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COMMERCIAL PROPERTY ADVICE



## **APPEAL PROCEDURE JUSTIFICATION STATEMENT**

**Town and Country Planning Act 1990**

**Planning and Compulsory Purchase Act 2004**

**Localism Act 2011**

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**Land North West of 1 to 12 Twelve Houses, Sowbrook Lane, Stanton by Dale, Derbyshire**

**On Behalf Of:**

Wulff Asset Management Limited

**Prepared By:**

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Job Ref: P1763

Date: 23<sup>rd</sup> March 2023

## **APPEAL PROCEDURE JUSTIFICATION STATEMENT**

**LAND NORTH WEST OF 1 TO 12 TWELVE HOUSES, SOWBROOK LANE  
STANTON BY DALE, DERBYSHIRE**

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### **Main Contributors**

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### **Issued By**

**Signature:**



**Print Name: Sam Silcocks**

**Date: 23<sup>rd</sup> March 2023**

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### **Approved By**

**Signature:**



**Print Name: Josie Hobbs**

**Date: 23<sup>rd</sup> March 2023**

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## 1.0 INTRODUCTION

- 1.1 This Appeal Procedure Justification Statement has been produced by Harris Lamb Property Consultancy on behalf of Wulff Asset Management Limited (**'the Appellant'**) to justify the requested appeal procedure following the refusal of application ERE/0722/0038 by Erewash Borough Council for an Outline application for up to 196 with all matters reserved other than the means of access (**'the Appeal Scheme'**) on Land North West Of 1 To 12 Twelve Houses, Sowbrook Lane, Stanton By Dale, Derbyshire (**'the Appeal Site'**).
- 1.2 This Appeal Procedure Justification Statement has been produced taking into account the guidance provided in the Procedural Guide: Planning appeals – England (updated 12 April 2022).

## 2.0 APPEAL PROCEDURE JUSTIFICATION

2.1 On 13<sup>th</sup> October 2022, Erewash Borough Council refused the application for 10 reasons (see Appendix 1). The application was considered by the Planning Committee on 12<sup>th</sup> October 2023. The Officer's Committee Report recommendation was to refuse the application.

2.2 Annexe K of the Procedural Guide: Planning appeals – England (updated 12 April 2022) provides details on the proposed development provides criteria that are used to determine the type of appeal procedure that is appropriate to the appeal.

2.3 The guidance states that:

***“The criteria for each procedure cannot be fully prescriptive or entirely determinative: they require judgement to be applied using common sense. More than one criterion may apply and more than one procedure (in combination) may be appropriate on an issue by issue or ground by ground basis.”***

2.4 The guidance document identifies that an Inquiry procedure would be appropriate where one or more of the following are met:

- there is a clearly explained need for the evidence to be tested through formal questioning by an advocate (this does not preclude an appellant representing themselves as an advocate); or
- the issues are complex (for example, where large amount of highly technical data are likely to provided in evidence); or
- the appeal has generated substantial local interest to warrant an inquiry as opposed to deal with the case by a hearing (where the proposal has generated significant local interest a hearing or inquiry may need to be considered. In such circumstances the local planning authority should indicated which procedure it considers would be most appropriate taking account of the number of people likely to attend and

participate at the event. We will take that advice into account in reaching the decision as to the appropriate procedure.); or

2.5 The final two criteria referenced in the Procedural Guide: Planning appeals – England (updated 12 April 2022) relate to enforcement appeals, which are not applicable to this appeal.

2.6 The following paragraphs assesses the appeal against the relevant criteria listed above.

**1) There is a clearly explained need for the evidence to be tested through formal questioning by an advocate (this does not preclude an appellant representing themselves as an advocate)**

2.7 The application was refused for 10 reasons.

2.8 The 10 reasons for refusal raise matters that are complex and technical in nature and would benefit from the evidence produced by both parties being tested through formal questioning by an advocate. The appellant expects to use expert witnesses in advancing its case and it is expected that the Council will do the same.

2.9 As identified elsewhere in our submissions, the Appellant was not afforded the time to address some of the technical issues that arose in the consultation response to the outline application. Submissions have been made with the appeal in relation to Biodiversity Net Gain, Highways and Noise from the committed employment site. It is not yet known whether common ground can be agreed with the Council on any of these matters, however, if they remain matters for debate, then they will require questioning by advocates to delve into the matters of debate and to determine how they should be considered in the context of local and national planning policy.

2.10 The matter of Noise requires the interpretation of the recently approved outline application for the 4000 job employment site. The employment site does not exist, and so this requires a level of interpretation of what has been

granted to understand what the potential impact will be. The level and nature of the noise then needs to be considered in the context of the relevant guidance documents and in the context of other noise sources that already surround the Appeal Site (e.g. road noise). Questioning by an advocate will allow for all these matters to be teased out and assist the Inspector to reach their conclusion as to whether an appropriate living environment can be provided for residents.

- 2.11 The Highway matters relate to an assessment of the impact on the surrounding highway network. This has required an understanding on what has happened on other sites to set the model. This being complicated by the different things being agreed at different stages on other sites.
- 2.12 Biodiversity Net Gain is less complicated in some ways. The reason for this being that at this stage we just need to be confident that a solution will exist when the final layout is known. However, interpreting the base line position and how this should be valued would benefit from questioning should it remain a matter of debate.
- 2.13 The wider planning matters would also benefit from questioning. In addition to the 10 reasons for refusal, there are also a wide range of benefits identified by the Appellant. Questioning the planning witnesses will allow us to delve into the detail of each of these matters and the weight to be given to them in the planning balance and under the public benefit test as set out in Paragraph 202 of the NPPF. Questioning will also tease out the matters of disagreements about the status of the adopted and emerging plan.

**2) The issues are complex (for example, where large amounts of highly technical data are likely to be provided in evidence)**

- 2.14 As identified above, there is a range of technical data that will inform the consideration of highways, noise and biodiversity net gain. This data is complex in nature, both in terms of establishing the inputs for the models and then the interpretations of the output from the models.

- 2.15 Technical data is also relevant in determining the weight to be given to the delivery of housing and affordable housing, which have both seen significant under delivery since the start of the plan period.
- 2.16 The volume of issues relevant to the Appeal Scheme also make it complex. Bringing these together to first assess their compliance with policy, and to then attach weight and assess them as part of the wider planning balance, is inherently more complex.
- 2.17 The volume of outstanding issues stems from the Council's unwillingness to engage with the Appellant through the pre-application and application process. The Appellant has counteracted this where possible (e.g. resolving the archaeological and drainage queries directly with the consultees), but this has proven challenging when most issues were not raised at the pre-application stage, the Council does not publish consultation responses and the Appellant had to resort to Freedom of Information requests on two occasions in relation to information that is normally made available on a Council's website.
- 3) The appeal has generated substantial local interest to warrant an inquiry as opposed to dealing with the case by a hearing (where the proposal has generated significant local interest a hearing or inquiry may need to be considered. In such circumstances the local planning authority should indicate which procedure it considers would be most appropriate taking account of the number of people likely to attend and participate at the event. We will take that advice into account in reaching the decision as to the appropriate procedure.)**
- 2.18 During the outline application Erewash Borough Council received 31 representations from local residents along with a representation from Stanton by Dale Parish Council.
- 2.19 On the face of it this does not seem substantial, however, with the main neighbours of the site being a vacant employment site, this is larger than it might first seem.



- 2.20 A large number of residents also attended the Stanton by Dale Parish Council meeting that the Appellant attended prior to the submission of the application. This being more than we would normally encounter.
- 2.21 Harris Lamb as the planning consultant has previously engaged with the Parish Council. Through this we know that the matter of highways is particularly important to them. Their concern goes beyond the Appeal Scheme and relates to any development to south of Ilkeston, including the large urban extension proposed to Kirk Hallam in the emerging Core Strategy. Whilst we cannot address the wider concerns, the Inquiry procedure would allow residents and the Parish Council to engage in this appeal process and for them to see and comment on the detailed scrutiny of highway evidence relevant to it.

#### **Likely length of the Public Inquiry**

- 2.22 The appellant is expecting to call on 5 people to provide expert witness advice, covering Planning, Highways, Ecology, Landscape and Noise.
- 2.23 As such, it is expected that 5 days will be required, subject to confirmation and discussions with the Council and Planning Inspectorate.

### **3.0 SUMMARY AND CONCLUSIONS**

- 3.1 This Appeal Procedure Justification Statement has been produced by Harris Lamb Property Consultancy on behalf of the Appellant to justify the requested Public Inquiry following the refusal of application ERE/0722/0038 by Erewash Borough Council for an Outline application for up to 196 Dwellings with all matters reserved other than the means of access.
- 3.2 In producing this statement, consideration has been given to Procedural Guide: Planning appeals – England (updated 12 April 2022).
- 3.3 For the reasons provided in the previous section, the relevant criteria provided in Annexe K of the Procedural Guide: Planning appeals – England (updated 12 April 2022) have been met and we consider the appeal should follow the Inquiry procedure. The issues to be considered are complex, with evidence needing to be tested through formal cross examination.
- 3.4 The proposed timescales for the Inquiry procedure will take significantly longer than the time usually allowed for a hearing.
- 3.5 As such, the Appellant considers that the Inquiry procedure is the most appropriate procedure for determining this appeal.

## **APPENDIX 1**

**Resources Directorate, Planning & Regeneration**

Town Hall Ilkeston  
Derbyshire DE7 5RP  
Switchboard: 0115 907 2244

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**TOWN AND COUNTRY PLANNING ACT 1990**

**NOTICE OF DECISION**

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**Part 1: Application Details**

Applicant: **WULFF ASSET MANAGEMENT LIMITED**

Application Ref: **ERE/0722/0038**

Proposal: **Outline Application for up to 196 dwellings with all matters reserved other than the means of access.**

Site Address: **LAND NORTH WEST OF 1 TO 12 TWELVE HOUSES,  
SOWBROOK LANE, STANTON BY DALE, DERBYSHIRE**

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**Part 2: Decision**

Erewash Borough Council in pursuance of powers under the above mentioned Act hereby

**REFUSE PERMISSION**

for the development in accordance with the application.

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**Part 3: Reasons for Refusal:**

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.
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.
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.
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.
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.

#### **Part 4: Positive and proactive statement**

The proposed development is considered to be fundamentally contrary to both national and local planning policy and the agent is aware of the Council’s position on

the development as advised at pre-application stage. It was therefore not considered possible to work in a positive and proactive manner in order to overcome the reasons for refusing this application.

Date: 13 October 2022



Signed  
Steve Birkinshaw  
Head of Planning & Regeneration

## ATTENTION IS CALLED TO THE NOTES BELOW

### Appeals to the Secretary of State

- If you are aggrieved by the decision of your local planning authority to refuse permission for the proposed development or to grant it subject to conditions, then you can appeal to the Secretary of State under section 78 of the Town and Country Planning Act 1990.
- If you want to appeal against your local planning authority's decision then you must do so within 6 months of the date of this notice.
- Appeals must be made using a form which you can get from the Secretary of State at Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6PN (Tel: 0303 444 5000) or online at [www.gov.uk/government/organisations/planning-inspectorate](http://www.gov.uk/government/organisations/planning-inspectorate)
- The Secretary of State can allow a longer period for giving notice of an appeal but will not normally be prepared to use this power unless there are special circumstances which excuse the delay in giving notice of appeal.
- The Secretary of State need not consider an appeal if it seems to the Secretary of State that the local planning authority could not have granted planning permission for the proposed development or could not have granted it without the conditions they imposed, having regard to the statutory requirements, to the provisions of any development order and to any directions given under a development order.
- In practice the Secretary of State does not refuse to consider appeals solely because the Local Planning Authority based their decision on a direction given by the Secretary of State.
- If you intend to submit an appeal that you would like examined by inquiry then you must notify the Local Planning Authority and Planning Inspectorate ([inquiryappeals@planninginspectorate.gov.uk](mailto:inquiryappeals@planninginspectorate.gov.uk)) at least 10 days before submitting the appeal. [Further details are on GOV.UK.](#)

**Application Reference: ERE/0722/0038**

**OUTLINE APPLICATION FOR UP TO 196 DWELLINGS WITH ALL MATTERS RESERVED OTHER THAN THE MEANS OF ACCESS AT LAND NORTH WEST OF 1 TO 12 SOWBROOK LANE STANTON BY DALE DERBYSHIRE**

**Proposals**

The application seeks outline planning permission for a maximum of 196 dwellings on land at Stanton by Dale to the western side of Ilkeston Road and the northern side of Sowbrook Lane. Details of the proposed access to the site have been provided, with highway accesses proposed from Sowbrook Lane and Ilkeston Road. The matters of scale, layout, appearance and landscaping have been reserved for later consideration.

This application is before the planning committee due to the number of representations received.

**Site and Surroundings**

The application site extends across a sizeable area of open agricultural land north and north-west of the junction between Sowbrook Lane and Ilkeston Road. These two highways provide strong physical southern and eastern boundaries, whilst a section of the disused Nutbrook Canal and two ponds help delineate the northern and western boundaries of the site respectively. The site is relatively flat and at a similar ground level to the adjacent highways. Boundaries consist mainly of established hedgerows with mature trees located at various points along the perimeter of the site. A section of the site adjacent to its northern boundary sits within Flood Zone 2. A Grade II Listed row of cottages at Twelve Houses sits on the opposite side of Sowbrook Lane. The site is not within the Green Belt.

**Relevant Site History**

None.

**Policy Context**

**National**

National Planning Policy Framework  
National Design Guide

**Local**

**Erewash Core Strategy**

Policy A – Presumption in Favour of Sustainable Development  
Policy 1 – Climate Change  
Policy 2 – The Spatial Strategy  
Policy 3 – Green Belt  
Policy 8 – Housing Size, Mix and Choice  
Policy 10 – Design and Enhancing Local Identity

Policy 16 – Green Infrastructure, Parks and Open Space  
Policy 17 – Biodiversity  
Policy 19 – Developer Contributions

### **Erewash Local Plan Saved Policies**

H9 – Section 106 Planning Obligations  
H12 – Quality and Design  
EV11 – Protected Species and Threatened Species  
EV16 – Landscape Character  
R2 – Rights of Way  
GB1 – Green Belt

### Consultations

Ward Councillors – Cllr J Frudd – Objects on the grounds of over intensification of urban build in a rural setting. Application ERE/0722/0038 is for the number of houses to be up to 196. If this is to be added to the already proposed nearby large development of some 1300 houses, this will constitute the over intensification I speak about, and compromise the whole nearby area turning it into an unacceptable urban sprawl with little respite in terms of green breaks.

Stanton by Dale Parish Council - Objects on the basis of:

- Flooding
- Existing traffic congestion
- Inaccessible and impractical public transport, cycling and walking connectivity; Local amenities cannot cope with any extra pressure, with some amenities already being oversubscribed.
- Damaging to birds.

Derbyshire County Council Archaeologist – Notes the presence of various historical assets and considers the submitted Heritage Statement to be insufficient.

Derbyshire County Council Highways – Object on the basis that: 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; and approval of 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, increasing the potential for conflict with vehicles contrary to the best interests of highway safety.

Derbyshire County Council Public Rights of Way – No comments received.

Derbyshire County Council S106 Contributions – Existing primary and secondary schools would have capacity for the demand generated by the proposed development. Request contributions towards Special Educational Needs and Disability (SEND) and library provision. Request that a note be attached regarding broadband provision. Consider that proposed dwellings should



encourage independent living for all ability and mobility levels, promoting ageing well in place.

Derbyshire County Council Flood Team – Various questions raised in relation to detailed design.

Erewash Borough Council Environmental Protection – Comments relating to noise and contaminated land. No objection subject to conditions.

Erewash Borough Council Greenspace and Street Scene – No comments received.

Erewash Borough Council Housing Strategy Officer – No objection, comments provided on potential affordable housing.

Erewash Borough Council Planning Policy – Do not support the principle of housing development at this location. The site represents an inappropriate and unsustainable location to provide new housing. Contrary to emerging Core Strategy policies.

Erewash Borough Council Tree Officer – No comments at this stage.

Erewash Borough Council's Heritage Consultant - The proposal will result in adverse changes to the setting of the Grade II listed building which detracts from the manner in which it is experienced, appreciated and understood.

Derbyshire Wildlife Trust – Further details are required to demonstrate how offsite provision would be provided to compensate for the displacement of the priority species of Skylark from the site. Given that the development will result in loss of habitat it is important that a Biodiversity Impact Assessment using the Defra Metric calculator tool is provided in order to demonstrate how the proposal will avoid no net loss of biodiversity and provide evidence of how biodiversity net gain will be achieved in accordance with the principles of the NPPF.

Environment Agency – The development falls within flood zone 2 and therefore the LPA should apply national flood risk standing advice in this instance.

Safer Derbyshire – No objection in principle.

Coal Authority - No objection subject to conditions.

Severn Trent Water – No response received.

Western Power Distribution – No response received.

### **Representations**

The application was advertised by way of a press notice and 6 site notices. 31 representations were received from the residents of the following addresses and a County Councillor, making the points summarised below: 1 & 9 Twelve Houses,

15, 22, 27 & 59 Windsor Crescent, Clayworth Cottage, Little Hallam Hill, 7 Lock Close, 15 & 17 Windermere Avenue, 129 Kenilworth Drive, 36 Westwick Street, 160 & 195 St Norbert Drive, 13 Longfield Crescent, Moorfield Farm Barn, Hixons Lane, 140 Longfield Lane, 92 Corporation Road, 87 Oliver Road, 12 Tilton Grove, 4 Westfield Close and 40 Godfrey Drive.

- Despite your obvious wish to keep this quiet, I've been made aware of your plan to destroy our area with yet further proposed building.
- The application in this area adds further to the huge numbers of houses proposed around the Erewash areas of Kirk Hallam, Stanton and Ilkeston by the Council in their Core Strategy plan, escalating already over-intensified proposed development further.
- The area is often too wet and swampy to support this housing and its traffic as parts of the fields in the application often flood during bad weather. Also, parts of the road in this area are flooded and become impassable at certain times of the year during poor weather conditions.
- Any development on these fields would only further add to the already proposed unnecessary loss of precious greenbelt and green land in the area and is a tragedy for the environment, local wildlife and physical and mental health giving benefits to residents.
- The regular heavy congestion around here is well known. Even without this application and other proposed residential and industrial development, this area already can't sustain the high levels of traffic. With what could only be a dramatic increase in heavy goods and other traffic even longer queues of congestion and higher levels of health detrimental emissions and pollution will occur.
- Directly across the road are Twelve Houses Cottages, listed buildings about 180 years old. Being situated so close by, surely ground shaking works and constant noisy traffic could not only harm the aged buildings and fragile footings and also increase road hazards and regular rumbling noise pollution for residents.
- Decimation of wildlife
- Loss of Green Belt
- Pollution and noise
- At this proposed development the annual average of pollutant PM2.5 is over double the WHO's limit.
- Increased congestion
- Traffic is already dangerously busy here
- Congestion at Bulls Head roundabout on Little Hallam Hill will be further added to by this development. This is not just an inconvenience to residents and road users, it is also a safety concern as emergency vehicles are unable to access large areas of Ilkeston within acceptable times to provide life saving services.
- I think it would not be unreasonable to look at trying to improve this junction to accommodate the building and construction traffic and also the extra cars belonging to the additional 196 dwellings. For example could Sowbrook Road be widened as it approaches the junction in front of Twelve Houses for through traffic, and a service road be kept for residents parking only.

- Ilkeston Road has pinch points which require HGVs to mount the verge and pavement to pass. This occurs along Ilkeston Road where the proposed housing will front. The added issue with this, is the majority of these HGVs are carrying waste materials which are regularly deposited on the highway and adjacent land. These vehicles mounting and discounting the curbs creates local noise and vibration which will affect the properties fronting Ilkeston Road. Setting the houses well back from Ilkeston Road with a substantial green screen would alleviate noise and road pollution (and prevent overshadowing when the 23m high warehouse be built to the east of the site on the other side of Ilkeston Road).
- Traffic is regularly (daily) at a standstill on Lows Lane, Sowbrook Lane, Ilkeston Road, Quarry Hill, Little Hallam (Stanton Road) and at the junction in Sandiacre. Additional vehicles will exacerbate this situation. I believe a full transport assessment, considering the Verdant Regeneration Development, Kirk Hallam Southern Extension and Stanton Lows Lane Housing Development should be undertaken prior to consideration of this application.
- Footway (and multiuser) provision in the local area is inadequate. There is no safe pedestrian or cycle route over the Nutbrook Trail therefore there is no sustainable transport method available for those on the development site to visit Ilkeston. The development and existing highway infrastructure therefore requires households to have motorised transport and is therefore unsustainable.
- The footway along Sowbrook Lane from Twelve Houses to Kirk Hallam is of insufficient width as is the footway along Ilkeston Road (less than 1 metre wide in places) to enable safe pedestrian access. Both roads have a 40mph speed limit with high volumes of traffic.
- Bus provision is inadequate. The Stanton by Dale 14 runs sporadically and not at hours conducive to standard employment hours or school hours.
- There is no safe pedestrian route into Sandiacre via Lows Lane due to poor quality footway provision and a pinch point at the road bridge within Stanton Works (footway width less than 1m).
- Non-vehicular access to Stanton by Dale village is currently difficult as the direct route, Stanton by Dale Footpath No. 18 is obstructed (and temporarily closed)
- No consideration has been taken regarding the Kirk Hallam Access Road which will exit / enter near to the site.
- I would like to see the existing informal footpath formalised and added to the Derbyshire County Council Definitive Map. It is a well used route, used for many years and connects two existing public footpaths.
- No infrastructure to support additional inhabitants
- No additional schools, doctor surgeries and dentists – these are all full already
- This is a beautiful piece of land
- I understand this development land is earmarked to be reclassified as green belt as an offset for green belt removed with the proposed Kirk Hallam southern extension and access road. This area is not classified as land available for housing development in the existing or replacement local plan.

- I do not classify this site as 'brownfield', which is possibly an intention by highlighting the abandoned mine shaft / bell pits on the site, these could be Roman, medieval or later. This site has been fields and latterly agricultural land since the 1840's according to historic mapping and aerial photography.
- The hedgeline bounding Ilkeston Road is likely to be in excess of 100 years old and should be retained as suggested in the Indicative Masterplan. The hedgeline running east - west within site should also be considered for retention. In particular any mature trees, for example the oak tree should be retained. Outline planning shows the removal of the east / west hedgeline. I object to removal of this hedgeline in it's entirety.
- I welcome the green infrastructure (retained hedges, circular pedestrian route, and access) provision. I am pleased to see that areas of the site are to be retained as green space. However, the quality of this green space is important. Currently the site is a barn owl, swallow, swift, housemartin, sand martin and bat feeding ground. During imposed years of set-aside as required by the previous landowner Stanton Ironworks, lapwings nested on the site. It is a hunting ground for barn owl, buzzards, kestrel and sparrow hawk. Skylarks are currently nesting on the site.
- The site is home and / or hunting ground to fox, badger, hedgehog and stoat. As the development site has remained fallow for many years, it will have a higher species count and is of greater value to wildlife than agricultural land. The outline application has put in limited mitigation for these species.
- It is a shame the outlook over the Nutbrook Canal and ponds cannot be better utilised with respect to the housing provision.
- I would not consider this an 'edge of settlement location'. It is immediately surrounded on most sides by agricultural or wildlife rich land. It is in essence a satellite location standing apart from local urban areas and town and village centres. With the current transport and highway provision I do not believe this to be a sustainable development.
- I am pleased to see that there will be a provision for affordable housing on the development site.
- I hope there will be provision for electricity generation on the site - rooftop solar photovoltaic or solar thermal.
- A New Stanton Village Green would be a welcome addition to the development. The Open Spaces Society are actively encouraging public space to be classified and protected as Village Greens.
- Depending on the size of gardens some allotment provision would be welcomed (Stanton by Dale village residents are keen on securing allotment space).
- I believe the development will detrimentally alter the setting of Grade II Listed New Stanton Cottages. When viewed from Quarry Hill, Ilkeston Road and Sowbrook Lane, the outline plan indicates that new buildings will obscure part of the terraced row. Their isolated setting at the road junction will be compromised.
- Whilst I would prefer the open aspect outlook of field and hedging as exists at present, I appreciate the proposed development has been designed relatively sympathetically. However, in my opinion other

brownfield sites should be utilised in advance of this site (Oakwell Brickworks, Stanton South). My main concern is the Stanton and Kirk Hallam area will end up with multiple piecemeal developments, no added local services, inadequate infrastructure upgrades and the existing (problematic) brownfield sites remain undeveloped. With the number of developments (industrial and housing) proposed for this area a joined up scheme is necessary. My hope is Erewash Borough Council / Derbyshire County Council will take a lead on this.

- YOU, the council have already given permission for 1200 houses to be built on greenbelt land in Kirk Hallam, something that the local residents are appalled by, and object most strongly to. Now you are looking to pass permission for almost another 200 to be built only a stones throw away!!! The mind boggles at the sheer stupidity of the proposal!
- The council has already stated that Pewit golf course will be closing down, and you have plans to turn the area into a 'nature reserve'. In a few years time, when the reserve hasn't 'worked out', you could apply for a change of use on the land and build there. I'm sure you could fit both the 1200 and the 200 on that land?
- Why are Erewash Borough Council so hell bent on dumping the majority of all new builds in the Ilkeston area? We have had more than our fair share over the past 20 odd years. Perhaps it's time to look further around the borough for more suitable sites!
- I understand that the council would like the extra (at least) £250,000 council tax each year (Band A rate £1275 x 196) but until infrastructure improvements are made I will continue to object to more housing in a area that is struggling to provide adequate medical, education, transportation and environmental improvements.
- Outside of Erewash's own Local Plan / Core Strategy guidelines – this was not included within Erewash's own Core Strategy guidelines up to this point. The Core strategy has been communicated as providing the development needs for the Borough for the next 15 years. Making any additional changes to this from this point, makes a mockery of this strategy and approach.
- This location is protected Green Belt land – I refuse to accept any further degradation of the green spaces around our communities in Ilkeston. This is not acceptable and we should not allow any further development on designated, protected, Green Belt land.
- The details of the site or proposals are either not available or not easy to locate.
- Overdevelopment of site.

### **Assessment**

The issues for consideration are as follows:

- Status of local policies
- The principle of the development
- Highways matters
- Ecological matters

- Visual impact
- Amenity for future occupiers
- Heritage matters
- Developer contributions
- Flood risk matters
- Ground conditions
- Emerging Core Strategy policies
- Other matters

### Status of local policies

It is now over five years since the Erewash Core Strategy was adopted. The National Planning Policy Framework (NPPF) therefore defines the Core Strategy as being 'out of date' and diminishes the robustness and level of weight it carries, particularly in reference to those policies that influence the scale and location of new housing. The Core Strategy is further deemed out of date as a consequence of the council's current inability to identify a five-year supply of deliverable housing land. Whilst work to review and update the Council's Strategic Housing Land Availability Assessment (SHLAA) document ahead of the forthcoming submission of the Core Strategy Review is ongoing, the last reported position in respect of Erewash's housing land supply (December 2019) saw the identification of a 3.43 year supply. The consequence of this is that all housing proposals should be considered in the context of NPPF Paragraph 11d.

NPPF Paragraph 11 establishes that plans and decisions should apply a presumption in favour of sustainable development. 11d states that where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, permission should be granted unless (i) the application of policies in the NPPF protecting 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 the NPPF taken as a whole. This has become known as the "tilted balance" and will be addressed following the assessment of the proposals against the NPPF policies in their entirety.

### The principle of the development

The site sits at the corner of Sowbrook Lane and Ilkeston Road, a busy priority T-junction with vehicles travelling on the former required to give way to the latter. Land adjacent to the site displays a diverse range of uses including an electrical sub-station, private ponds, Grade II listed residential properties and currently under-utilised/vacant employment land. Notwithstanding these uses, much of the wider area is largely undeveloped and is remote from any nearby settlement. An analysis of local facilities shows the closest cluster of shops and services to be located 1.6km away at Queen Elizabeth Way in Kirk Hallam. A very limited range of services can be accessed at Stanton-by-Dale also 1.6km away from the application site - albeit this journey involves a progressively steepening route, limiting the ease in which these facilities can be accessed.

As there are no local services located in proximity to the site and the closest are located relatively distant from it, the site is not in a sustainable location. Occupants of the proposed housing would be heavily reliant on the use of the private car to access the nearest convenience retail facilities, contributing to the promotion of an unsustainable pattern of travel. This is contrary to aspects of provisions set out in Core Strategy Policy 10: Design and Enhancing Local Identity and Policy 14: Managing Travel Demand. The proposals would not constitute sustainable development as a consequence. Paragraph 9 of the NPPF advises that decisions on planning applications should play an active role in guiding development to sustainable solutions. The proposals conflict with that objective.

Policy 10 presents a set of design-based criteria that all new development must meet. Its first criterion (1a) requires new development to make a positive contribution to the public realm and sense of place. As already described, 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. 1b requires the creation of an attractive, safe, inclusive and healthy environment. Whilst layout and appearance are reserved matters, it is considered that the unsustainable location would make it impossible to achieve this. 1c requires new development to have regard to the local context and reinforce valued local characteristics. In similar ways to 1a, a housing scheme at this location will also struggle to achieve this owing to the largely undeveloped environs the site is situated within. This does not lend itself to the identity of a strong built context.

Criterion 1d addresses the need to reduce the dominance of motor vehicles. As noted above, the unsustainable location, including the proposed development's remoteness from shopping and convenience facilities, would inevitably place reliance on use of motor vehicles. The physical disconnection from services is likely to influence a high level of car dependency. The characteristics of routes around the application site do not encourage travel by foot or bicycle. Ilkeston Road & Sowbrook Lane have narrow pavements which are located only on one side of the highway. On both roads, those pavements are on the opposite side to the application site. There are no formal crossing points and the application does not propose any. The key access route northwards along Ilkeston Road sees a 250 metre long section of highway without pavement on either side of the carriageway, which prevents safe pedestrian movement in the direction of Ilkeston town centre, employment areas or schools. Both the adjacent highways have 40mph speed limits. Sections of the highways are unlit. There is no segregated provision for people on bicycles and as such they would be required to use the main carriageways which are narrow, busy and, particularly on Ilkeston Road, used by a multiplicity of heavy goods vehicles accessing the surrounding industrial and commercial sites. As such, the existing carriageways are far from conducive to people commuting from the application site by bicycle. With mature hedgerows tightly lining the highway space around the application site, options to widen pavements and encourage pedestrian movement are extremely limited without the widespread removal of hedgerows – something which would cause unacceptable harm to local character and ecology.

Policy 14 establishes the Council's approach to reducing the demand for car-based travel arising from new development. It sets out a framework in which the Council will make decisions on the sustainability of proposals to secure developments in accessible locations. Of particular relevance to this scheme is 14(2) which requires development sites to be readily accessible by walking, cycling and public transport. Where deficiencies exist, these are expected to be fully addressed. However, from the considerations above it is evident that there are fundamental shortcomings with the ability of the site to adequately integrate with the surrounding movement network that links it to nearby areas. The site is poorly served by public transport. The no.14 bus service passes along Ilkeston Road (travelling between Ilkeston and Sandiacre) with a stop at Twelve Houses, although this is only an hourly service and does not operate on Sundays and Bank Holidays. The infrequency of services contributes to the view that the site has a weak overall relationship with the wider sustainable movement and travel network. The applicant's supporting statement refers to this proposal including additional bus stops, however, such provision is not detailed on the submitted plans and no detail is provided or evidence included suggesting agreement from operators or the highway authority that these could be accommodated, and as such the suggestion attracts little weight.

In summary, 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. The proposal does not constitute sustainable development.

### Highways matters

The application includes the matter of access for consideration now and the application submissions include a Transport Assessment.

Whilst some of the applicant's submissions make reference to the development approved at the adjacent New Stanton Park site, their Transport Assessment advises that "We are not aware of any permitted developments within the locality of the proposal Site." This lack of awareness has resulted in the submission being somewhat deficient. For example, it fails to make reference to junction improvements which were required as part of that development immediately adjacent to the current application site at the Ilkeston Road/Sowbrook Lane/Lows Lane junction. It also fails to make reference to the Council's proposals for a Kirk Hallam relief road related to the Emerging Core Strategy proposals for a strategic housing site to the west of Kirk Hallam. The Assessment does make reference to the addition of signals at the junction of Quarry Hill Road and Little Hallam Hill which were included in a section 106 agreement for the approved scheme for houses on Quarry Hill Road. However, following further consideration of that matter by the Highway Authority, that signalisation was not considered to be necessary or efficacious and an alternative set of works to amend the junction through the addition of a pedestrian refuge was subsequently agreed in July 2021.



In light of these omissions and flaws in the applicants' Transport Assessment, the Highway Authority considers that 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 and they have objected on this basis. It is considered that this represents a reason for refusal.

Turning to more detailed matters, a plan submitted within the applicant's Transport Assessment shows that access would be taken from two new site accesses, one on Sowbrook Lane and one on Ilkeston Road. Both would require the widening of the carriageways.

As considered in the previous section, the existing highway surrounding the site has limited, and in some places no provision for pedestrians and no segregated provision for people travelling by bicycle. The applicant's Transport Assessment offers no assessment of the quality of the Ilkeston Road pavement or carriageway, or their suitability for walking and cycling. The Assessment does aver that the pavement along Sowbrook Lane is narrow in places and includes a map showing elements which could be widened through the narrowing of the carriageway. However, these suggestions do not form part of the current application, and do not appear to have been discussed with the Highway Authority. The notion, therefore, attracts no weight.

Derbyshire County Council as Highway Authority have objected to the application as "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, increasing the potential for conflict with vehicles contrary to the best interests of highway safety." It is considered that this matter, supported by the Highway Authority's objection, represents a reason for refusal.

The visibility splays for the proposed new road access points include land which is currently highway verge in the ownership of the County Council and currently contains significant lengths of mature hedgerow and mature trees.

To deliver the proposed visibility splays, the removal of significant amounts of existing hedge and trees which sit partially within the application site and partially within the highway verge would be necessary. The visibility splays run for distances of 120m in both directions from the proposed accesses on both Sowbrook Lane and Ilkeston Road, with removal of the entirety of the vegetation being necessary for approximately half of that distance, as illustrated on the proposed access plan which has been included at appendix J of the Transport Assessment.

The applicant's Planning Statement advises that "some vegetation would need to be removed to create these access points", but little assessment is made as to the visual or ecological impact of the significant losses required to deliver the proposed visibility splays. The indicative site layout plan conversely shows the retention of the existing hedgerow within the visibility splay heading north from

the proposed Ilkeston Road access, but this is clearly an error as the very nature of a visibility splay is that it must be clear of obstructions to visibility.

The Highway Authority has advised that they have no objection to the type of junctions proposed at the two site accesses, however, they have specified a range of shortcomings in the design proposed. They consider that at both Sowbrook Lane and Ilkeston Road: the deceleration lane has insufficient length; the footway is lacking; and that there should be a pedestrian refuge. It is considered that these shortcomings would be contrary to the best interests of highway safety and warrant refusal of the application. They also consider that the junction should be wide enough to allow for a future bus route, however, this point is not considered to represent a reason for resisting the application.

In conclusion on highways matters therefore, the proposals would fail to deliver a choice of means of sustainable transport as required by the NPPF. Due to the location of the site and the poor options for sustainable transport to/from it, the site would be heavily reliant on the private car. This would conflict with the objectives of para 112 of the NPPF. Additionally, the proposals would result in the loss of significant lengths of mature hedgerow and mature trees to deliver the visibility splays required. Their loss would have a detrimental impact on the visual amenity of the road frontages, detracting from their rural character and have a detrimental loss on interests of biodiversity. The Highway Authority have furthermore identified highway safety concerns with regard to the detailed design of the proposals. The NPPF advises in para 111 that in such cases, permission should be refused.

### Ecological matters

As noted above, the visibility splays for the proposed accesses would necessitate the removal of significant amounts of existing hedge and trees which sit partially within the application site and partially within the highway verge. The visibility splays run for distances of 120m in both directions from the proposed accesses on both Sowbrook Lane and Ilkeston Road, with removal of the entirety of the vegetation being necessary for approximately half of that distance.

A Preliminary Ecological Appraisal (PEA) accompanies the application and Derbyshire Wildlife Trust (DWT) were asked to provide comments on it. The Ecological Appraisal is based upon field surveys of the site undertaken in 2021 and 2022 which in turn were informed by an appropriate desk study. Amongst other things, it describes "hedgerows that are generally intact and thick providing good foraging and commuting potential for bats throughout the site" and also contends that they could be used by birds and hedgehogs. It also describes the proposal as requiring "minimal losses of scrub and hedgerow habitat and trees". On the basis that the assessment does not actually assess what is proposed, i.e. the loss of a significant amount of hedge and trees, its conclusions would not address the impact of the proposal and can, therefore, be accorded little weight in favour of the application. However, it is considered reasonable to conclude that the loss of a significant amount of hedgerow and trees which provide habitats, food and commuting routes for a range of species, would cause harm to biodiversity.

One matter where the Ecological Assessment does identify an impact is on bird habitats. Periodically, the Royal Society for the Protection of Birds works with other nature and conservation organisations to compile the UK Birds of Conservation Concern report. Each type of bird is assessed and put on the Green List, Amber List or Red List depending on the level of concern relating to species decline, with Red being those in most urgent need of help. The applicant's submission includes details of surveys undertaken on the site. Two Red List species were observed on the site (Skylark and Mistle Thrush) and eight Amber List species. Even without assessing the impact of the removal of a significant amount of hedgerow, the assessment concludes that the loss of open grassland would have a detrimental impact on birdlife. Whilst the assessment concludes that "The areas of retained grassland are unlikely to be of sufficient size to provide skylark nesting habitat and mitigation for the loss of nesting habitats would need to be delivered off-site", the application makes no proposal for such off-site mitigation.

The proposal would result in the loss of a significant amount of hedgerows 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 National Planning Policy Framework 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.

### Visual impact

The proposal would have a visual impact upon what is currently a large, open and undeveloped field. Whilst layout, scale, appearance and landscaping are reserved matters, it is clear that the impact of the erection of 196 houses across this open field would have a significant impact on the character and appearance of what is currently a rural landscape. The proposal would have a detrimental urbanising impact. The boundary hedgerows provide a strong contribution to local character. The loss of much of that characteristic boundary treatment would amplify the impact of the built development in its surroundings.

Saved Policy H12 requires that proposed housing development is compliant with the following criteria: the proposals (1) are in scale and character with their surroundings; (2) have regard to distinctive landscape features and provide supplementary landscaping where appropriate, particularly where the development is visually prominent or situated on the established urban fringe; (3) provide adequate amenity space for each dwelling; (4) an acceptable standard of privacy within private garden areas is achieved by visually appropriate boundary treatment; (5) are located so as to avoid being unduly affected by noise or smells from nearby uses that would be expected to generate such effects.

With regard to (1), as detailed above, the proposed development is considered to be out of character with its surroundings. With regard to (2), as considered above, the proposal would lead to the loss of the open landscape which is

characteristic of the area. (3) and (4) could be satisfied at reserved matters stage. Point 5 is considered in detail in the following section. Due to the failure to meet criteria (1) and (2), the proposal would be contrary to Saved Policy H12.

Core Strategy Policy 10: Design and Enhancing Local Identity complements Policy H12 with one requirement being that applications are assessed in terms of their treatment of structure, texture and grain, including street patterns, plot sizes, orientation and positioning of buildings and the layout of spaces. For the reasons detailed above and in the *principle of the development* section of this report above, it is considered that the proposed development would not follow the existing pattern and would not integrate with the existing character and as such the proposal is contrary to Core Strategy Policy 10.

#### Amenity for future occupiers

A Noise Assessment has been submitted with the application. It identifies a range of noise sources in the locality and advises that they necessitate mitigation measures in the layout of the site such as setting dwellings away from site boundaries, the detailed design of dwellings, and the inclusion of physical barriers. Members will be aware that the council has recently approved a strategic development on New Stanton Park, on the opposite side of Ilkeston Road which includes provision of up to 261,471 sqm of employment development on the site comprising a mix of Use Class E(g)(iii) light industry, B2 general industry, and B8 storage and distribution. On the developed part of that site closest to the current application site (i.e. not including the water based elements which sit north and north west of this site), labelled as Plot 1 on the approved plans, buildings of up to 24m in height have been approved. The Noise Assessment submitted with the current application gives no consideration to the impact of that approved development. Given the industrial uses permitted, their scale and the layout approved for development plots on New Stanton Park, it is considered that there is clear potential for noise and other impacts from that development on the amenity of potential future occupiers of this proposed residential development.

Whilst the application is in outline and approval of layout and appearance of the dwellings is not proposed, the indicative layout proposes houses in close proximity to the eastern boundary of the site, which would be in proximity to the harmful impacts. Based on the proposed number of dwellings (196) it is inevitable that dwellings would be proposed in close proximity to the nearby industrial development and yet the likely noise impacts are not considered within the applicant's Noise Assessment. Furthermore, it has not been demonstrated through the application submissions that the harm arising could be adequately mitigated.

As such, it is considered that the proposal would be likely to lead to unacceptable living conditions for occupiers of the proposed dwellings, contrary to the NPPF, Policy 10 of the Core Strategy and Saved Policies H10 and H12.

## Heritage matters

The County Council's Archaeologist has identified a range of shortcomings in the submitted Heritage Statement. The Archaeologist has referred to: the site lying over a 19<sup>th</sup> century southern extension, the Stanhope Arm, of the Nutbrook Canal and the projected routeway of an early 19th century tram way which linked Dale Abbey Ironworks to the Stanhope Arm of the Nutbrook Canal; the presence of medieval ridge and furrow in the centre of the site; a hedgerow which is recorded on the Sandersons map of 1835 and is thus old enough to possibly class as important; a range of publicly available records relating to archaeological matters on the site. The Archaeologist requested an amended statement to address these shortcomings. As the proposal is otherwise unacceptable, it was not considered appropriate to request such amendments. Whilst the comments are noted, it is not considered that these shortcomings amount to a reason for refusal.

The designated heritage asset to be considered is the Grade II Listed New Stanton Cottages, also known as Twelve Houses, which is a terraced block sitting on the opposite side of Sowbrook Lane. The applicant's Heritage Statement concludes that the proposed development would have a "minor adverse effect" on the setting of the listed building. This Authority's heritage consultant agrees with that assessment. Whilst having a historic connection with the nearby ironworks, New Stanton Cottages were set away from the ironworks, constructed in an agrarian and tranquil setting which has remained the case to some degree. Whilst detailed design matters have been reserved, it is considered inevitable that development of this site would result in a considerable urbanisation of the immediate environs and across the principal outlook from New Stanton Cottages. Lows Lane and Ilkeston Road are busy and Twelve Houses sits at a busy junction, with a range of commercial and industrial development in the locality. Notwithstanding that, Sowbrook Lane retains something of a rural character which the proposal, including the removal of a significant amount of the well-established hedge, would harm.

The proposal would result in adverse changes to the setting of the Grade II listed building which would detract from the manner in which it is experienced, appreciated and understood. This is considered to meet the threshold of "less than substantial harm" to the designated heritage asset.

Paragraph 200 of the NPPF specifies that "Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification." Noting the various other matters considered within this report which are considered to weigh against the proposal, and the absence of weight in its favour, it is not considered that a clear and convincing justification has been made.

Paragraph 202 of the NPPF specifies 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 including, where appropriate, securing its optimum viable use." Such public

benefits have not been identified by the applicant and are not considered to exist given the clear conflicts with national and local planning policies.

The Council's Heritage Consultant considers that the proposal would have an impact on the setting and experience of the Nutbrook Canal and bridge on Ilkeston Road and that the rural situation would be urbanised by the development. Noting that the assets are non-designated, it is not considered that the potential impact upon them provides sufficient reason for refusal.

#### Developer contributions

A statement on developer contributions was submitted with the application. As the proposal is unacceptable in principle, it has not been considered necessary to pursue these matter in detail with the applicant. If the application were to be approved, it would be expected to deliver mitigation through contributions to off-set harm caused.

#### Flood risk matters

A minor part of the site along its northern boundary sits within Flood Zone 2. A Flood Risk Assessment has been provided and this has been considered by Derbyshire County Council as Lead Local Flood Authority (LLFA) and the Environment Agency. The Environment Agency has provided no detailed comment and referred to its standing advice. It is the view of the LLFA that additional clarification is required in order to make a judgement as to whether the details of the proposal are acceptable in flood risk terms. However, they do not object to the principle of development. In light of the fundamental planning policy objections to this proposal, and noting the lack of an objection from the LLFA and the Environment Agency, answers to the LLFA's queries were not sought from the applicant. It is also noted that the questions related to detailed design, approval of which is not sought at this stage.

#### Ground conditions

The planning application is accompanied by a Coal Mining Risk Assessment (November 2021, prepared by BWB) which identifies that a coal seam is recorded to have been worked at shallow depth beneath the site and considers that the stability risk posed by these workings is high. Accordingly, the report goes on to make appropriate recommendations for the carrying out of intrusive ground investigations, in order to determine the extent and condition of the shallow coal workings beneath the site. The Coal Authority has been consulted on the submissions and has raised no objection to the proposal subject to a condition requiring such further investigations. In the absence of an objection from them, the application should not be resisted on the basis of this matter.

A report identifying the potential for contaminated land has been submitted with the application which has been assessed by the Council's Contaminated Land Officers. They concur with the recommendation for further investigation works and raise no objection subject to a condition in that regard. In the absence of an

objection from them, the application should not be resisted on the basis of this matter.

### Emerging Core Strategy policies

The Council's Core Strategy Review is at an advanced stage and preparations are underway to submit this to the Secretary of State for independent examination. In March 2022, the Council undertook public consultation over a Publication (Regulation 19) version of its Review. Paragraphs 48 & 49 of the NPPF enable councils to give weight to relevant policies in emerging plans according to:

- a) The stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given);
- b) The extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and
- c) The degree of consistency of the relevant policies in the emerging plan to the NPPF (the closer the policies in the emerging plan to the policies of the NPPF, the greater the weight that may be given).

With the Council having completed a Regulation 19 consultation, it is considered that the policies within the Core Strategy Review are sufficiently advanced in their preparedness to carry weight in providing direction over decisions on any applications not in conformity with the emerging policy framework. The NPPF is clear however that an application cannot be refused on grounds of prematurity unless both of the following aspects apply:

- a) The development is so substantial, or its cumulative effect would be so significant, that granting consent would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging plan; and
- b) The emerging plan is at an advanced stage but is not yet formally part of the development plan for the area.

The Core Strategy Review is the appropriate mechanism to deliver new housing sites in a sustainable manner to address the identified shortfall in land supply. The development proposal in this application, comprising up to 196 new homes, is of a comparable scale to the Core Strategy Review's strategic allocation sites at "North of Spondon" (200 homes – SGA26) and "North of Cotmanhay" (250 homes – SGA7). Both those sites are considered strategic in their scale and vital in boosting housing delivery in Erewash. In that context, the proposed development is considered to be so substantial that granting permission would undermine the plan-making process because 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 site allocation set out in the emerging Core Strategy Review. The application site was promoted by the landowner through the Core Strategy Review process and rejected by the council. The landowner's objection

to this rejection will be considered in due course through the Core Strategy Review Examination.

The application site has alternatively been identified by the Council through its Core Strategy Review as land that should form part of an extended Green Belt designation. Such action is deemed necessary as a response to major proposed developments on each side of the application site, emphasising the need to maintain openness between the Borough's largest residential and employment developments. The aforementioned granting of outline permission for up to approximately 260,000 square metres of new employment facilities at "Stanton North", east of Ilkeston Road will see the establishment of a strategic industrial development just a few metres away from the current application site's eastern boundary. Combined with residential development at the SGA25 strategic allocation projecting southwards from Kirk Hallam and stopping just west of Sowbrook Farm, new housing at the application site would effectively create a contiguous band of development sweeping through from Kirk Hallam all the way around the south of Ilkeston to the eastern edge of the Stanton North employment site. The proposed designation of land as Green Belt across the application site (and extending slightly beyond) provides a degree of openness between an expanded Kirk Hallam and new industrial facilities at Stanton North.

Granting permission for a major housing development at the application site would undermine the ability to maintain openness between an expanding settlement and a strategically sized new employment zone. It is therefore considered that both criteria a) and b) of NPPF Paragraph 49 can reasonably be met in supporting the refusal of the application.

Additionally, the application site is located within an area of the Borough that the Core Strategy Review proposes to allocate as a Strategic Green Infrastructure Corridor. The Nutbrook Strategic Green Infrastructure Corridor, one of four in Erewash, forms a key off-road, non-motorised Green Infrastructure route running around the west and south of Ilkeston. Objectives of the Strategic Green Infrastructure Corridors are to provide sustainable floodwater management, biodiversity improvement (including natural carbon capture), active travel and open space recreational uses. Major residential development within the draft Nutbrook Strategic Green Infrastructure Corridor would compromise the objectives of Strategic Policy 5: Green Infrastructure, as the proposal would adversely affect the ability of the plan to deliver Strategic Green Infrastructure Corridors that can achieve the key characteristics as set out in the policy. Approval of this major residential scheme within the extent of a Strategic Green Infrastructure Corridor would undermine the Core Strategy Review objectives for the role the Council wishes such areas of the Borough to play.

During the Core Strategy Review consultation process, the applicant has made representations with regard to the emerging policies affecting the site. In summary they consider that the restrictive policies of the emerging plan should not apply. Had those designations not been contested, they would have had significant weight. Although that weight is reduced by the challenge, the emerging Core Strategy policies remain a material consideration.



For members' information, the applicant's objections raised through the Core Strategy Review process can be summarised as follows:

*The proposal to allocate additional 27ha of Green Belt should be removed as it is contrary to the NPPF. No exceptional circumstances justifying establishing this element of the Green Belt have been presented. Retaining separation between Kirk Hallam and Stanton is flawed; both these areas are part of the same urban area, development of the land would not result in two towns merging (would be infill on edge of existing town instead). This area of land would do nothing to contribute towards the main role of the Green Belt in this area; to maintain separation between Nottingham and Derby.*

*Policy 5 (Green Infrastructure) – Site is an agricultural field and does not include any of the natural assets listed by the policy other than a small section of flood plain. The Nutbrook Green Infrastructure Corridor should be focussed along the Nutbrook Canal, Nutbrook and Nutbrook Trail.*

These matters will be considered in detail through the Core Strategy examination process and it is considered that they have been appropriately addressed above.

In summary, with regard to the emerging Core Strategy Review, it is considered that the proposal would be contrary to the proposals for an expanded Green Belt, harmful to the development of a Strategic Green Infrastructure Corridor and is considered to be so substantial that granting permission would undermine the plan-making process. As a consequence, the application should be refused on this basis.

### Tilted balance

As addressed earlier in the report, in cases where the strategic housing policies of the Core Strategy are out of date and the council cannot demonstrate a 5-year housing land supply, the "tilted balance" applies.

The development proposed is not considered to constitute sustainable development and it is questionable whether the titled balance needs to be applied where the decision would not affect the delivery of sustainable development. However, for the avoidance of doubt, the assessment undertaken throughout this report has identified several areas where the proposed development is considered to conflict with the policies and objectives of the NPPF. Accordingly, it is considered that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF taken as a whole.

As such, the titled balance does not weigh in favour of granting permission and it is recommended that planning permission should be refused.

## Other matters

A number of objectors have criticised the Council for “making this proposal”, however, the Council is not the applicant and has not made the proposal. An objector has contended that the Council has a wish to “keep this quiet”. The application has been advertised by way of six site notices, a press notice, publication on the Council’s website and consultation of a range of statutory consultees and as such it is considered that there is no basis for the objector’s contention. An objector has contended that the Council is motivated by the Council Tax which would be paid by occupiers of the proposed dwellings. Whilst such a matter is not a material planning consideration, it is noted that the occupiers of the dwellings would place additional demand on Council services which are partially funded by Council Tax, however, the matter attracts no weight in the planning balance. An objector has averred that “The details of the site or proposals are either not available or not easy to locate.” However, a site location plan published on the Council’s website identifies the site unambiguously.

A number of objectors have contended that the listed buildings at Twelve Houses are not structurally sound and as such would be at risk from construction work on the application site. It is noted that the buildings have stood in proximity to highways and relative proximity to a variety of industrial uses since 1848 and that the occupiers of Twelve Houses who have objected to the proposal have not made any reference to their houses’ structural integrity. It is not considered that the contention attracts any weight.

It is noted that a number of both material and non-material planning considerations have been raised by members of the public and that a range of issues have been raised by consultees which have not been considered in detail above. In the event that the Council had been minded to grant planning permission, it is considered that adequate information has been provided to demonstrate that the site could accommodate the amount of development proposed. In such an instance the remaining matters relating to the proposed development, and the material matters raised by consultees, could have been controlled either via planning conditions or through a Section 106 planning obligation.

## Conclusion

The site is in an unsustainable location, remote from services, with poor options for walking and cycling to services further afield. Those poor options would result in a highway safety risk. The proposed visibility splays would necessitate the removal of considerable lengths of hedgerow, harming visual amenity and biodiversity. The design of proposed junctions is poor in highway safety terms. 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. Harm to ecology would occur through the loss of habitats. The proposed development would have a harmful visual impact. An inadequate standard of amenity would be provided for future occupiers. Harm would be caused to the setting of the listed New Stanton Cottages. The proposal would be contrary to policies on the Green Belt and

Strategic Green Infrastructure Corridors contained within the emerging Core Strategy. It is not considered that the titled balance requirement of para 11d of the NPPF weighs sufficiently in favour of the development given the harm identified above.

**Recommendation**

REFUSE

**Reasons**

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.
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.
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.
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.
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.

### **Positive and Proactive Statement**

The proposed development is considered to be fundamentally contrary to both national and local planning policy and the agent is aware of the Council's position on the development as advised at pre-application stage. It was therefore not considered possible to work in a positive and proactive manner in order to overcome the reasons for refusing this application.

**ITEM 4    APP REF:  
ERE/0722/0038**

**OUTLINE APPLICATION FOR UP TO 196  
DWELLINGS WITH ALL MATTERS RESERVED  
OTHER THAN THE MEANS OF ACCESS  
AT LAND NORTH WEST OF 1 TO 12 TWELVE  
HOUSES, SOWBROOK LANE, STANTON BY  
DALE, DERBYSHIRE FOR WULFF ASSET  
MANAGEMENT LIMITED**

#### Further consultation responses

Since publication of the main committee report, further submissions have been made by the applicant's agent in response to comments made by consultees. In response to re-consultation, some further comments have been provided by those consultees.

The agent provided a further statement in response to comments from the Council's Planning Policy Team. The statement was a reassertion of points made in the original planning statement submitted with the application. The Planning Policy Team have considered the Agent's comments but do not consider these add anything material to the assessment of the application and accordingly raise no further comments.

Derbyshire County Council's Flood Team had raised a number of queries which were addressed in a statement by the agent. The Flood Team responded to advise that they have no objection subject to a range of conditions. As none of the recommended reasons for refusal relate to flooding matters, this response does not alter them.

In response to comments from this Council's heritage consultant and the County Council's Archaeologist, an amended heritage statement was submitted with additional information contained therein. The County Council's Archaeologist considers that the amended statement does now provide a procedurally sufficient assessment of what is on the site. This Council's heritage consultant notes that the amended statement reaches the same conclusion as the original statement, which is that harm would be caused to the setting of the listed terraced block (Twelve Houses). As such, there are no amendments to the heritage related reason for refusal.

A late response to the original Travel Plan has been provided by the Sustainable Travel team within the Highway Authority. They consider the Travel Plan to be lacking an Action Plan. They consider that the Travel Plan provides a list of possible actions, and does not specify what would be done, by whom, and when. On the basis of the proposal being unacceptable for the fundamental reasons detailed in the main report, whilst these comments have been shared with the applicant's agent, that has been done for information only. No amended submissions have been sought as it is considered that the

reasons for refusal cannot be overcome. It is considered that the shortcomings of the travel plan are related to the fundamental shortcomings of the site and its unsustainable location. As such, it is considered that they provide support for the existing reasons for refusal, rather than providing an additional one.

The recommendation remains to refuse the application for the reasons detailed in the main committee report.

# Planning Committee Checklist Supplementary Report

Application Ref: ERE/0722/0038

Case Officer: \_\_\_\_\_ JAG \_\_\_\_\_

Committee Date: \_\_\_\_\_ 12/10/22 \_\_\_\_\_

	Officer	Date
1. Supplementary Report Drafted	JAG	11/10
2. 1 <sup>st</sup> Check of report	RS	12/10
3. 2 <sup>nd</sup> Check of report	N/A	
<b>Pass report to Admin team by 12pm on Committee day</b>		
4. Report compiled/formatted		
5. Report emailed to Democratic Services		

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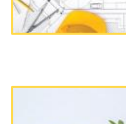
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