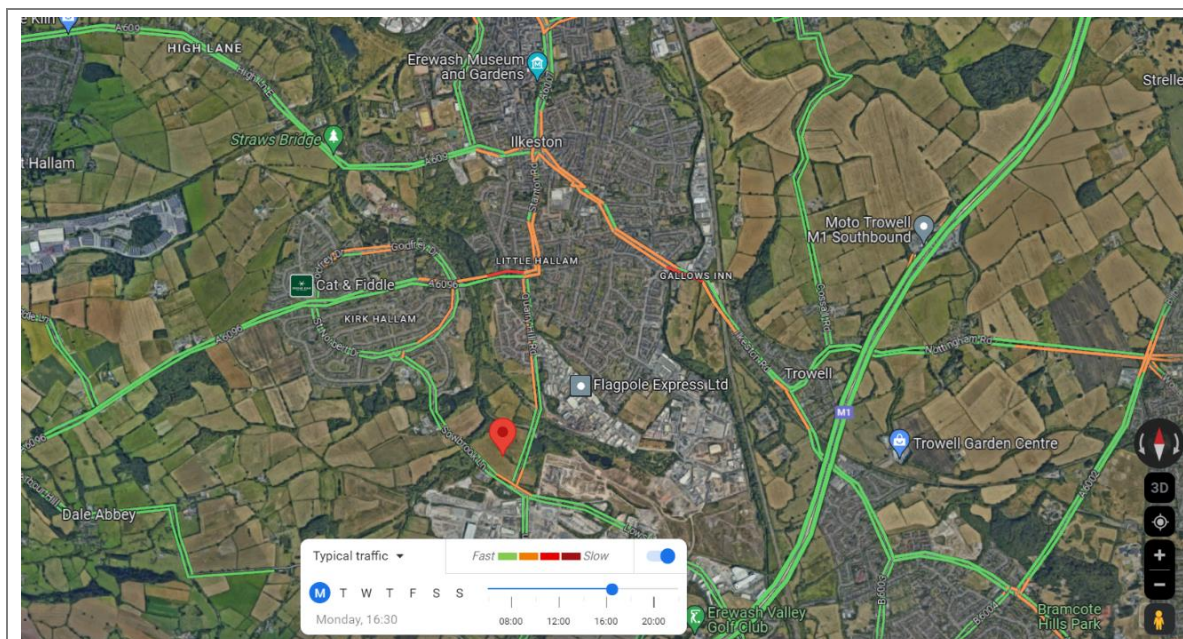


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Figure 16: Off-peak Traffic Speeds in the Local Area

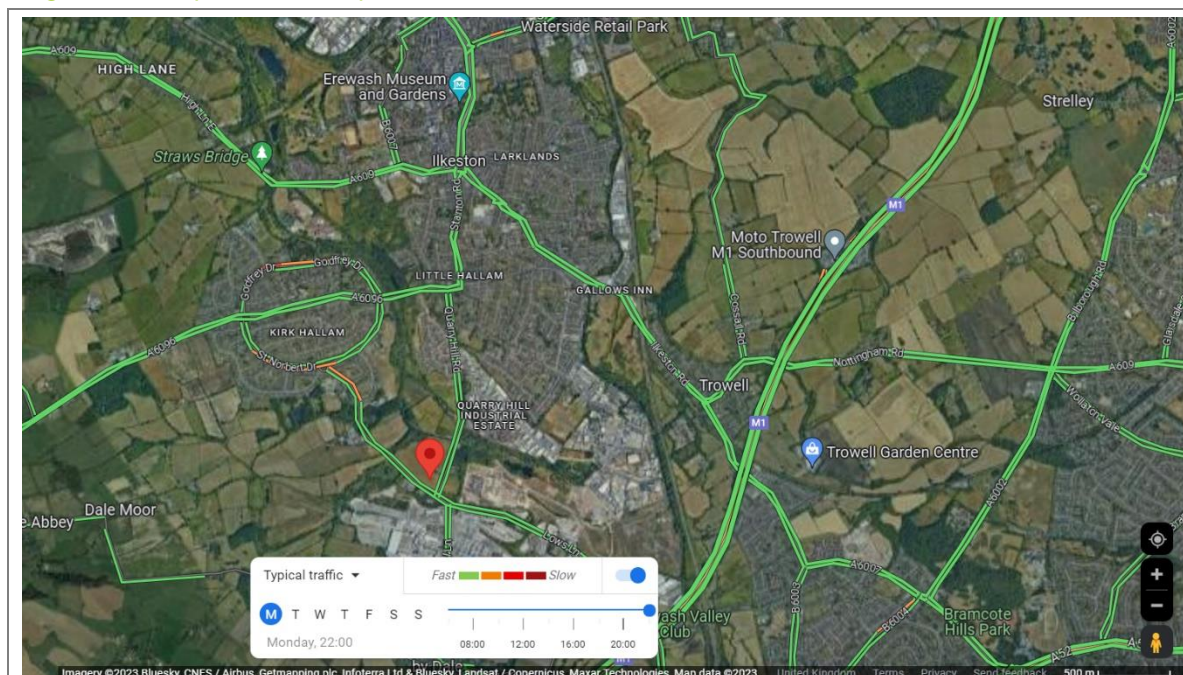


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Figure 17: Windrose of Wind Speed and Direction for Each Year from 2017 (Top Left) to 2021 (Bottom Right) of Observational Data at Nottingham Watnall Meteorological Station

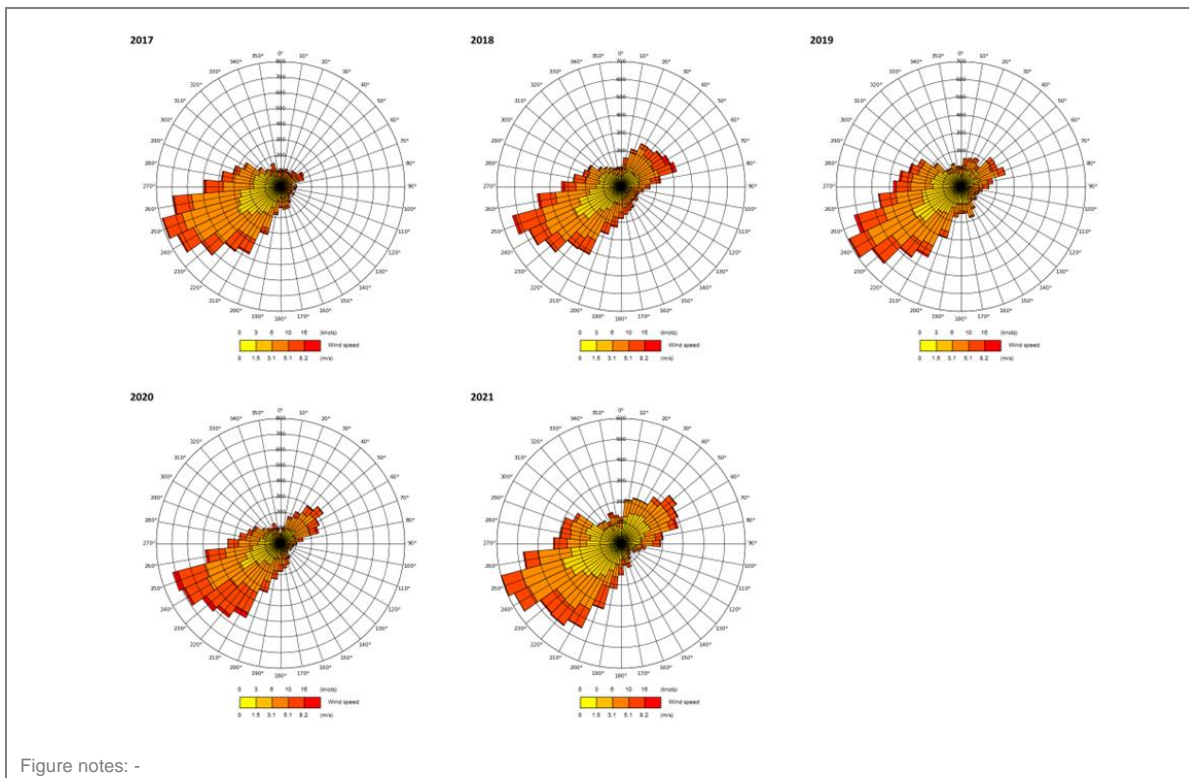


Figure notes: -

Figure 18: Windrose of Wind Speed and Direction for Each Year from 2017 (Top Left) to 2021 (Bottom Right) of NWP Data at the Appeal Site

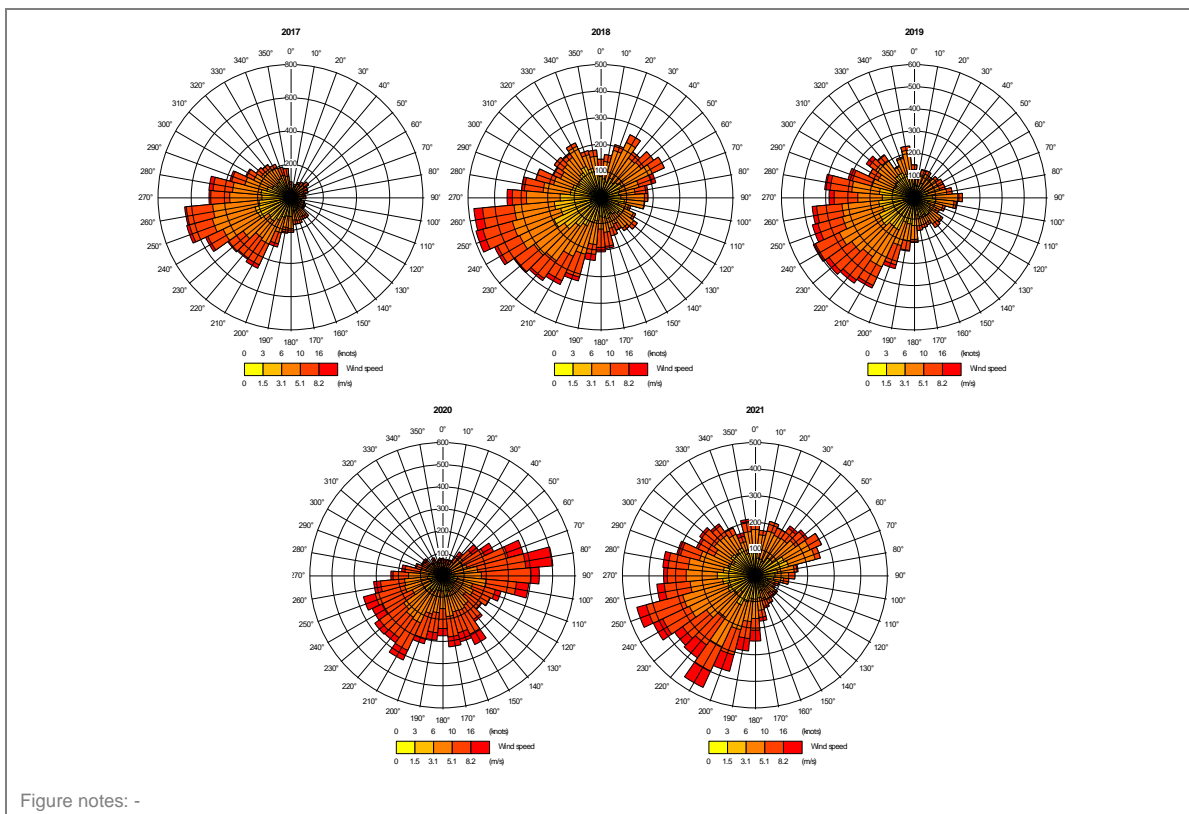


Figure notes: -



Figure 19: Existing Surface Roughness

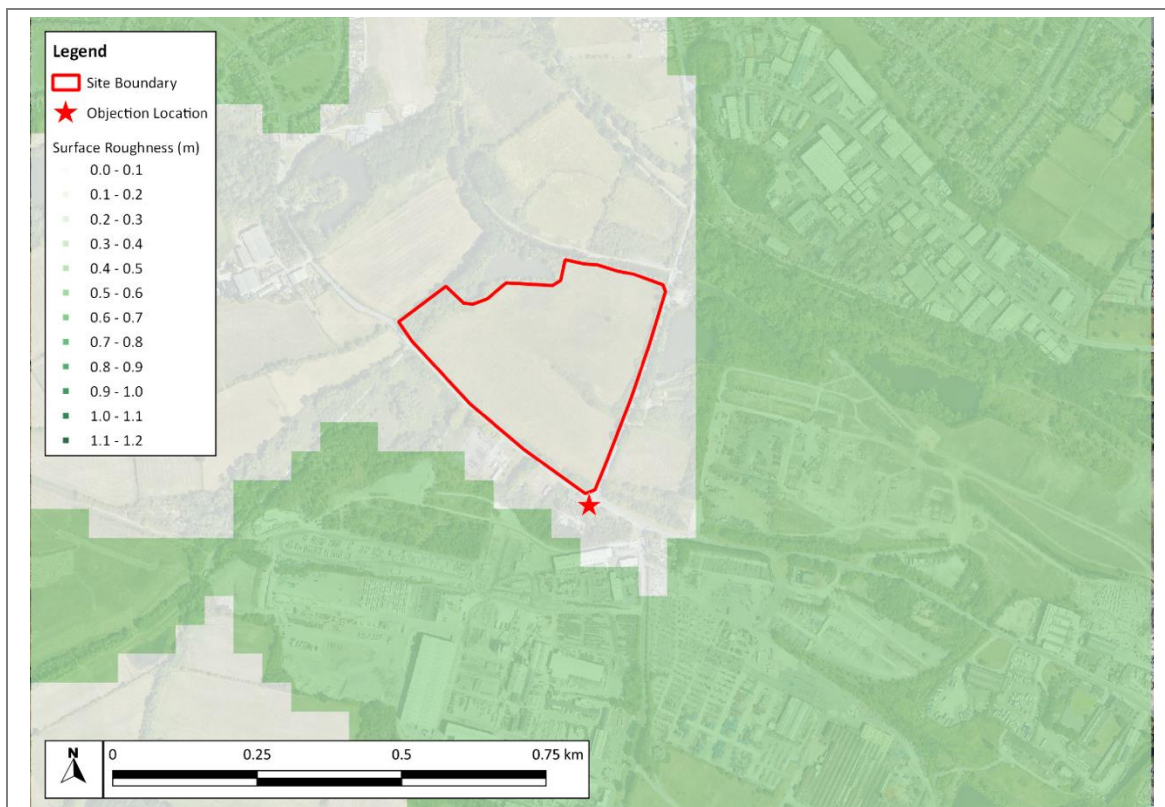


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Figure 20: Local Terrain

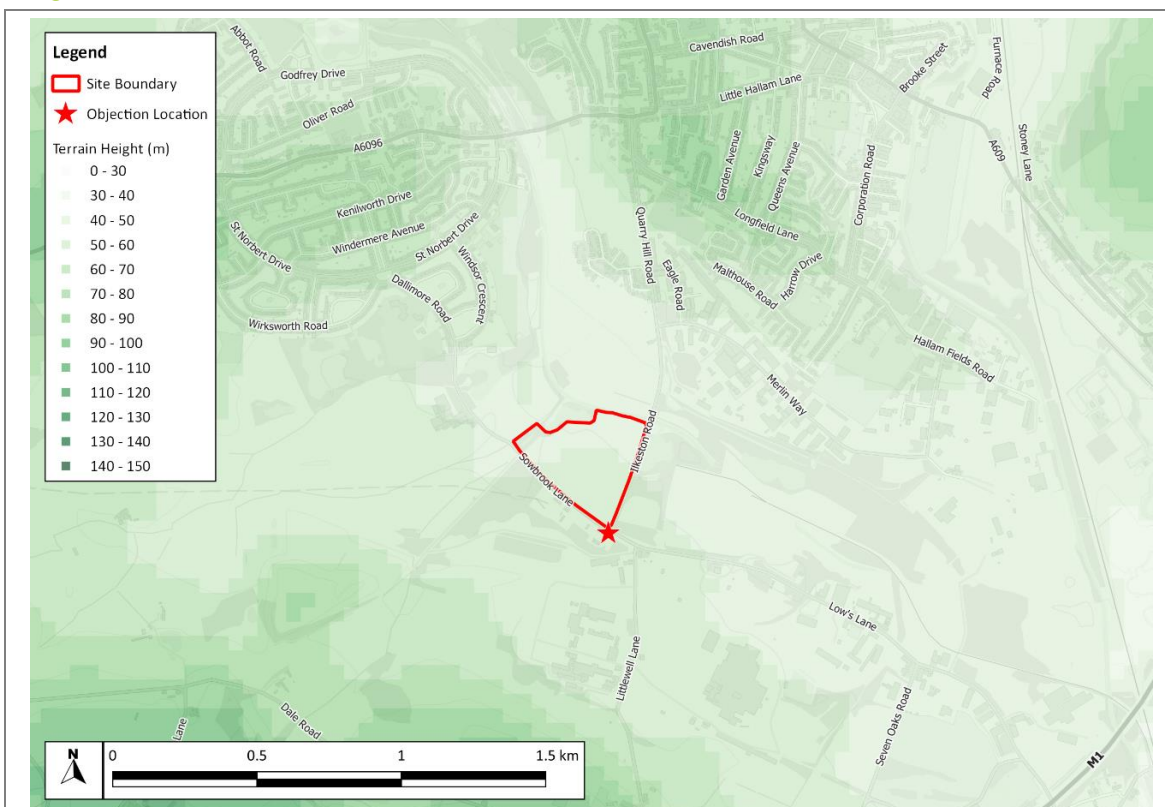


Figure notes: Imagery © 2023 Google, Map data © 2023.



Figure 21: LDV AADT >500 at Lows Lane (Link 1) due to the Appeal Development

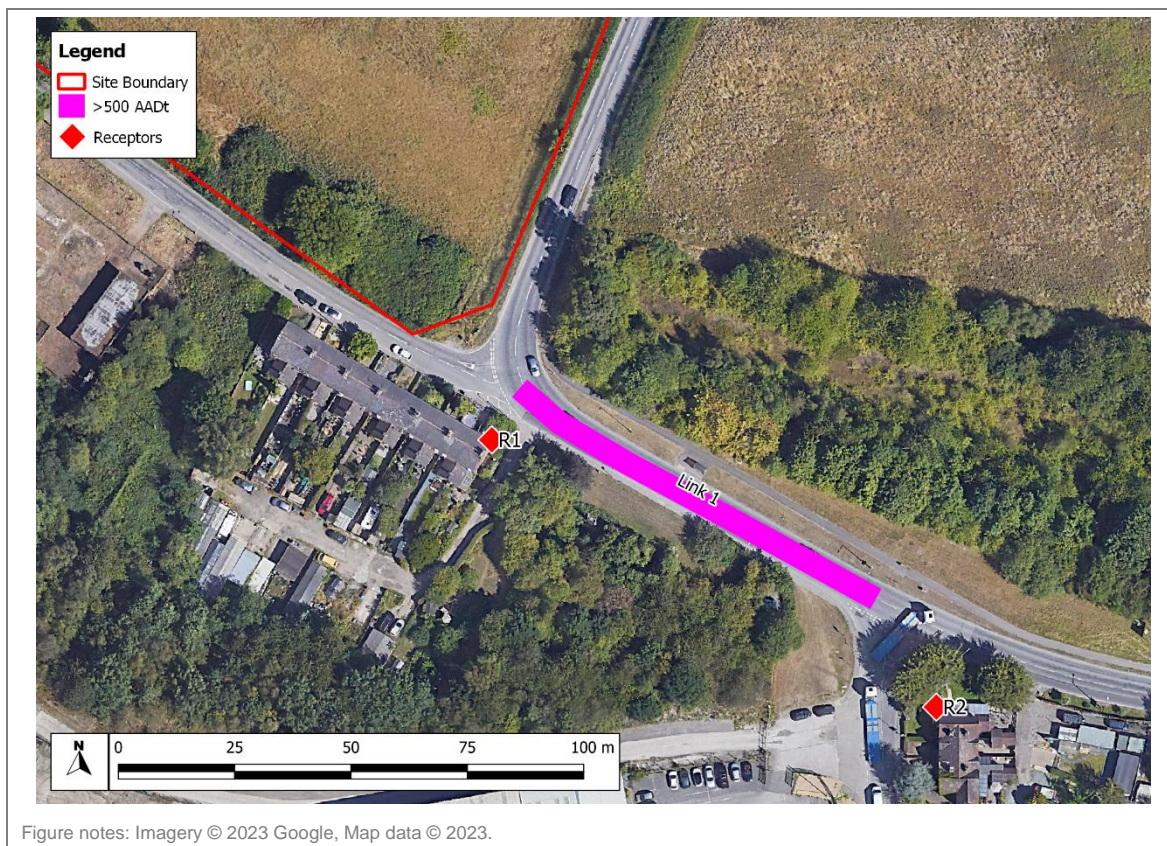


Figure 22: Quarry Hull Road and Elka Road Junction





Figure 23: Quarry Hill Road



Figure 24: Quarry Hill Road to Roundabout





Figure 25: Street view ...

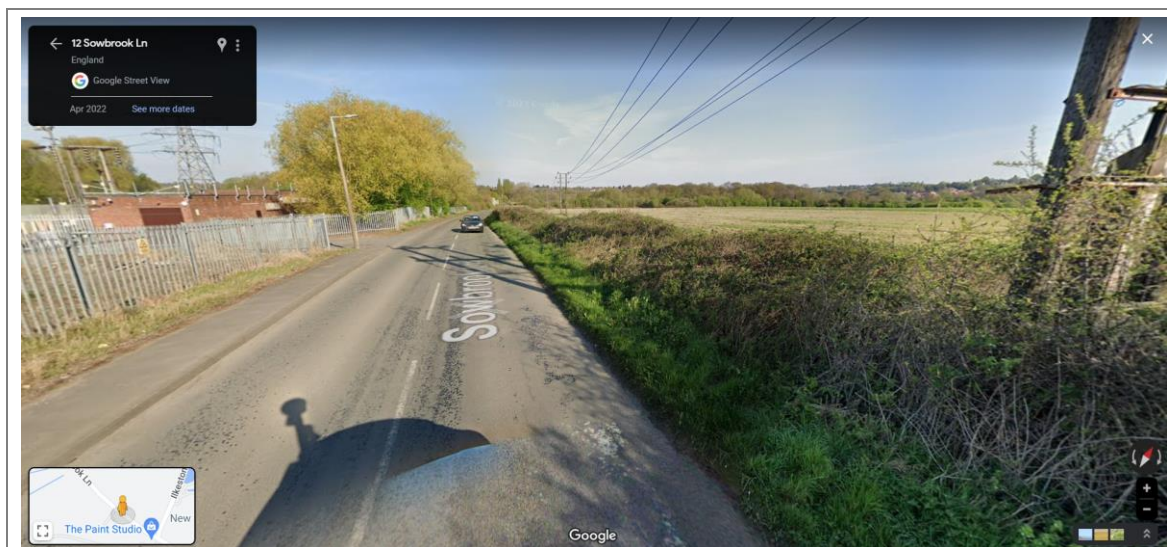


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Experts in Air Quality, Odour and Climate Change



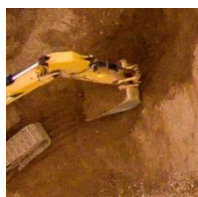
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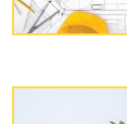
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