



Ministry of Housing,  
Communities &  
Local Government

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Our ref: APP/M1005/V/18/3194115  
Your ref: SWC/LH/HG0199

11 October 2018

Simon Chadwick  
WYG Environment Planning Transport Ltd  
Rowe House  
10 East Parade  
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HG1 5LT

Dear Sirs,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 77  
PLANNING APPLICATION BY PEVERIL SECURITIES LTD & VAILLANT GROUP UK  
LTD  
LAND AT BULLSMOOR, OFF NOTTINGHAM ROAD, BELPER  
APPLICATION REF: AVA/2017/1040**

1. I am directed by the Secretary of State to say that consideration has been given to the report of C J Ball DArch DCons RIBA IHBC, who held a public local inquiry between 10-13 and 17-19 April 2018 into your client's planning application to Amber Valley Borough Council ("the Council") for a maximum of 6,000 sq m of B1/B8 floor space for the manufacture/assembly of heating appliances/boilers and parts; Offices (Non-ancillary); the storage and distribution of heating appliances/boilers and parts; and for any other use or uses within Class B1 and/or B8; and a maximum of 6,500 sq m (B1a - Offices) and maximum of 7,500 sq m (B1c- Light Industry) alterations to service yard, provision of car parking and vehicle manoeuvring areas and point of access onto Nottingham Road, in accordance with application ref: AVA/2016/1040, dated 11 September 2017.
2. On 19 January 2018, the Secretary of State directed, in pursuance of Section 77 of the Town and Country Planning Act 1990, that your clients' application be referred to him instead of being dealt with by the local planning authority.

**Inspector's recommendation and summary of the decision**

3. The Inspector recommended that planning permission be refused. The Inspector also considered a separate appeal for a mixed use development on broadly the same site

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(APP/M1005/W/17/3183493), and the Secretary of State's decision on that case is attached for information.

4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and agrees with his recommendation. He has decided to refuse planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

#### **Matters arising since the close of the inquiry**

5. On 30 July 2018, the Secretary of State wrote to the main parties giving them the opportunity to make representations on the publication of the new National Planning Policy Framework. His letter also gave parties the opportunity to comment on correspondence between the Inspector of the emerging Amber Valley Local Plan and the Council.
6. Responses were received from your company on 13 August 2018 and from other parties. The Council in their response of 20 August 2018 forwarded a further note from the Inspector of the emerging Amber Valley Local Plan. All responses were circulated to the main parties on 21 August 2018. Copies of all correspondence referred to above may be obtained on written request to the address below. A list of representations which have been received since the inquiry is at Annex A. Copies of these letters may be obtained on written request to the address at the foot of the first page of this letter.

#### **Policy and statutory considerations**

7. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
8. In this case the development plan consists of saved policies of the Amber Valley Local Plan (AVLP) to 2011, adopted in 2006. The Secretary of State considers that the development plan policies of most relevance to this case are those set out at IR24.
9. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'). The revised National Planning Policy Framework was published on 24 July 2018, and unless otherwise specified, any references to the Framework in this letter are to the revised Framework.
10. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the proposals, or their settings or any features of special architectural or historic interest which they may possess (referred to below as "the section 66 duty").
11. In accordance with section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special attention to the desirability of preserving or enhancing the character or appearance of conservation areas.

### *Development plan*

12. With regard to the AVLP, the Secretary of State notes the Inspector's conclusion at IR24 that policy EN29 is generally consistent with the Framework heritage policy objectives, and he therefore agrees that this Policy should carry significant weight.
13. The Secretary of State also notes the Inspector's analysis of Policy ER3 (IR25), which allocates the site for employment purpose only. He agrees with the Inspector's assessment that, while the policy might be consistent with Framework economic growth policies, there is some tension between Policies ER3 and EN29, which affects the weight it can carry and, for this reason, the Secretary of State considers that policy ER3 carries moderate weight.

### *Emerging plans*

14. The draft Amber Valley Borough Local Plan (AVBLP) was submitted for independent examination on 2 March 2018. The examination is currently paused to enable the Council to conduct a Green Belt review and a revised housing trajectory for the Plan period, along with an updated 5 year housing land supply calculation. The site was included in a previous draft of the Plan, but is not currently allocated for any purpose in the submission draft of the AVBLP.
15. Paragraph 48 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework.
16. The inspector at IR26 considers that the AVBLP is at a fairly advanced stage and, for the reasons stated, the fact that the site is not allocated is consistent with heritage protection policies in the Framework. The Inspector considers that the AVBLP therefore carries at least moderate weight. However, because of developments since the Inquiry, in particular the reasons for the pausing of the AVBLP examination, the Secretary of State gives only limited weight to the policies of the emerging AVBLP.
17. The Belper Neighbourhood Plan has not yet reached referendum stage. The Secretary of State agrees with the Inspector at IR27 that the Neighbourhood Plan therefore carries very limited weight.

### **Main issues**

#### *Impact on the Derwent Valley Mills World Heritage Site (WHS) and other heritage assets*

18. The Secretary of State has carefully considered the Inspector's detailed analysis of the significance of, and the potential impact on, the WHS at IR133-144. In particular, he agrees with the Inspector at IR138 that, because of the area's protected location within the WHS buffer zone, the survival of the historic field pattern and the very positive contribution that this historic landscape make to the Outstanding Universal Value (OUV) of the WHS, it should be considered a valued landscape in terms of the Framework.
19. The Secretary of State further agrees with the Inspector's assessment of the significance of the grade II listed Pottery Farm and its setting. In particular, he agrees with the Inspector's conclusion at IR144 that further encroachment of modern development would substantially reduce the ability to appreciate the farmhouse in its historic agricultural setting such that its significance as an historic rural farmstead would be diminished.

20. The Secretary of State further agrees the Inspector's analysis at IR145-147 of the potential impact of the scheme on the Belper and Milford Conservation Area. He agrees with the Inspector at IR146, that the urbanisation of a key part of this rural setting would to a large extent blur the clear boundary between town and country and result in the loss of a substantial part of the historic rural setting of the conservation area and that this would undermine its special interest and lessen its significance as a heritage asset.
21. Overall, therefore, the Secretary of State agrees with the Inspector's conclusions at IR147 that the harm caused by the proposed scheme would substantially undermine the significance of all the heritage assets albeit that, in terms of the Framework, the development proposal would lead to 'less than substantial' harm to the significance of designated heritage assets. He also agrees that the failure to preserve or enhance the setting of the WHS in particular would conflict with AVLP policy EN29 and he attributes considerable weight to that conflict. He further agrees with the Inspector's conclusion at IR156 that the development would cause serious harm to the unchanged historic countryside into which the pioneering development was inserted and which now provides a valued rural landscape setting for the built development.

#### *Other matters*

22. For the reasons given at IR148-149, the Secretary of State considers that matters relating to flooding and highway safety should not weigh against the proposal. The Secretary of State has also noted the Inspector's analysis of the benefits and uncertainties associated with the employment aspects of the proposal (IR150-151), and he agrees with the Inspector's conclusions at IR155 that the economic benefits arising from the scheme carry moderate weight in favour of the proposal.

#### **Planning conditions**

23. The Secretary of State has given consideration to the Inspector's analysis at IR123-126 and IR152, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 55 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 55 of the Framework. However, he does not consider that the imposition of these conditions would overcome his reasons for refusing planning permission.

#### **Planning obligations**

24. Having had regard to the Inspector's analysis at IR119-122, the planning obligation dated 2 May 2018, paragraph 56 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 56 of the Framework. However, the Secretary of State does not consider that the obligation overcomes his reasons for refusing planning permission.

#### **Planning balance and overall conclusion**

25. For the reasons given above, the Secretary of State considers that application scheme is in accordance with AVLP policy ER3, but that there is conflict with AVLP policy EN29. Overall, he considers that the scheme is in accordance with the development plan as a whole, but has gone on to consider whether there are material considerations which

indicate that the proposal should be determined other than in accordance with the development plan.

26. The Secretary of State has considered whether the identified 'less than substantial' harm to the significance of the heritage assets, including the WHS, is outweighed by the public benefits of the proposal. In accordance with the s.66 duty, he attributes considerable weight to the harm.
27. Having regard to the tension with the heritage implications of the site allocation, the Secretary of State considers that the economic benefits of the application scheme, as outlined above, carry only moderate weight in favour of the proposal and are outweighed by its inclusion in the WHS. Thus, although the Secretary of State concludes that the harm to the WHS from the proposal would be 'less than substantial' in terms of the Framework, the benefits of the application scheme are not collectively sufficient to outweigh the identified harm to the significance of the heritage assets as a whole. He considers that the balancing exercise under paragraph 196 of the Framework is therefore not favourable to the proposal.
28. Overall, the Secretary of State considers that the adverse impacts of allowing the scheme would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole and material considerations indicate that the development should be determined other than in accordance with the development plan.
29. The Secretary of State therefore concludes that planning permission should be refused.

### **Formal decision**

30. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby refuses planning permission for your client's planning application to Amber Valley Borough Council for a maximum of 6,000 sq m of B1/B8 floor space for the manufacture/assembly of heating appliances/boilers and parts; Offices (Non-ancillary); the storage and distribution of heating appliances/boilers and parts; and for any other use or uses within Class B1 and/or B8; and a maximum of 6,500 sq m (B1a - Offices) and maximum of 7,500 sq m (B1c- Light Industry) alterations to service yard, provision of car parking and vehicle manoeuvring areas and point of access onto Nottingham Road, in accordance with application ref: AVA/2016/1040, dated 11 September 2017.

### **Right to challenge the decision**

31. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
32. A copy of this letter has been sent to Amber Valley Borough Council and Rule 6 parties, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

*Jean Nowak*

Authorised by the Secretary of State to sign in that behalf

## Annex A: Schedule of representations

### Representations received in response to the Secretary of State's letter of 30.07.18

<b>Party</b>	<b>Date</b>
Val Pickard – Protect Belper	31.07.18 and 10.08 18
Adam Lathbury – Derwent Valley Mills WHS partnership	02.08.18
David Walsh – Historic England	14.08.18
Simon Chadwick – agent	14.08.18
Derek Stafford – Amber Valley BC	21.08.18



# Report to the Secretary of State for Housing, Communities and Local Government

by **C J Ball** DArch DCons RIBA IHBC

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Date: 9 July 2018

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TOWN AND COUNTRY PLANNING ACT 1990

Amber Valley Borough Council

Appeal by Peveril Homes Ltd and Vaillant Group UK Ltd

Application by Peveril Securities Ltd and Vaillant Group UK Ltd

**Proposed development of**

**land at Bullsmoor, off Nottingham Road, Belper DE56 0DB**

Inquiry Opened on 10 April 2018

File Refs: APP/M1005/W/17/3183493 & APP/M1005/V/18/3194115

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## **Land at Bullsmoor, off Nottingham Road, Belper DE56 ODB**

### **Scheme A: APP/M1005/W/17/3183493**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Peveril Homes Ltd and Vaillant Group UK Ltd against the decision of Amber Valley Borough Council.
- The application Ref AVA/2016/0754, dated 20 July 2016, was refused by notice dated 22 May 2017.
- The development proposed is for a maximum of 150 dwellings and public open space, employment floor space - max 6,000 sq m of B1/B8 for the manufacture/assembly of heating appliances/boilers and parts; Offices (Non-ancillary); the storage and distribution of heating appliances/boilers and parts; and for any other use or uses within Class B1 and/or B8, alterations to service yard, provision of car parking and vehicle manoeuvring areas and point of access onto Nottingham Road.

**Summary of Recommendation:** the appeal be dismissed.

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### **Scheme B: APP/M1005/V/18/3194115**

- The application was called in for decision by the Secretary of State by a direction, made under section 77 of the Town and Country Planning Act 1990, on 19 January 2018.
- The application is made by Peveril Securities Ltd and Vaillant Group UK Ltd to Amber Valley Borough Council.
- The application Ref AVA/2017/1040 is dated 11 September 2017.
- The development proposed is for a maximum of 6,000 sq m of B1/B8 floor space for the manufacture/assembly of heating appliances/boilers and parts; Offices (Non-ancillary); the storage and distribution of heating appliances/boilers and parts; and for any other use or uses within Class B1 and/or B8; and a maximum of 6,500 sq m (B1a - Offices) and maximum of 7,500 sq m (B1c- Light Industry) alterations to service yard, provision of car parking and vehicle manoeuvring areas and point of access onto Nottingham Road.
- The reason given for making the direction was because of the type of issues raised.
- On the information available at the time of making the direction, the following were the matters on which the Secretary of State particularly wished to be informed for the purpose of his consideration of the application:
  - (i) policies in the National Planning Policy Framework on conserving and enhancing the historic environment;
  - (ii) policies in the National Planning Policy Framework on building a strong competitive economy;
  - (iii) the extent to which the proposed development is consistent with the development plan for the area; and
  - (iv) any other matters the Inspector considers relevant.

**Summary of Recommendation:** the application be refused.

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### **Procedural matters**

1. The appeal under Scheme A was recovered by the Secretary of State to determine himself because that appeal is most efficiently and effectively considered with the called-in planning application involving similar development at land at Bullsmoor, off Nottingham Road, Belper (Scheme B). Thus the appeal was recovered under the criterion that there are on occasions other cases which merit recovery because of the particular circumstances.
2. The inquiry sat for 7 days on 10-13 and 17-19 April. I made an accompanied visit to the site and its surroundings on 18 April (by coincidence International World Heritage Site Day) following an agreed itinerary (IN3).

3. The appellants in Scheme A (the mixed use scheme) are Peveril Homes Ltd and Vaillant Group UK Ltd. The applicants in Scheme B (the employment scheme) are Peveril Securities Ltd and Vaillant Group UK Ltd. They were represented jointly at the inquiry. For convenience I shall refer to them jointly as the appellants.
4. Both applications were submitted in outline with access to be considered. In each case the matters of appearance, landscaping, layout and scale were reserved for future consideration. Each application was accompanied by a suite of supporting technical reports and a masterplan. Since these are outline applications, with layout reserved, I take the masterplans simply to be illustrative of the appellants' approach rather than a fixed site layout design. Although a revised mixed use scheme masterplan was submitted to the inquiry (CD4/12), intended to address concerns raised in objection to that scheme, I do not consider the objectors' evidence to be undermined in any way by the changes to the indicative layout.
5. The proposals have been screened in accordance with the EIA Regulations and are considered not to be EIA development, so that a formal Environmental Statement (ES) is not required. Nonetheless I note the range of environmental and other information submitted with the applications and I have taken this into account.
6. Before the inquiry I sent out a pre-inquiry note setting out the key issues and a suggested programme (IN1).
7. At the inquiry Historic England (HE), the Derwent Valley Mills World Heritage Site Partnership (DVMWHS) and Protect Belper, a local residents group, all appeared as Rule 6(6) parties.
8. At the inquiry the appellants submitted final agreed drafts of s106 Agreements for each scheme, which were discussed on day 6 (PV6.1, PV6.2)). On 19 April, having heard all the evidence, I adjourned the inquiry to 8 May solely to allow signature of the Agreements by all the interested parties. Certified copies of the executed Agreements were received on 2 May (PV9.1, PV9.2) and I closed the inquiry in writing on 8 May (IN4).
9. The reporting of the parties' cases is based on summarised evidence given at the inquiry, both written and oral, and edited closing submissions. Some parties raise similar objections and I have tried to avoid too much repetition. References in round brackets (IN1) are to the documents listed at the end of this report.

### **The site and surroundings**

*The site and its surroundings are described more fully in the Design and Access statements CD2.3 and CD3.3 and the statement of common ground CD4.11*

10. Belper is one of Amber Valley's 4 market towns, the key settlements identified in the 2006 Local Plan. Vaillant Ltd, whose existing factory is located on the north-eastern edge of the town, has operated from the site since the 1970s, expanding the works over the years.
11. Both development proposals are made in conjunction with Vaillant Ltd. Part of the delineated development site lies within the factory grounds. The remainder is open countryside, part of an area known as Bullsmoor, lying immediately beyond the existing factory fence (CD2.35, CD4.12). There is no vehicular access to the rural part of the site so both schemes rely on the improvement and extension of Vaillant's existing internal access road, off Nottingham Road. The factory site is

partly dug into the hillside. The open agricultural land beyond slopes up to the south, and gently falls away to the west towards the Coppice Brook. A number of public footpaths cross the site and the land beyond (CD1.49).

12. The site lies within the buffer zone of the Derwent Valley Mills World Heritage Site (WHS), although it is not within the WHS itself. The WHS was inscribed by UNESCO in 2001. The extent of the WHS and its buffer zone is shown on the map submitted as part of the Nomination document (CD1.11 p14 map1). The Belper and Milford Conservation Area lies to the west of the site. Much of the Conservation Area is within the WHS (CD1.33). The grade II listed Pottery Farmhouse is situated immediately to the east of the site, with other non-designated heritage assets nearby.
13. It should be noted that the sites differ slightly. The employment site boundary reflects the allocation in Local Plan policy ER3 for business and industrial purposes, whereas the mixed use site includes additional land. A helpful overlay is at CD4.5.

### **The proposals**

14. Scheme A proposes a mixed use development consisting of up to 6,000 m<sup>2</sup> of employment development (Class B1/B8), intended to facilitate the expansion of Vaillant Ltd; additional and reconfigured car parking and extended access road, serving both commercial and residential development; and up to 150 dwellings, with open space and sustainable urban drainage systems. A masterplan gives an indication of how this could be realised (CD2.26).
15. The Council refused this application for a single reason: *The proposal is harmful to the Outstanding Universal Value of the Derwent Valley Mills World Heritage Site, as it fails to preserve, enhance or protect the rural landscape character which makes a significant contribution to the World Heritage Site. Whilst the harm to the Outstanding Universal Value of the World Heritage Site is considered to be 'less than substantial', the public benefits of the proposal do not outweigh that harm, contrary to paragraph 134 of the National Planning Policy Framework and EN29 of the Adopted Amber Valley Borough Local Plan 2006.*
16. Scheme B proposes an employment development consisting of a similar 6,000 m<sup>2</sup> of Class B1/B8 to allow the expansion of Vaillant, 6,500 m<sup>2</sup> of Class B1a and 7,500 m<sup>2</sup> of Class B1c uses. New and additional parking space would be provided and the extended access road would serve the whole of the site. A masterplan shows an indicative layout (CD4.12).
17. The Council supports the employment application, concluding that, as the site is designated as employment land in Local Plan policy ER3, the proposal accords with the development plan and the public benefits derived from job creation through employment development outweighs the less than substantial harm to the significance of the WHS (CD3.25).

### **Agreed matters**

18. Just before the inquiry the main parties submitted a statement of common ground (CD4.11). This describes the site and the surrounding area and gives details of the mixed use scheme (the appeal proposals) and the employment scheme (the call-in application proposals). It sets out the heads of terms of a planning obligation for the mixed use scheme and confirms that a planning obligation will be submitted for the employment scheme. It outlines the planning policy context,

including local and national planning policy. The statement confirms that the Council cannot currently demonstrate a 5 year supply of deliverable housing land so that paragraph 49 of the National Planning Policy Framework applies.

19. The statement lists the agreed planning matters including - on a balance of policy, heritage considerations and public benefit - the Council's support for the employment scheme. For the mixed use scheme the matters agreed relate to the principle of development, heritage assets, landscape and visual impact, highways matters, residential amenity, flooding and drainage, ecology, trees, land stability, land contamination, crime prevention, and public rights of way. The statement outlines the public benefits of the mixed use scheme and notes the financial contributions to be made to off-site infrastructure.
20. The statement helpfully confirms the matters remaining in dispute relating to the mixed use scheme:
  - Whether there is any harm which would be caused to the Outstanding Universal Value of the Derwent Valley Mills World Heritage Site, or its setting, by the appeal proposals – and if so the degree of such harm;
  - The weight to be attached to the public benefits of the development; and
  - Whether, having regard for the Adopted Development plan and the Framework (in particular paragraphs 134 and 14), permission should be granted for the mixed use proposal.

### **Planning obligations**

21. For each proposal the parties submitted an Agreement under s106 of the Act as a deed of planning obligation. The obligations for Scheme A, the mixed use scheme (PV9.1), are intended to ensure the provision of affordable housing; the mitigation of the impact of the proposals on local infrastructure through education, healthcare and public open space contributions; the necessary transfer of land between the parties; a commitment to a sustainable urban drainage scheme and Travel Plan administration. The obligations for Scheme B, the employment scheme (PV9.2), relate to commitments regarding a sustainable urban drainage scheme and Travel Plan administration.

### **Planning policy**

22. The local development plan is the Amber Valley Local Plan (AVLP) to 2011, which was adopted in 2006 (CD1.3). Relevant policies were saved in 2009 by Direction of the Secretary of State until such time as they are superseded by an up-to-date Local Plan (CD1.4). Since it was adopted well before publication of the Framework in March 2012, AVLP is subject to Framework 215 which indicates that due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).
23. The Council accepts that, although it will argue otherwise at the forthcoming Local Plan examination (CO5), for the purposes of this inquiry it cannot currently demonstrate a 5 year supply of deliverable housing sites so the relevant policies for the supply of housing cannot be considered to be up-to-date. It makes no objection to the mixed use scheme on housing policy grounds.

24. The key policies relevant to these proposals are AVLP policies EN29 and ER3. Policy EN29 says: *Within the Derwent Valley Mills WHS as shown on the Proposals Map, the Borough Council will require all development proposals to preserve or enhance its character and appearance. Within the Derwent Valley Mills WHS Buffer Zone, as shown on the Proposals Map, the Borough Council will require all development proposals to preserve or enhance the setting of the WHS, including views into and out of the site. In considering proposals, the Borough Council will have regard to the aims and objectives of the Derwent Valley Mills WHS Management Plan.* This policy is generally consistent with the Framework heritage policy objectives so carries significant weight.
25. Policy ER3 says: *Planning permission will be granted for development within Use Classes B1, B2 and B8 provided that the proposals satisfy the criteria in Policy ER11. Development will also need to have regard to any detailed requirements set out in approved development briefs. Any proposals at Bullsmoor, Belper will not be permitted until a development brief has been approved for the site. Proposals will need to include appropriate landscaping and other measures necessary to minimise the visual impact of development, including in relation to the Derwent Valley Mills WHS.* This policy relates to designated sites and the Bullsmoor, Belper site referred to is the application site. The site has been designated as employment land since at least 1981, well before the inscription of the WHS, but it now lies within the WHS Buffer Zone. Against heritage advice to the contrary, and despite the Local Plan Inspector's evident misgivings, the Council decided to retain the allocation in the 2006 Local Plan. While this might be consistent with Framework economic growth policies, there is clearly some tension between policy EN29 and policy ER3 which affects the weight it can carry.
26. A new Amber Valley Borough Local Plan (AVBLP) has been prepared (CD1.10). An early version of the draft AVBLP allocated the site for a mixed use development of housing, business and industrial uses (Policy HGS6). Following consultation this was deleted from the submission version and the site is not currently allocated for development of any kind. The draft AVBLP was submitted on 2 March 2018 and is due to be examined starting 12 June 2018. The appellants have made representations on reinstating the mixed use development of the site. With regard to Framework 216, the AVBLP is at a fairly advanced stage and, while the appellants' objections are unresolved, the current 'de-allocation' of the site is consistent with Framework heritage protection policies and indeed with the WHS Management Plan. It therefore carries at least moderate weight.
27. A Neighbourhood Plan for Belper is in preparation but has not yet reached the referendum stage so currently carries very limited weight.

### **The case for Amber Valley Borough Council**

*This is the gist of the evidence given to the inquiry by AVBC, set out primarily in proofs of evidence and appendices CO2.1-CO2.7, proofs CO3, CO4 and closing submissions CO6*

28. There are two development proposals before the Inquiry, identified as the mixed use scheme (APP/M1005/W/17/3183493) and the employment scheme (APP/M1005/V/18/3194115). The mixed use scheme is essentially for the development of 150 dwellings and a 6,000 m<sup>2</sup> extension to the Vaillant factory. The development would cover 10.8 ha. This application was made to the Council on 20<sup>th</sup> July 2016 and was refused on 22<sup>nd</sup> May 2017 (CD2.45). An appeal was

- made and the Secretary of State has recovered it for his own determination. The employment scheme is for a similar extension to the Vaillant factory and for 14,000 m<sup>2</sup> of office/light industrial uses. The development would cover 9.45 ha. The application was made on 11<sup>th</sup> September 2017 and on 13<sup>th</sup> November 2017 the Council's Planning Board resolved to approve it subject to the conditions set out in Appendix 1 to the Officer's Report (CD3.25). The Secretary of State issued a direction to the Council not to grant planning permission and directed that the matter be called in for his own determination.
29. The housing scheme is a departure from the local plan. The area to be developed exceeds that allocated for employment use by Policy ER3 in the adopted development plan (CD1.3, CD4.5). The employment scheme is in accordance with policy ER3 of the adopted local plan. The red line of the employment scheme development site is aligned with the relevant employment land allocation (CD1.3 Inset Plan D).
30. Both proposed development sites are wholly contained within the Buffer Zone for the Derwent Valley Mills World Heritage Site (WHS), which is a heritage resource of international significance and therefore of the highest importance. The WHS was inscribed in 2001 (CD1.13). The development plan was adopted in April 2006. The Inspector who considered the proposed local development plan and who reported in January 2005 recommended that the Council give further consideration to the allocation of the site for employment use given its location within the Buffer Zone of the WHS (CD 1.5 para 2.8.22). This was done and the site allocation was confirmed (CD 1.40 paras 4.19-4.23 and CD 1.48 paras 4.5-4.9).
31. For the purposes of this Inquiry it is common ground that the Council cannot demonstrate a 5 years supply of housing land (CD4.11). The Council has recently submitted its Draft Local Plan and an Examination in Public is shortly to take place where this issue will be considered and at which the Council will be arguing that it does indeed have such a supply of housing land. This Inquiry is not the forum for that debate. The consequence here is that policies in the adopted development plan for the supply of housing cannot be considered to be up to date. Normally this would result in a weighted balance in favour of the Council approving the housing scheme pursuant to paragraph 14 of the National Planning Policy Framework. However, in this case Footnote 9 notes that there are other policies in the Framework which indicate that development should be restricted. They include policies relating to protection of heritage assets.
32. The Council considered that development of the mixed use scheme would cause less than substantial harm to the significance of the WHS and that the public benefits arising from the scheme would not outweigh that harm. As a result the Council refused it. In contrast, given that the employment scheme is in conformity with the policies contained within the adopted development plan, the law requires the Council to determine planning applications in accordance with the provisions of the local development plan unless material considerations indicate otherwise. The NPPF is such a material consideration. The Council did not consider that the less than substantial harm caused to the significance of the WHS was a sufficient reason to indicate otherwise than that the employment scheme application should be determined in accordance with the local development plan. The employment site was allocated in full knowledge of the inscription of the WHS. Therefore the Council determined in the case of the employment scheme that it was appropriate to approve it.

33. The Council considers that the key questions in these proposals are:

- in the case of the mixed use scheme, which is not in accordance with the adopted development plan, whether the less than substantial harm that will be caused to the significance of the WHS, an international heritage asset of the highest importance, is outweighed by the public benefits that that scheme will bring<sup>1</sup>; and
- in the case of the employment scheme, whether the less than substantial harm that will be caused to the significance of the WHS is a sufficiently material consideration to justify taking a decision otherwise than in accordance with the provisions of the adopted development plan, which plan was adopted having regard to the existence of the WHS and to the fact that the site allocation was within the Buffer Zone of the WHS.

*Heritage and landscape*

34. It is a Framework core planning principle that the planning system should recognise the intrinsic character and beauty of the countryside.

35. Whilst there is no formal definition of the term, it is the Council's case that the development sites and the land at Bullsmoor surrounding them are a "valued landscape", in terms of para 109 of the Framework, for the following reasons:

- It is typical of the local Landscape Character type Gritstone Heaths and Commons, which forms part of the larger Derbyshire Peak Fringe and Lower Derwent National Character Area (CD 1.24 pp 3.16-3.18). This landscape character type is almost, but not quite, unique to the area around the town of Belper (CD 1.24 p 3.1).
- The evidence shows (CO2.3) that the present field boundaries have existed virtually unchanged since about 1835, which field boundaries resulted from the Parliamentary and earlier enclosures of the land described in the assessment of the Landscape Character of Derbyshire (CD1.24 p 3.17). The appellants do not demure from this evidence. The Strutts, who built the mills at Belper, were able to acquire land as a consequence of the Enclosure Award of 1791, increasing their land holdings from 48 acres to 380 acres between 1786 and 1797 (CD1.11 p104). The Council's evidence demonstrates the interest the Strutts took in the land around Belper including at Bullsmoor (CO2.3). The landscape appearance is therefore contemporary with the development of the mills. It forms part of the surviving landscape setting of the mills and industrial communities, which was much admired in the 18<sup>th</sup> and early 19<sup>th</sup> centuries and into which rural landscape the industrial establishments were inserted (CD1.1).
- The land is within the buffer zone of the WHS and therefore indisputably within the setting of the WHS.
- The land is well-used as evidenced by the condition of the footpaths and the evidence given to the inquiry by Protect Belper (PB3.2). Users of the footpath network are able to enjoy a full appreciation of the relationship of the landscape to the town of Belper. It is an open landscape. The contrast between this openness and the dense linear form of the adjacent built development of

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<sup>1</sup> *Forest of Dean DC v SoS CLG* [2016] EWHC 421 (Admin) Coulson J at para 35

Belper clearly articulates its value and evidences a landscape which predates the industrial expansion of Belper and is an immediate and continuing amenity to the residents of Belper (CO3).

- The land is subject to a directly applicable policy in the adopted local plan, Policy EN29, which relates to the WHS and its setting.
36. The Council's evidence is consistent with the guidance given in the Guidelines for Landscape and Visual Impact Assessment ("GLVIA") Third Edition (CD1.51 paras 5.19-5.31). The appellants argue that the land is not a valued landscape because, for example, it is not a special landscape area unlike other nearby land. GLVIA para 5.26 makes it quite clear that, "*The fact that an area of landscape is not designated either nationally or locally does not mean that it does not have any value.*" What is clear is that the landscape has either medium or high sensitivity to change. The appellants consider it to have medium sensitivity (PV2.1 paras 6.15 and 6.24). The Council's case is that the sensitivity is high (CO3).
37. Furthermore, it is clear that the form of the built development proposed by either scheme is incongruous with the form of built development in the immediate vicinity of the site, which is linear and terraced in its form. The impact of the schemes from various viewpoints is depicted in the Council's visualisations (CO2.4). The Appellants accept that those visualisations are technically correct. The effects in both cases, whilst being different in terms of mass and scale, would be more or less equally harmful. The visualisations clearly show the extent of that harm from a range of viewpoints in and around Belper.
38. The fact is that the Bullsmoor area, which includes the site, is a relict rural area, which is topographically enclosed. It is readily apparent that it is an historic, open landscape which contributes to the overall experience of this part of the Buffer Zone. It is the contribution of this land to the appreciation of the difference between the settlement edge, the adjacent farmland and the experience of approaching the WHS which is integral to the significance of the Bullsmoor area. The proposed developments would be an intrusion into this area.
39. The heritage asset of overriding importance is the WHS. On this issue the Council's witness, who had first-hand experience of the inscription process for the WHS, was able to give direct evidence as to why the boundaries of the buffer zone were drawn as they were. Historic England's evidence complemented the Council's approach. It is submitted that, if nothing else, the Secretary of State should give great or considerable weight to the advice of HE. It requires cogent and compelling evidence to depart from their views<sup>2</sup>. Such evidence has not been provided.
40. The Appellants' case at first appeared to be that site is not in fact within the rural landscape setting of the WHS and further that there is no harm to the significance of the WHS (PV5.1). It was subsequently agreed that the site is both within the setting of the WHS and that the developments proposed would cause less than substantial harm to the significance of the WHS.
41. The appellants considered only visual considerations to be relevant (PV3 para 5.5) notwithstanding the wealth of material to the contrary (CD1.11 pp 103-106). In so doing they did not explain why they had departed from the Guidance issued by

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<sup>2</sup> *Steer v SoS CLG* [2017 EWHC 1456 (Admin), Lang J at para 52 – Keddlestone Hall



Historic England: The Setting of Heritage Assets (December 2017) (CD1.21). This document makes it clear that the setting of a heritage asset comprises “*the surroundings in which a heritage asset is experienced*” and that “*the way in which we experience an asset in its setting is also influenced by other environmental factors such as ... our understanding of the historic relationship between places. ... The contribution that setting makes to the significance of the heritage asset does not depend on there being public rights or an ability to access or experience that setting.*” (CD1.11 p2).

42. It is true that “*the contribution of setting to the significance of a heritage asset is often expressed by reference to views, a purely visual impression of an asset or place which can be static or dynamic, long, short or of lateral spread, and include a variety of views of, from, across or including that asset.*” (CD1.21 para 10 p6). However, the appellants’ evidence was that a direct visual view was what was required and that that was almost, but not totally, absent in this case.
43. The appellants simply did not consider the other matters. Nor did they consider the ICOMOS Guidance on Heritage Impact Assessments for Cultural World Heritage Properties (January 2011) (CD1.18). Given that this Guidance expressly relates to cultural WHSs, this is a remarkable omission.
44. They did consider the Operational Guidelines for the Implementation of the World Heritage Convention of July 2017 (CD1.16) in aiming to prove that there were no attributes of the WHS outside the formal site boundary, in which they singularly failed. They relied, in particular, upon paras 99 and 100, which provide:
- 99. The delineation of boundaries is an essential requirement in the establishment of effective protection of nominated properties. Boundaries should be drawn to incorporate all the attributes that convey the Outstanding Universal Value and to ensure the integrity and/or authenticity of the property.*
- 100. For properties nominated under criteria (i) - (vi), boundaries should be drawn to include all those areas and attributes which are a direct tangible expression of the Outstanding Universal Value of the property, as well as those areas which in the light of future research possibilities offer potential to contribute to and enhance such understanding.*
45. However, they overlooked the import of para 104 which relates expressly to buffer zones and which provides:
- 104. For the purposes of effective protection of the nominated property, a buffer zone is an area surrounding the nominated property which has complementary legal and/or customary restrictions placed on its use and development to give an added layer of protection to the property. This should include the immediate setting of the nominated property, important views and other areas or attributes that are functionally important as a support to the property and its protection. The area constituting the buffer zone should be determined in each case through appropriate mechanisms. Details on the size, characteristics and authorized uses of a buffer zone, as well as a map indicating the precise boundaries of the property and its buffer zone, should be provided in the nomination. (Emphasis added.)*
46. The appellants also overlooked the Xi’an Declaration (CD1.17 p28) which made it clear that setting was not a zone of secondary importance “*but rather an equal, complimentary and inseparable part of the so-called zone of primary importance,*

*given its contribution to helping establish and define “significance and distinctive character”. Setting is “more than “the physical and visual aspects”. Emphasis is given also to the importance of social and cultural context, and to the maintenance of traditional practices and knowledge which have shaped the historic development of important heritage places and continue to sustain their significant values ...”*

47. These matters find their expression in the first three articles of the Xi'an Declaration (CD1/17 p29 and CO2.2 Ax 3):

*1. The setting of a heritage structure, site or area is defined as the immediate and extended environment that is part of, or contributes to, its significance and distinctive character. Beyond the physical and visual aspects, the setting includes interaction with the natural environment; past or present social or spiritual practices, customs, traditional knowledge, use or activities and other forms of intangible cultural heritage aspects that created and form the space as well as the current and dynamic cultural, social and economic context.*

*2. Heritage structures, sites or areas of various scales, including individual buildings or designed spaces, historic cities or urban landscapes, landscapes, seascapes, cultural routes and archaeological sites, derive their significance and distinctive character from their perceived social and spiritual, historic, artistic, aesthetic, natural, scientific, or other cultural values. They also derive their significance and distinctive character from their meaningful relationships with their physical, visual, spiritual and other cultural context and settings. These relationships can be the result of a conscious and planned creative act, spiritual belief, historical events, use or a cumulative and organic process over time through cultural traditions.*

*3. The definition of setting requires an understanding of the history, evolution and character of the surrounds of the heritage resource. Defining the setting is a process of considering multiple factors to include the character of the arrival experience and the heritage resource itself.*

48. The Derwent Valley Mills WHS is one of only 18 cultural world heritage sites in England. It was inscribed because it met 2 of the UNESCO inscription criteria (CD1.13). In the Statement of Outstanding Universal Value under the heading Integrity 2010 (CD1.13) it is stated:

*The relationship of the industrial buildings and their dependent urban settlements to the river and its tributaries and to the topography of the surrounding rural landscape has been preserved, especially in the upper reaches of the valley, virtually intact. Similarly, the interdependence of the mills and other industrial elements, such as the canals and railway, and the workers' housing, is still plainly visible. All the key attributes of the cultural landscape are within the boundaries. The distinctive form of the overall industrial landscape is vulnerable in some parts to threats from large-scale development that would impact adversely on the scale of the settlements.” (Emphasis added.)*

49. The appellants focused on the sentence underlined above, contending that the word 'key' in that sentence was a redundant word and maintaining that all of the attributes that gave the WHS its OUV were to be found within the boundary of the site itself. They did accept, however, that if the word 'key' was not redundant, then the Council's evidence that in the buffer zone there were attributes which supported the OUV of the WHS could be correct.

50. The clear fact is that there are attributes of the WHS in the Bullsmoor area which do contribute to the experience of the significance of the WHS. It is an holistic experience. Whilst the WHS itself is tightly defined by the cultural landscape of the factories and housing built for the factory workers and by the river, roads, railways and waterways serving those factories, it is integral to the OUV of the WHS that that cultural infrastructure is seen in its rural landscape setting. The Derwent River Valley was, and still is, an essentially rural environment. It was into this rural environment that the industrial buildings and their dependent urban settlements were inserted and it is the relationship between the two that gives the WHS its integrity and contributes to its OUV. The buffer zone is delineated to protect this rural landscape.
51. The attributes of the WHS in the Bullsmoor area include the late 18<sup>th</sup>/early 19<sup>th</sup> century agricultural landscape; the contemporary and still surviving field pattern and associated farmsteads (the listed Pottery Farmhouse and unlisted Cherry House Farm), which are contemporary with the foundation of the cotton industry in the Derwent Valley; the nailers' cottages (Bullsmoor Cottage and the tumbledown nailer's cottage and nailshop, albeit that its condition means that little weight can be given to it); and the quarry at Pinchholm's Hill. The network of public footpaths and in particular Kirk's Lane bridleway, the nature of the open countryside and the views into and out from the WHS that Bullsmoor provides, means that people moving through this landscape can experience the rural landscape into which the industrial development underpinning the OUV of the WHS was inserted and thereby appreciate and experience the significance of the WHS.
52. The line of the Coppice Brook, a tributary of the River Derwent, which was channeled to supply water to a former corn mill, an attribute of the WHS, marks the present, clearly defined, linear boundary to the town of Belper along Nottingham Road, on the north side of which early 19<sup>th</sup> century cottages, formerly occupied by cotton factory workers and nailers, still remain. Looking out of the WHS from the recreation ground, which is a palimpsest, being the site of the historic millpond, and from the public footpaths known as channels leading between the terraced buildings along Nottingham Road, one presently has a sense of looking up into that open countryside. That these are all attributes of the WHS is apparent from the WHS Management Plan (CD1.14) which has been approved by the government and by UNESCO.
53. The experience of the WHS in the Bullsmoor area is an holistic experience; it is not purely visual. This is where the appellants are wrong and why their evidence is not to be relied upon. Loss of this experience and the damage to the attributes set out above is the harm that will be caused to the setting of the WHS, undermining its significance as an important heritage asset. The fact that the development will only affect a small, localised part of the buffer zone is not to the point. That is an argument for salami slicing which cannot be sustained (CD1.17 p24 and CD5.12 para 36). That the proposed developments would cause harm to the setting and thus the significance of the WHS and that that harm will be less than substantial is therefore agreed by all parties. This being so, it is not necessary to determine further where on a spectrum of less than substantial the harm lies.<sup>3</sup>

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<sup>3</sup> *Shimbles v Bradford MBC* [2018] EWHC 195 (Admin), Kerr J, at para 87 and 91.

*Planning balance*

54. The appellants repeatedly stated that those who inscribed the site would have been aware of the historic site allocation in the local development plan and have taken the possibility of development into account when deciding whether to inscript the WHS. However, they were forced to concede that there was no support for that assertion. Indeed, the Council submits that it is contrary to the clear statements in the Nomination Document that the local planning authorities would be expected to review their local plans in light of the inscription (CD1.11 p153).

*The mixed use scheme*

55. The harm to the significance of the WHS has been identified above. The WHS is an internationally protected site. It is a heritage asset of the highest significance. It is against this that the balance must be struck.
56. There are only 18 cultural world heritage sites in England. The Derwent Valley Mills WHS is the only such site in the East Midlands. (The next nearest are Ironbridge in Shropshire to the south, Liverpool to the west and Saltaire (another industrial mill site) to the north. Liverpool is on the at risk register.) Whilst it is accepted that there is a pressing need for housing both locally and nationally, it is submitted that any blocking effect on housing delivery caused by these 18 WHSs would be insignificant nationally and in the case of this WHS locally. The starting point must be the overriding need to protect these internationally acclaimed and protected assets for humanity.
57. The benefits claimed for the housing scheme are listed in PV5.1 at pp 40-44. The Council's response is as follows:
- It is accepted that the provision of 150 houses where there is between 3.16 and 3.39 years supply of housing land is a benefit. However, that level of provision would not go far to redressing the gap in supply.
  - It is accepted that the provision of 45 affordable units is a benefit. Peveril Homes has a good track record in delivery of affordable units promised.
  - The provision of on-site open space and recreation facilities is doubtful. The revised indicative Master Plan (Rev. F) (CD4.12) shows one area of open space at the north-west corner of the site. There is no recreation facility provided. This provision will only become apparent at reserved matters stage.
  - The provision of additional floorspace for Vaillant is a matter of debate. Attention is drawn to Vaillant's carefully worded letter at PV5.2 Ax 9. It appears that whilst there is a need for car parking space and a desire to relocate staff from offices on the opposite side of Nottingham Road to the factory, there is no present need for further manufacturing space.
  - The construction jobs are to be welcomed, but will be temporary.
  - The net added expenditure of £3.75 million cannot be justified and there has been no opportunity to test or verify that figure.
  - The gross value added of £10.6 million is likewise not supported.
  - Whilst the New Homes Bonus is a benefit, it must be remembered that the section 106 contributions are paid in order to make acceptable in planning

terms a development that would not otherwise be acceptable. Planning permissions are not bought by generous financial contributions. Planning obligations have to meet the criteria set out in the CIL Regulations. If they do not they should not be there and, indeed, the section 106 agreements provide that an obligation will lapse if the Secretary of State holds that it is not CIL compliant and therefore gives no weight to it. Accordingly, the weight to be given to planning obligations is, if it is submitted, very limited if any.

58. It is the Council's clear case that these benefits are not sufficient to outweigh the less than substantial harm that will be caused to the WHS.
59. The Council's case does not extend to the listed Pottery Farm House, other than to include it as a heritage asset in the buffer zone and therefore setting of the WHS, which makes a contribution to the significance of the WHS. However it remains the case that others have objected to the development proposal on the basis that the significance of this building would be harmed by the development proposed. The Council simply observes that the *Barnwell Manor* principles (CD5.15) and section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 are engaged.

*The employment scheme*

60. The consideration here is different. The Council had resolved to grant planning permission for the employment scheme notwithstanding the harm that it would cause to the significance of the WHS.
61. The local plan was adopted in April 2006 after the WHS had been inscribed and in knowledge of the inscription. Whilst it might be the case that the Council's understanding and appreciation of the WHS has developed since that time, it remains the case that Policy ER3 remains part of the local development plan and that the Council is required to take planning decisions having regard to and in accordance with the provisions of that plan.
62. It is true that, whilst Policy ER3 provides for a development brief to be adopted for the site, there is no such development brief in place. A planning condition has been suggested which would address that issue. This is an outline application with all matters except for access reserved. No one is suggesting that the construction of the new access will have an effect on the WHS. This being so, it is submitted that the question to be asked is whether the less than substantial harm to the WHS that would be caused by the development is sufficient to displace the statutory presumption in favour of taking the decision in accordance with the local development plan. It is submitted that it would not.
63. Finally, it is clear that the employment scheme will not be built on a speculative basis. Apart from Vaillant there is at present no potential tenant or purchaser for any of the employment units that might be built. The appellants stated in evidence that the employment scheme is only likely to come forward over a period of 10 years or so. It has to be open to doubt whether it would in fact be built.

*Conclusion*

64. The housing scheme appeal should be dismissed.
65. The employment scheme application should be permitted.

## The case for Derwent Valley Mills WHS Partnership

*This is a summary of the evidence given by the Derwent Valley Mills WHS Partnership which is set out in the proof of evidence DVM1.1, appendices DVM1.2 and closing submissions DVM1.3.*

66. World Heritage Sites are places of Outstanding Universal Value (OUV) for all humanity. The Derwent Valley Mills WHS was inscribed in 2001 after meeting 2 UNESCO criteria established to assess OUV and to satisfy requirements of authenticity and/or integrity. They are:
- C(ii) The Derwent valley saw the birth of the factory system, when new types of building were erected to house the new technology for spinning cotton developed by Richard Arkwright in the late 18<sup>th</sup> century*
- C(iv) In the Derwent valley for the first time there was large-scale industrial production in a hitherto rural landscape. The need to provide housing and other facilities for workers and managers resulted in the creation of the first modern industrial settlements.*
67. The Derwent Valley Mills WHS Partnership is responsible, on behalf of the government, for conserving the unique and important cultural landscape of the WHS; to protecting its OUV; to interpreting and promoting its assets; and to enhancing its character, appearance and economic well-being in a sustainable manner (DVM1.2 Ax D and Ax E). To that end, a Management Plan was created in 2002 and updated in 2014. The Derwent Valley Mills WHS Management Plan 2014-2019 is at DVM1.2 Ax A. The first of its 9 aims is to protect, conserve and enhance the OUV of the Derwent Valley Mills WHS. To better and more fully explain the Site's OUV, a Statement of OUV was created for the Derwent Valley Mills in 2010 and was endorsed by UNESCO.
68. The Statement of OUV can be read in full at p.13 of the Management Plan (DVM1.2 Ax A) or in CD1.13. The Statement notes that .. *Much of the landscape setting of the mills and the industrial communities, which was much admired in the 18<sup>th</sup> and 19<sup>th</sup> centuries, has survived .. and that .. The insertion of industrial establishments into a rural landscape necessitated the construction of housing for the workers in the mills, and the resulting settlements created an exceptional industrial landscape. The change from water to steam power in the 19<sup>th</sup> century moved the focus of the industry elsewhere and thus the main attributes of this remarkable cultural landscape were arrested in time.*
69. The Derwent Valley Mills WHS consists of a series of key physical attributes, linked by the River Derwent, which embody the values referred to in the term OUV. Inappropriate change to the fabric of WHS attributes should be resisted through the planning system. One of the most challenging tasks for the Derwent Valley Mills WHS Partnership relates to the attribute described as the 'relict' industrial landscape, where late 18<sup>th</sup> and early 19<sup>th</sup> century industrial development may still be appreciated in an 18<sup>th</sup>/19<sup>th</sup> century landscape. As well as providing an important setting for the WHS, that green relict landscape is in itself an attribute which contributes to the WHS's OUV. One of the most important management objectives is the protection of the WHS's setting, hence the advice of UNESCO to identify the most immediate and sensitive parts of a WHS's setting as a Buffer Zone. The boundary of the WHS at Belper and the extent of its Buffer Zone are

- shown in CD1.33. The countryside at Bullsmoor, including the development site, was deliberately included in the Buffer Zone to protect the setting of the WHS.
70. Planning applications in the Derwent Valley Mills WHS are determined by the local planning authority. The saved policies of the AVLP include policy EN29 intended, within the WHS Buffer Zone, to preserve or enhance the setting of the WHS, with regard had to the WHS Management Plan. The Derwent Valley Mills WHS Partnership objected to the 2 planning applications on the grounds of harm to the OUV of the WHS (DVM1.2 Ax F). In order to safeguard the setting of the WHS the Partnership also recommended to AVBC the removal of Bullsmoor as a development site of any kind from the emerging Local Plan.
  71. The development site can be clearly read as being part of the surviving rural relict landscape setting of the WHS. Indeed, as historic maps show (DVM1.2 Ax G), the historic field pattern at Bullsmoor remains clearly legible. Today it is experienced by people walking the lanes and paths in the same way as it was experienced by millworkers coming to work in the Belper mills in the 19<sup>th</sup> century. That workforce consisted mainly of women and children, leaving the men to find alternative employment including agriculture, work in the potteries, nail making, quarrying and foundry work. The Bullsmoor site manifests all these alternative employment options, which were essential in supporting the birth of the factory system.
  72. This rural setting is of particular importance for the WHS, as UNESCO cited one of the reasons for inscription was because the mills and their associated settlements remain in a largely rural landscape. The survival of this landscape setting provides a rare sense of the remarkable impact the factories had on the rural landscape. It is essential that this setting is safeguarded to ensure the survival and authenticity of the attributes which substantiate the values for which the site was inscribed on the UNESCO list of World Heritage Sites. A number of recent appeal decisions support this approach (CD5.7-5.17).
  73. Substantial development would have a negative impact on the rural setting of the WHS. Housing or industrial buildings in this part of the landscape would erode the context within which the historic industrialisation and factory system survives today in its arrested state. The site is highly visible from approaches to the WHS, including from one of the Monitoring Views established to enable UNESCO to evaluate the government's stewardship of the WHS. From Monitoring View 36 the application site can clearly be seen as part of the only surviving open green fields on the rising ground to the east of the town (DVM1.2 Ax J).
  74. The approach from the east, on foot or by vehicle, provides a clear visual appreciation of the relict landscape of Bullsmoor and its relationship with the WHS. That appreciation of the landscape can also be made from footpaths within the WHS and from the long distance footpath over the Chevin Hill from the west (DVM1.2 Ax K). The view from Bessalone Reservoir, built by the mill owner to provide piped water for the town and a recognised attribute of the WHS, gives a very clear appreciation of the rural relict landscape of Bullsmoor and its contribution to the setting of the WHS (DVM1.2 Ax L).
  75. Any built development on green fields in the Buffer Zone will reduce the open character of the setting and consequently impact negatively on the OUV of the WHS. While this might be identified in Framework terms as 'less than substantial harm', UNESCO considers that any harm to the OUV of a WHS is unacceptable and will judge that loss accordingly. The cumulative effect of small losses to the

surviving 'relict' landscape poses one of the most significant threats to the OUV of the Derwent Valley Mills WHS and could lead to the site being placed on UNESCO's World Heritage in Danger List or even to deletion from the World Heritage List.

### **The case for Historic England**

*This is a summary of the evidence given by HE which is set out in proofs of evidence HE2.1 and HE2.2 and closing submissions HE3.*

76. World Heritage Sites are designated heritage assets of the highest significance. The significance of a WHS derives not only from its physical presence but also from its setting. The WHS Buffer Zone is the area surrounding the WHS, intended to protect important views and other areas or attributes that are functionally important as a support to the WHS property. The Buffer Zone has complementary legal restrictions placed on its use and development to give an added layer of protection to the property. The Buffer Zone forms part of the immediate setting of the WHS but the setting can be more extensive than the Buffer Zone. Details of the size, boundaries, characteristics and authorised uses of the Buffer Zone formed part of the inscription of the Derwent Valley Mills WHS in 2001 (HE2.1).
77. HE has been engaged in the emerging Local Plan process, consistently raising concerns about the principle of development of the Bullsmoor site. This follows the Hill Top Farm decision (CD5.7) which dismissed a housing scheme on a nearby site within the WHS Buffer Zone, giving limited weight to AVLP policy ER3. In the current draft, following concerns expressed by HE (HE2.1 Ax2 & Ax3), an emerging policy HGS6, allocating Bullsmoor for a mixed housing/employment use, was deleted. As statutory consultee, HE made further objections on heritage grounds to the current proposals (HE2.1 Ax4).

#### *The heritage assets*

78. The Derwent valley saw the birth of the factory system and is therefore one of the key sites associated with the world's first industrial revolution, which took place in the UK in the 18<sup>th</sup> century. The Derwent Valley Mills WHS extends from Matlock Bath to Derby, and includes a series of historic 18<sup>th</sup> and 19<sup>th</sup> century water-powered mill complexes along the valley and an industrial landscape of high historical and technological significance. The mills and their associated settlements remain in a largely rural landscape, just as they were in the late 18<sup>th</sup> and 19<sup>th</sup> centuries. This survival provides a clear sense of just how remarkable it was for this industrialisation to impose itself upon an agricultural landscape. With the advent of steam power, the cotton spinning industry moved to Lancashire, leaving the pioneer mills and built settlements 'arrested in time'. Some 19<sup>th</sup> and 20<sup>th</sup> century expansion has not undermined the essential characteristics of the settlements, including Belper, which were largely unaltered by further industrialisation and urbanisation (HE2.1).
79. The Derwent Valley Mills WHS boundary defines the historic core of Belper and the post-medieval industrial expansion. The Buffer Zone includes the immediate setting of the mills and settlements, recognising the need to acknowledge and protect the significance of the site as a cultural landscape. Within the Buffer Zone, the 'relict' landscape – an attribute of the Derwent Valley Mills WHS – is clearly apparent. The open fields at Bullsmoor, including the site, maintain the historic character of the unspoilt landscape as it inclines away from the Coppice Brook, a tributary of the River Derwent, towards the hilltop to the south-east. Historic



maps show that the features of the 18<sup>th</sup> and 19<sup>th</sup> century landscape remain relatively intact (HE2.1 Ax 7 & 8).

80. The Coppice Brook would have been a significant natural feature for the development of Belper, second only to the River Derwent. Earlier industrial activity took place along the brook, forming part of the 'relict' industrial landscape. While some 20<sup>th</sup> century development has taken place within the Buffer Zone, including the Vaillant factory, the natural separation provided by the brook between the built up area and the open fields remains so that modern development has a relatively limited impact. In the context of this part of the Buffer Zone, the character remains one of open fields beyond the natural boundary of the Coppice Brook.
81. Within the site, and viewing it in its wider context, the contribution made by the rural landscape to the OUV of the Derwent Valley Mills WHS can be directly experienced. Here, the Buffer Zone and setting of the WHS reinforces the distinction between the intact historic condition of the rural setting (an attribute of the WHS) and the historic built up areas. The Buffer Zone makes a very important and highly valuable contribution to the overall significance of the Derwent Valley Mills WHS.
82. The grade II listed Pottery Farm, of early 18<sup>th</sup> century origins, lies to the east of the site. The farm itself is a key element of the historic landscape and the surrounding fields, including the Scheme site, provide its rural setting. To the west the Vaillant factory has impacted negatively on the setting of the farm. However, the survival of the historic rural landscape between the farm and the factory, and to the south, still enables an appreciation of the rural setting and historic function of the farm and a direct association with the agricultural land that supported it (HE2.1 Ax 9). This makes a vital contribution to the significance of the farm.
83. The Scheme site lies within the setting of the Belper and Milford Conservation Area. The conservation area lies within the WHS and follows some of its boundaries; its south-eastern boundary takes in part of the Coppice Brook. The rural landscape setting to the conservation area contributes to the heritage significance of the WHS and the conservation area in the same way. The historic character of the conservation area's setting is evident in the rural landscape, with historic farmsteads, field boundaries and footpaths rising above the natural watercourse.

#### *Heritage impact*

84. Both schemes would essentially require the development of virtually the entire site and would result in built development in depth across the site. This extensive new urbanisation would result in the loss of the green fields and open rural character of the Scheme site which contribute so much to the significance of the WHS and other assets. This would severely diminish the established relationship, and experience, of the close juxtaposition of 2 spaces of completely different character – the open, peaceful, rural landscape and the historic built form of Belper. The understanding and appreciation of the historic relationship between the pattern of historic development and the rural landscape is a key element of the Buffer Zone, forming the setting of the WHS. This development will undermine the ability to understand that relationship and will harm one of the key attributes of the WHS, the historic rural landscape, thus harming the setting and significance of the WHS.

For the same reasons it will harm the setting and significance of both Pottery Farm and the Belper and Milford Conservation Area.

85. Belper is a key settlement in the WHS which saw the early creation of industrial development. In this part of the Buffer Zone, the OUV of the WHS and the authenticity of Belper is revealed in the survival of the relict rural landscape, a physical attribute of the WHS. While the mills and their functional proximity to the river cannot be seen from the site, they can be seen together in wider views both near and far, including Monitoring View 36 (HE2.1 Ax 5). There are many areas of the WHS where the historic mills cannot be seen, but the OUV concerns the imposition of industrial development on the rural valley landscape and, with the rapid decline of the industry, the unique juxtaposition of that development and the historic landscape, arrested in time. With the Coppice Brook ever forming a natural boundary, that particular attribute of the WHS can still be appreciated on the site.
86. HE considers overall that the harm is significant – albeit ‘less than substantial’ in Framework terms – since the harm caused would impact on a key element of the OUV of the Derwent Valley Mills WHS, one of the country’s most important heritage assets. The weight to be given to this harm should reflect not just its own severity but also the importance of the WHS as a whole. This decision is important to the overall management of this outstanding relic of Britain’s industrial revolution, something which had a profound effect on the world. Given the significance of this asset to the nation, the harm that would be caused should be accepted only if there is clear and convincing justification that the public benefits decisively outweigh that harm.

### **The case for Protect Belper**

*This is a summary of the evidence given by Protect Belper’s 5 witnesses, set out in documents PB1-PB9.*

87. The rural setting of the Derwent Valley Mills WHS was key in securing WHS status (PB3.1). The WHS is described as ‘a ‘relict’ industrial landscape where late 18<sup>th</sup>/early 19<sup>th</sup> century industrial development may still be seen in an 18<sup>th</sup>/19<sup>th</sup> century agricultural landscape (PB7). The setting of the mills and their associated communities in a largely rural landscape is of vital importance to the OUV of the WHS. The Buffer Zone has been drawn to include the rural landscape setting. Without the rural surroundings the historic meaning of the Derwent Valley Mills is lost. This position is supported by many recent appeal decisions.
88. The site lies adjacent to the Coppice Brook within a wider area of historic landscape which includes farmsteads and nailer’s cottages in a network of walled and hedged fields. The fields at Bullsmoor have medieval origins, later affected by enclosure, and are crossed by many public footpaths. These allow the 18<sup>th</sup>/19<sup>th</sup> century rural landscape, arrested in time, to be experienced as part of the context of the WHS (PB2.1, PB3.2, PB7). The tributary Coppice Brook valley opens into the Derwent valley and is a key element of the Buffer Zone (PB9). Development of the ‘relict’ landscape of the site would not only harm the integrity and authenticity of the WHS but would severely damage the setting of the grade II listed Pottery Farm on its boundary and the setting of the Belper and Milford Conservation Area.
89. The Coppice Brook suffers from localised flooding from rainwater run-off. While the appellants have considered flooding within the site, there are wider

- implications presenting a systemic risk. Water will accrue above the site due to cutting across overland water flows and the brook is culverted for 750 metres under the town before it enters the Derwent (PB7). No investigation of the culvert or its capacity has been undertaken. Network Rail expresses concern about the impact of floodwater on the railway culvert and there are clear implications for the town's flood management systems. This is not a matter that can be dealt with by condition since a series of unknown risks will remain unresolved (PB2.2, PB9).
90. A safe and secure access to the site cannot be achieved. At its junction with Kilbourne Road, the existing single entrance road already has a number of hazards (PB5). In Scheme A the entrance would be shared by increased Vaillant factory traffic, including HGVs, and cars and service traffic for 150 dwellings; in Scheme B it would be shared by increased Vaillant factory traffic and commercial traffic associated with 14,000 m<sup>2</sup> of commercial development. The major increase in traffic at the junction and the required highway adjustments would significantly increase the hazards. The right turn lane, by introducing a third lane, would narrow the widths of the through lanes and would also result in the loss of the grass verge, which protects pedestrians and children leaving the nearby school. These are dangers that cannot be resolved by condition (PB5).
91. Bullsmoor has been allocated in AVBC Local Plans as employment land since 1982. Following the inscription of the WHS in 2001, AVBC was minded to de-allocate Bullsmoor in the 2006 Local Plan, following advice from the Local Plan Inspector, but did not do so, to save time and money rather than for planning reasons, instead strengthening the policy by requiring a development brief (CD1.5, PB4 p10). No such brief has been agreed for either application. In consultations for the emerging Local Plan, the site has been consistently assessed as poor quality employment land which could readily be lost to employment use. Both the Council and the appellants have argued that, apart from some Vaillant expansion, the site is unsuitable for employment use because of its location and access. It is somewhat contradictory for the appellants now to submit, and the Council to support, proposals for employment use of that site (PB4 pp 10 & 11).
92. The claimed public benefit of additional jobs is at best speculative. There is no clear intention by Vaillant to expand; the proposals simply give them the option to expand in the future. Even so, the stated employment figures are for just 35 new jobs. The appellants now confirm that development of their employment site might take 10-12 years, not the 2 years presented to the Planning Board. The public benefits are clearly overstated. In any event emerging AVBLP policy ED6 would allow Vaillant to expand onto additional land (CD1.10 p78). Furthermore there is more than sufficient brownfield land already identified for employment uses in the Borough, so there is no compelling need to develop this site. There can be no justification for allowing an application on a site which is greenfield, part of the WHS and considered to be poor quality or inappropriate for employment use by every review and assessment that has been made of it since 2005 (PB4, PB9).
93. The Town Council unanimously opposed both applications, primarily to protect the WHS. The Town Council is in the process of drafting a Neighbourhood Plan. The Draft currently shows that, while there are some constraints and concerns about deliverability, all the town's housing needs could be met by brownfield development without the need for any greenfield sites (PB6). This is in line with the Framework and the emerging Local Plan, which prioritises the use of brownfield land.

## **The case for Peveril Homes Ltd/Peveril Securities Ltd and Vaillant Group UK Ltd.**

*This is the gist of the evidence given to the inquiry by the appellants, set out primarily in proofs of evidence and appendices PV2.1-PV5.2 and closing submissions PV8.1*

94. Officers of the Council recommended that both schemes be approved (CD2.44 and CD3.25). In the case of Scheme A, the mixed use scheme, members decided not to accept the recommendation and refused the application. In the case of Scheme B, the employment scheme, members accepted the recommendation and resolved to approve the scheme. From its evidence it is clear that the Council remains firmly in favour of granting permission for the employment scheme.

### *The development plan*

95. In policy terms the employment scheme (Scheme B) is fairly straightforward (PV5.1 para 3.32). It complies with up to date development plan policy and should be granted planning permission unless material considerations indicate otherwise. As the Council points out (CO1), the only consideration is whether the less than substantial harm to the significance of the WHS is sufficient to justify taking a decision otherwise than in accordance with the development plan. The WHS was inscribed in 2001, at a time when the site was allocated for Business and Industrial Development Use in the 1994 Development Plan. The inscription was clearly an important consideration in the adoption of the current Local Plan in 2006. Policy ER3 was formulated having regard to the existence of the WHS and the fact that the site was within its buffer zone.
96. For the mixed use scheme (Scheme A) the position is more complicated and nuanced. It is acknowledged that the housing element is not fully consistent with policy ER3; however, the employment element is fully compliant and should carry significant weight (PV5.1 paras 3.58-3.71). As a matter of law, what is required is an assessment of the development plan as a whole (PV8.2 paras 46-50). The Council agrees that the failure to adopt a Development Brief for the site does not compromise the fundamental purpose of policy ER3, to bring forward employment development. The appellants submitted a Brief and pressed for its adoption (PV5.1 Ax 3). The main purpose of the Brief is to regulate the visual impact of the proposals. As the Council agrees, these matters can be dealt with by condition.
97. Policy EN29 must be read in the light of the later Framework policies, particularly para 134. This seeks to balance the public benefits of the proposal against less than substantial harm. While the underlying objectives of protecting heritage assets remain the same, policy EN29 imposes a stricter test.
98. It is agreed that the housing policies of the development plan are out of date and that the mixed use scheme is in accordance with the strategic objectives of the development plan. The Council accepts<sup>4</sup> that the employment element complies with policy ER3; the policy does not seek to proscribe other forms of development;

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<sup>4</sup> In cross examination of Mr Millhouse

and where the housing element of development is contributing to enabling employment development on the allocation, it is contributing to the achievement of the underlying purpose of policy ER3, thereby meeting its specific objective. Thus overall a grant of permission to the mixed use scheme would be a determination in accordance with the plan as a whole or at least one which is in compliance with its overriding objectives.

*Heritage assets – law and policy*

99. A concise summary of legislation, national policy and guidance relevant to the setting of heritage assets is set out in section 3 of PV3. Key points to note are the statutory duty under s66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 which requires special regard to be paid to the desirability of preserving a listed building or its setting. The Barnwell Manor judgement (CD5.15) indicates that special regard means giving considerable importance and weight. Framework 132 requires that great weight should be given to the conservation of designated heritage assets; the more important the asset, the greater the weight should be. The parties agree that World Heritage Sites lay at the apex in terms of importance.
100. The key issue is what impact the proposals would have on the significance of the WHS, the listed building and the conservation area. The site lies within the settings of the heritage assets. Setting is not a heritage asset in its own right and it is the impact on the asset rather than directly on the setting which forms the basis of the correct approach. The most directly relevant guidance on setting is Historic England's GPA3 (CD1.21). The Council also refers to the Shimbles case<sup>5</sup> (CO1) which indicates that a decision maker need not express the degree of harms or benefits on a spectrum, needing only to make it clear which consideration outweighs the other. The circumstances here are different. Each witness has given some assessment of the degree of harm. It would be helpful in understanding the outcome if some broad characterisation of the degree of weight applied to harms and benefits could be expressed.

*The impact of the proposals on the significance of designated heritage assets*

101. With regard to the WHS, all the expert evidence, including that of the Council (CO2.1 p71), confirms that the heritage impact of both proposals would be broadly the same. The appellants carried out a concise assessment of the impact on the setting of the WHS by applying steps 2, 3 and 4 of GPA3. HE and the Council both criticise the appellants' approach which they consider focusses solely on the intervisibility between the site and the WHS (HE2.2 para 5.4 and CO2.1 para 8.7). This is mistaken; the evidence shows that the GPA3 advice *that it is how the WHS is experienced and how we appreciate its significance which is important* was fully taken into account. The finding that only visual considerations were relevant simply signals that all the understanding of the setting comes from the use of one's eyes, and means no more than that.
102. The appellants' key conclusions on this matter are set out in PV3 paras 5.14-5.80. They can be summarised as follows:
- The proposed developments would be visible in the background of informative views of the WHS from the Chevin, to the west of the River

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<sup>5</sup> *Shimbles v Bradford MBC* [2018] EWHC 195 (Admin), Kerr J, at para 87 and 91.

Derwent. The degree of change would be minimal and would have little effect on the contribution these views make to heritage significance (PV2.2 Ax 4 pts 2 and 3, VP6 and VP7).

- To the limited extent that it is possible to experience the WHS from the vicinity of the proposed developments, in particular from Pinchom's Hill (VP8), that experience of Belper with a rural landscape in the foreground would not be materially changed. There would be little effect on the contribution these views make to heritage significance.
  - There are multiple locations within the WHS at Belper from where the relationship with the surrounding rural landscape can be appreciated. The proposed developments would only be visible from one of these locations, a short section of Nottingham Road on the eastern edge of the WHS (VP2). From here, there would only be a minor increase in the extent of built development, leaving the rural character of the view largely intact. There would be very little loss of legibility in the historic relationship between Belper and its rural landscape setting and therefore little effect on the contribution this view makes to the heritage significance of the WHS.
  - In addition to the essentially static viewpoint on Nottingham Road, it is also possible to experience the relationship between the WHS and its rural landscape setting to a limited degree in the vicinity of the proposed development sites. One footpath, Belper FP92, connects the WHS at Walker's Bottom directly into the rural landscape (VP3 and VP4) and the bridleway on Kirk's lane (VP1). When both leaving and approaching the WHS along this route, the experience of the rural landscape in the immediate vicinity of the path is currently affected by open views north to the extensive 20<sup>th</sup> century residential suburbs of Belper and the existing Vaillant Works. The presence of either of the proposed developments would add to the existing built development in this area but would not materially change the legibility of the relationship between rural landscape and historic settlement.
103. As the Statement of OUV (CD1.13) makes clear, the key attribute of the cultural landscape which conveys OUV lies within the boundary of the WHS. It is fully accepted that the wider rural setting could affect an appreciation of these main attributes of the cultural landscape both in general and potentially in connection with the Scheme site in particular. However, the Council's treatment of the rural setting as a key attribute has led to an overstatement of impact. The appellants maintain that, when considering the WHS as a whole, the changes to the historic landscape would be negligible. With regard to the issue of 'salami slicing', it is important to avoid the fallacy of illogical reductionism. The loss of a relatively small site in itself, together with some effect on limited views, cannot be escalated in scale to something which seriously jeopardises the significance of the WHS as a whole.
104. The evidence (PV3 paras 5.28-5.30) confirms that the boundary of the buffer zone in this area was based solely on pre-existing boundaries and was fixed with no reference to support what contribution it made to OUV. This contrasts with the majority of the rest of the buffer zone, where evidence of the importance of the wider rural setting is clear from the Nomination Document and Management Plan. The serves to highlight the lack of significance of this part of the buffer zone.

105. No key monitoring point will be significantly affected by either proposal. Proper assessment from Monitoring View 36 shows that the site is barely visible. The extremely limited intervisibility between the site and the WHS is clearly shown in the appellants' Zones of Theoretical Visibility (PV2.2 Ax2 Figs 1-3 and Ax3). Neither of the 2 development proposals would materially harm the heritage significance and OUV of the Derwent Valley Mills WHS. The setting of the WHS would effectively be preserved, in compliance with policy EN29.
106. Although the Nomination Document does refer to development pressures (DVM1.2 Ax B p160), at no point is the site's allocation for employment development seen as a concern. Para 3 section 5 of the Nomination Document specifically confirms that 'local development plans have been devised for land use policies to control and promote development to help satisfy the needs of the community. Upon subscription, planning authorities will introduce new or modify existing policies to reflect the enhanced status of this cultural landscape'. This is precisely what happened with the adoption of the 2006 Local Plan, with policy ER3 firmly confirming development on the site.
107. The WHS Management Plan refers to planning matters and the fundamental aim of striking a balance between the needs of conservation and the public benefits of development (CD1.14 p50 para 12.1.4). What is important in this case is that the statutory plan has carried out this exercise and has already struck the balance. While there is more evidence before the inquiry now in 2018, the fundamental nature of the objections and benefits are not materially different to what they were in 2006. While the understanding of the concept of setting has moved on, it would be inaccurate to say that heritage policy is significantly more restrictive now than it was in 2006. On the contrary, the absolute language of policy EN29 was consistent with PPG15 but does not sit with the language of balance in Framework 134. Furthermore, the 2006 Local Plan predates the recession and does not reflect the Government's key objective to support sustainable housing development and employment growth.
108. With regard to Pottery Farmhouse, the setting of this grade II listed building is provided by the agricultural land around it. Despite modern development of part of the farmland, including the Vaillant works, Pottery Farm remains connected to its agricultural land and can still be experienced as a working landholding, albeit now on the fringes of Belper with a backdrop of the built up area. That relationship to its agricultural land makes a positive contribution to the heritage significance of the farmhouse, enhancing its historic interest (PV3 pp 49-53). The proposals would not encroach on remaining Pottery Farm land but they would change the setting of the farmhouse, so that it would be experienced in a more urban setting. The encroachment of built development would reduce the ability to appreciate the farmhouse in its historic agricultural setting. Since the setting already contains built development, this incremental change would result in a minor reduction in heritage significance.
109. The conservation area lies within the WHS and its heritage significance relates primarily to the architectural and historic interest embodied in the industrial landscape. In this respect it is a microcosm of the larger WHS and its relationship with the rural landscape is much the same. There are very limited views between the conservation area and the site, and the experience of approaching the conservation area on paths in the vicinity of the site would be similar to that outlined above for the WHS. The land at Bullsmoor makes only a very limited

contribution to the heritage significance of the conservation area and this contribution would not be materially diminished by the proposed developments. The setting of the conservation area would be preserved and the development proposals would cause very little harm to the heritage significance of the area.

#### *Other matters*

110. Highway safety and capacity. The proposed main point of access has been the subject of an independent road safety audit (PV4.2 Ax IT4). The audit raised no concerns regarding the safe use of the access road by all users. Visibility splay standards, derived from observed traffic speeds, would be applied to both schemes. Some minor modifications required to the left turn out can be achieved by agreed conditions. The junction would operate within capacity (PV4.2 Ax IT7 and IT8). Analysis of accident data shows that the schemes would have no significant detrimental effect on road safety (PV4.1 paras 5.7.1-5.7.4). Both schemes would result in no more than 5% increase in traffic flows and would not result in material capacity problems on the wider highway network (PV4.1 para 5.5.3).
111. Despite Protect Belper's survey, carried out on a different basis, the appellants consider that the existing usage of the local footpaths is low and that the necessary changes to the footpath network would not have a significant effect (CD1.49, PV4.1 para 4.7.12). The site is in a highly sustainable location, with access to a range of facilities and public transport (PV4.2 Ax IT12 and IT13). Travel Plans would be submitted for both schemes to encourage the use of public transport. Both schemes would resolve the current parking problems for Vaillant's employees, reducing the need for on-street parking. In all the proposals would fully comply with relevant standards and national guidance and would not result in any material adverse impact on either highway safety or capacity.
112. Employment. Although the site was designated for employment long ago, it is only recently that agreement between Vaillant and Peveril was reached (PV5.2 Ax 4). This removes a significant obstacle to development. This is not a case where there is no reasonable prospect of the site being used for employment purposes, indeed the appellants confirm that the employment scheme is likely to deliver over a 10-12 year period. As to the availability of alternative brownfield sites, no other site can facilitate the expansion of Vaillant. It is wrong to suggest there is no positive statement of support from Vaillant regarding its intention to expand. This overlooks their letter of support (PV5.2 Ax 9) and the fact that Vaillant is a joint applicant on both sites. Expansion, to all practical extents, is dependent upon the success of the schemes.
113. Flood risk. The Flood Risk Assessments (FRAs) for both schemes are at CD2.13, CD3.14 and CD3.20. It became clear at the inquiry that Protect Belper made no criticism of the appellants' FRAs, rather their concerns were directed at the Lead Local Flood Authority (LLFA) and their decision not to commission a Stage 2 Strategic FRA for Belper. There are no objections to the proposals from the Environment Agency or the LLFA and there are no flood risk or drainage related impacts that would justify the refusal of permission.

#### *The overall planning balance*



114. On the employment scheme (Scheme B), the principal parties are in agreement. The weight to be attached to the delivery of employment development in accordance with the development plan is self-evident. The question is whether other material considerations – the harms – outweigh the statutory presumption in favour of the development plan. In this case the appellants have found that little harm would be caused to the WHS, its buffer zone or the conservation area. There would be some limited harm to Pottery Farm. While harm to heritage assets carries considerable importance and weight, in this case the level of harm is so slight that it does not approach the significance necessary to lead to a refusal of planning permission for a development otherwise in accordance with the development plan. Against that minimal harm are set the many benefits of the scheme, including the ability for Vaillant to expand, securing existing and providing new jobs; about 655 jobs created across the rest of the site; and about 191 construction period jobs. The vast majority of these jobs, including apprenticeships, would be local. There would be substantial benefits for the local economy (PV5.1 pp 20-22). It is agreed by the main parties that the statutory presumption in favour of the development plan is not outweighed by other material considerations so that permission should be granted for the called-in application 'without delay'.
115. On the mixed use scheme (Scheme A), the parties agree the primary mechanism for the protection of the WHS is the development plan and its policies; that the employment element – the extension of the Vaillant works – complies with policy E3; and that it was inherent in policy E3 that development of the allocated site would cause some harm to the WHS. The housing element does not accord with the development plan but, in the absence of a 5 year supply of housing land, would boost significantly the supply of housing in accordance with Framework 47. The parties agree that the harm to heritage assets would be less than substantial so the proposal falls to be considered under Framework 134. Footnote 9 to Framework 14 means that the 'tilted balance' in favour of development is disengaged until and unless the balancing exercise is resolved favourably (PV5.2 Ax 6 p126 and p 142).
116. The limited 'less than substantial' harm to heritage assets is certainly not beyond the range of 'slight to moderate' harm. Against this must be set the very substantial weight of public benefits. The provision of 150 market and affordable houses would be a major benefit in circumstances where there is a significant shortfall in housing provision; the housing development would cross-subsidise enabling works at Vaillant, helping to safeguard 750 existing jobs as well as providing a significant boost to the prospects of growth for Vaillant (and solving an existing parking problem); it would provide a significant boost to the local economy, helping to maintain the vitality and viability of the town and the fabric of heritage assets; and there would be construction jobs, albeit temporary (PV5.1 paras 3.117-3.138).
117. In the context of the allocation of the site for employment development, these benefits are very substantial and provide clear and convincing justification for the limited, less than substantial harm to the heritage assets. The harm identified does not outweigh the very substantial public benefits of the development. Beyond the Framework 134 balancing exercise, no other harm comes close to outweighing the tilted balance in favour of sustainable development so the scheme should be allowed.

## Written representations

118. There are 14 letters of objection to the mixed use scheme and 5 to the employment scheme (IN2.1 and IN2.2), including a letter from Pauline Latham OBE, MP for Mid-Derbyshire. The letters generally raise the issues discussed at the inquiry relating to the harm to the landscape and the WHS and to the other matters of flooding and highways impact raised by Protect Belper. Some additionally include reference to the impact on local infrastructure – doctors’ surgeries, dentists and schools - and to the loss of wildlife habitat.

## Planning obligations

119. The Appellants and the Council submitted 2 Agreements (PV9.1 and PV9.2), one for each proposal, setting out planning obligations under s106 of the Act intended to mitigate the impact of the developments. The Agreements were accompanied by a CIL compliance statement (PV6.3) which confirms compliance with CIL Regulations 122(2) - the 3 tests - and 123(3) – the pooling restrictions. The statement provides justification for the provisions of the obligations with regard to national planning policy and guidance, the policies of the local development plan, the Council’s supplementary guidance and the precedent set by previous decisions. The Agreements were discussed in a discrete session at the inquiry.

120. The obligations for Scheme A, the mixed use scheme (PV9.1), are intended to ensure:

- payment of the Councils’ legal and monitoring fees
- the provision of 30% affordable housing in a mix of tenures
- the provision and management of on-site public open space
- the mitigation of the impact of the proposals on local infrastructure through contributions of £330,571.29 towards the upgrading of Pottery Primary School, £57,060.00 towards additional patient space at Riversdale Surgery, £911.82 per dwelling toward refurbishing and updating play and sports facilities at Sandbed Lane, and £191.12 per dwelling towards improving sports pitches at Whitemoor Recreation Ground
- the necessary transfer of land between the parties and the completion of access road, car parking and other works
- the provision of and maintenance arrangements for a sustainable urban drainage scheme
- a contribution of £10,000 towards monitoring the implementation of and compliance with the Commercial and Residential Travel Plans.

121. The obligations for Scheme B, the employment scheme (PV9.2), provide for:

- payment of the Councils’ legal and monitoring fees
- the provision of and maintenance arrangements for a sustainable urban drainage scheme
- a contribution of £10,000 towards monitoring the implementation of and compliance with the Commercial and Vaillant Travel Plans

122. The parties agree that the provisions of these obligations would effectively mitigate the impact of the developments on the local area; in particular, the effects of the additional population from 150 new dwellings on health provision, school places and recreational facilities would be mitigated by financial contributions towards their enlargement and improvement.

### **Conditions**

123. At the inquiry the parties submitted an agreed list of suggested conditions for each scheme (PV7.1 and PV7.2). The conditions were discussed in an informal session at the inquiry.
124. For the mixed use scheme (PV7.1), as well as the standard reserved matters conditions, a Development Brief is required to demonstrate how the development minimises its visual impact, including in relation to the WHS. Floor levels are required and building heights are set to reduce visual intrusion. Measures to protect the site from historic mining risk and the risk from contamination must be taken. The identified existing and proposed noise sensitive dwellings are to be protected from factory noise to ensure acceptable living conditions are provided. Details of the lighting scheme are required to limit light pollution. A construction period method statement is required in order to limit the impact on local residents. Details of the modification to the existing access and the associated relocation of the bus infrastructure are necessary to ensure highway safety. Space must be provided for the parking and manoeuvring of all vehicles before the commercial floorspace comes into use to ensure that these facilities are available when required. Similarly, an employees car park must be provided before works to the access take place to ensure employee parking is available. Residential and commercial Travel Plans are required to promote sustainable forms of travel. Biodiversity enhancements are required to mitigate the impact of development on wildlife. Details of foul and surface water drainage are required to ensure the proper drainage of the site. Works to implement the findings of the Flood Risk Assessment are necessary to ensure the flooding risks are minimised.
125. For the employment scheme (PV7.2), as well as the standard reserved matters conditions, a Development Brief is required to demonstrate how the development minimises its visual impact, including in relation to the WHS. Floor levels are required and building heights are set to reduce visual intrusion. Measures to protect the site from historic mining risk and the risk from contamination must be taken. The identified existing noise sensitive dwellings are to be protected from factory noise to ensure acceptable living conditions are provided. Details of the lighting scheme are required to limit light pollution. A construction period method statement is required in order to limit the impact on local residents. Details of the modification to the existing access and the associated relocation of the bus infrastructure are necessary to ensure highway safety. An employees car park must be provided before works to the access take place to ensure employee parking is available. A Travel Plan is required to promote sustainable forms of travel. Biodiversity enhancements are required to mitigate the impact of development on wildlife. Details of foul and surface water drainage are required to ensure the proper drainage of the site. Works to implement the findings of the Flood Risk Assessment are necessary to ensure the flooding risks are minimised.

126. The parties agree that, in each case, the conditions are necessary to control the impact of the development on the local area.

## Inspector's Conclusions

*The following conclusions are based on my report of the oral and written evidence submitted to the inquiry and on my inspection of the site and surrounding area. The numbers in square brackets [20] refer to paragraphs in the preceding sections of the report from which these conclusions are drawn.*

127. The main considerations fall within 3 broad headings [6, 20, 33]:

- the impact of the proposals on the significance of the Derwent Valley Mills WHS and other designated heritage assets;
- other material considerations; and
- the overall planning balance.

### Policy considerations

128. The current Amber Valley Local Plan, adopted in 2006, is dated. The appellants, and indeed the Council in relation to Scheme B, rely extensively on saved policy ER3 under which the site is allocated for employment development [32,95]. The site has consistently been allocated for employment development in a series of previous Local Plans [25,91].

129. The Derwent Valley Mills WHS was inscribed in 2001 [12,30,66]. The Nomination Document refers to development pressures, highlighting how large scale new development in locations near the site could damage the visual amenity of the cultural landscape. For this reason a buffer zone has been defined as a framework for policies to safeguard the setting of the nominated site. With that aim local planning authorities are required to introduce new or modify existing policies to reflect the enhanced status of the cultural landscape [54,106]. The site lies within the buffer zone [30,69,76,87,104].

130. In examination of the draft 2006 Local Plan, which continued to allocate the Bullsmoor site for employment development under policy ER3, the Local Plan Inspector was not satisfied that the allocation would not have an adverse impact on the WHS buffer zone and for this reason advised the Council to give further consideration to the allocation of the site [30,91]. Initially minded on heritage advice to delete the Bullsmoor site allocation, in the event, evidently for administrative rather than planning reasons, the Council opted to retain the allocation and to modify it by requiring a pre-permission development brief for the site [25,91,106]. Policy EN29 was also confirmed, requiring proposals to preserve or enhance the setting of the WHS [24]. There is clearly some tension between a policy allocating a site for development and a policy requiring at least its preservation [25].

131. Since then a number of relevant events has occurred:

- In 2008 an Employment Land Review questioned the viability of Bullsmoor as employment land, rating it a poor quality site and identifying it as a site that could be lost to employment use in favour of better allocations elsewhere [PB4 p4, 11 & 13].

- In 2010 the Derwent Valley Mills WHS Partnership produced a Statement of OUV, endorsed by UNESCO, which underlined the importance of the green 'relict landscape' setting of the WHS [69].
  - In 2012, the National Planning Policy Framework was published. Paragraph 132 made it clear that, in considering the impact of a proposed development on the significance of a heritage asset, which could be harmed by development in its setting, great weight should be given to the asset's conservation: the more important the asset, the greater the weight should be. All parties agree that the WHS is of the very greatest importance [30,33,99].
  - In 2014 the Derwent Valley Mills WHS Partnership published its updated WHS Management Plan, which says that one of the most important management objectives is the protection of the most immediate and sensitive parts of the WHS's setting represented by the buffer zone [67].
  - In 2016 the consultation draft AVBLP was published. This abandoned the employment allocation of the Bullsmoor site, initially replacing it by a mixed use allocation under policy HGS6, Following strong objections from HE, the Derwent Valley Mills WHS Partnership and others, the allocation was deleted from the plan [26,70]. The submission draft of the AVBLP is put forward for examination with the site not allocated for any purpose [26].
132. These later events have clearly strengthened the importance of the buffer zone and the setting of the WHS, giving them greater weight in the balance of considerations [61]. This was evidently recognised in the decisive rejection of any form of development on the site in the submission draft AVBLP [26]. While I cannot pre-empt the Local Plan Inspector's view of this, for the purposes of these proposals the rejection of the Bullsmoor site for development seems entirely consistent with the Framework conservation objectives and the WHS Management Plan [68,107]. All this leads me to the firm view that, on shaky ground to start with, policy ER3 cannot now be considered to be fully consistent with the Framework as a whole and can carry nothing like the full weight ascribed to it by both the Council and the appellants.

### **The impact of the proposals on the significance of the Derwent Valley Mills WHS and other designated heritage assets**

#### *The Derwent Valley Mills WHS*

133. The Derwent Valley Mills World Heritage Site is a heritage asset of the highest national and international importance. One of only 18 such designations in England, the Derwent Valley Mills WHS encapsulates a relatively short but vital early episode of the world's first industrial revolution. It illustrates the late 18<sup>th</sup> century birth of the factory system, with a series of water-powered cotton spinning mills built into the rural landscape of the Derwent river valley. The need to provide housing for workers nearby resulted in the creation of the first modern industrial settlements. Belper went from small medieval village to industrial town. The development of steam power in the 19<sup>th</sup> century moved the focus of the cotton spinning industry to Lancashire, and no further industrialisation of the valley took place [66,67,78].
134. The Outstanding Universal Value of the WHS lies primarily in the survival of an industrial landscape of great historical and technological significance. The mill

- complexes and their settlements remain in a largely rural landscape, just as they were when they were built. The survival of that unique cultural landscape, arrested in time in the 19<sup>th</sup> century, provides an insight into just how remarkable it was for these large industrial establishments and their associated settlements to be imposed on an admired rural landscape. Beyond the boundary of the WHS, the most sensitive parts of the relict landscape are protected by a buffer zone. As well as providing an important historic setting for the WHS, the relict landscape allows the 18<sup>th</sup>/19<sup>th</sup> century industrial development to be appreciated in an 18<sup>th</sup>/19<sup>th</sup> century landscape, and is in itself an attribute that contributes to the OUV of the WHS [38,68,69,79,87].
135. The significance of the WHS thus lies not just in the historical, cultural and evidential value of the early industrialisation of the Derwent valley but also in the survival, almost intact, of the contemporary rural landscape into which it was set. The ability to appreciate the mills and settlements in their original landscape setting contributes hugely to the significance of the WHS as a heritage asset.
136. The parties agree that the impact of either scheme would be broadly the same so I shall simply refer to both proposals as 'the development' [37,101]. The site encompasses several open fields at Bullsmoor, on the eastern edge of the built up area. The appellants argue that, despite being within the buffer zone, the site makes a limited contribution to the landscape setting of the WHS such that the changes proposed would have a negligible effect [102,103].
137. Historic maps show that the field pattern at Bullsmoor stems largely from enclosure in the 18<sup>th</sup>/early 19<sup>th</sup> century, more or less contemporaneous with the industrial development of the valley. There is evidence too of the range of ancillary employment activities, including farming, the potteries, nail making, foundry work and quarrying. Primarily for menfolk, since mainly women and children were employed in the mills, these employment options were essential in supporting the birth of the factory system. The field pattern, and the network of footpaths enabling workers to get to their places of work, remains relatively intact. Old farm buildings, pottery buildings and nailers workshops (some in ruins) contribute to the distinctive character of the landscape [35,50,51,71,79,82,88].
138. Because of the Bullsmoor area's protected location within the WHS buffer zone, the survival of the historic field pattern and the very positive contribution that this historic landscape makes to the OUV of the WHS, I consider that it should be considered a valued landscape in the terms of Framework 109, a natural, local environment to be protected and enhanced [35,36].
139. The site is some distance from the WHS boundary and there is limited intervisibility [41,105]. However as I found on my site visit, when walking through the historic landscape on the old footpaths, the site is included in many unfolding views of the WHS and, experienced like this, is clearly part of its relict landscape setting. Walking through the unchanged landscape on the same footpaths and country lanes today allows a clear appreciation of how 18<sup>th</sup>/19<sup>th</sup> century workers, walking to work, would have seen the industrialised areas from the countryside. It informs an understanding of the remarkable imposition of industrial development on the valley landscape [46,47].
140. From Monitoring View 36, across the river valley, the fields at Bullsmoor are a distant part of a wider panoramic view which takes in virtually the whole of Belper. However, from this point, and from the nearby footpaths, the historic relationship

between the relict landscape and the WHS, and the contribution that makes to its OUV, is very apparent. The encroachment of built development and the loss of the fields at the site would noticeably reduce the extent of the open landscape setting of the WHS [38,47,53,73,75,84,88,102,].

141. The site represents a fairly small part of the overall setting of the WHS in the Derwent valley. The appellants argue that the loss of a relatively small site, in itself, would not seriously jeopardise the significance of the WHS as a whole. However, the degree of local harm identified above should not be underestimated. Such reasoning could be used to justify similar proposals elsewhere in the buffer zone, and a proliferation of similar, relatively minor schemes throughout the WHS could, on a cumulative basis, result in very significant harm to the relict landscape setting of the WHS [53,103].
142. The loss to development of the fields at Bullsmoor would weaken the heritage authenticity of the relict landscape as a functionally important attribute of the WHS. It would diminish the quality and extent of the original landscape setting of the WHS and thus substantially reduce the contribution the setting makes to the OUV and to the distinctive character of the WHS. The significance of the WHS as a heritage asset would be considerably undermined.

#### *Pottery Farm*

143. The grade II listed Pottery Farm, dating from the early 18<sup>th</sup> century, lies adjacent to the eastern boundary of the site. The group of farm buildings contributes much to the character of the historic landscape, and the surrounding fields, including the Scheme site, provide its agricultural setting. Open land lost to the Vaillant factory has had a negative effect on the setting of the farm. However, the survival of the historic rural landscape between the farmhouse and the factory, and to the south, still enables an appreciation of the rural setting and historic function of the farm and a direct association with the agricultural land that supported it. This makes a vital contribution to the significance of the farm, enhancing its special interest [59,82,84,88,108].
144. The proposed development of the land between the factory and the farm buildings would mean that Pottery Farm would lose much of its rural surroundings. It would be experienced in a much more urban setting. The further encroachment of modern development would substantially reduce the ability to appreciate the farmhouse in its historic agricultural setting such that its significance as an historic rural farmstead would be diminished.

#### *The Belper and Milford Conservation Area*

145. The Belper and Milford Conservation Area lies almost entirely within the WHS and the built up area follows much of its boundary. The Bullsmoor fields, including the Scheme site, provide the eastern setting of the conservation area, with the Coppice Brook, a tributary of the Derwent, marking the strong contrast between town and country. The historic character of the conservation area's setting is evident in the rural landscape, with historic farmsteads, field boundaries and footpaths rising above the Coppice Brook. The significance of the conservation area lies in the relationship of the industrial area and the rural landscape into which it was inserted. The rural landscape setting to the conservation area contributes much to the heritage significance of the conservation area and helps to define its distinctive character and appearance [83,84,88,109].



146. The urbanisation of a key part of this rural setting would to a large extent blur the clear boundary between town and country and result in the loss of a substantial part of the historic rural setting of the conservation area. That would undermine its special interest and lessen its significance as a heritage asset.
147. Thus, while there would be no direct harm to the WHS, Pottery Farm or the Belper and Milford Conservation Area, very substantial harm would be caused to the setting of the WHS. Less, more moderate harm would be caused to the settings of Pottery Farm and the conservation area. Since these settings also form part of the setting of the WHS, within the buffer zone, the harm would be cumulative. Taken altogether, that harm would substantially undermine the significance of all the heritage assets. The failure to preserve or enhance the setting of the WHS in particular would conflict with AVLP policy EN29. In the terms of Framework 132-134, the development proposal would lead to less than substantial harm to the significance of designated heritage assets.

### **Other material considerations**

148. Understandably, given the history of flooding along the Coppice Brook, local residents are concerned that major development on this site, bordering the brook, would increase the risk of downstream flooding. However, the site would be drained by a sustainable urban drainage system, designed to replicate existing surface water runoff and to not make matters worse. The implementation and management of such a system would be secured by condition and obligation. That would effectively prevent the development of the site from increasing the risk of flooding and meets the requirements of the Environment Agency and the local flood authority. While conditions further downstream may be less than satisfactory, in these circumstances the development of the site cannot be expected to resolve existing offsite problems which are more the concern of the local flood authority [89,113,120,121,124,125].
149. Local residents are also worried about highway safety at the entrance to the site. There would be a substantial increase in the number of heavy lorries and cars using the entrance. However, the entrance would be redesigned to ensure that even the largest vehicles could safely turn in and out while safeguarding the safety of other road users and pedestrians using the footways. The design has been subject to an independent safety audit and compliance with the required standards can be ensured by condition. Residential Travel Plans, by encouraging more sustainable means of travel, would to some degree limit traffic flow and free up roadside parking space. Commercial Travel Plans could ensure restriction of heavy traffic to the safest routes. The residents' concerns are not sufficient to override the approval of the highways authority [90,110,111,120,121,124,125].
150. The site has long been allocated as employment land, although for more than 30 years it was not taken up. In the 2006 Local Plan, although initially minded to remove the allocation the Council, evidently for administrative reasons, decided to retain it. Then, in preparing the emerging Local Plan, the Council abandoned the allocation for employment use, instead preferring primarily residential use with an allowance for Vaillant expansion. I particularly note that, at that stage, in supporting a mixed use allocation, the appellants highlighted the poor quality of the site for employment use, arguing that it should not be retained for that use and that the 2006 Local Plan was time expired and should be afforded little weight. That formed the basis for the Scheme A application. Following strong objections from heritage bodies in particular, the mixed use allocation was deleted from the

emerging Local Plan. After the mixed use scheme was refused planning permission, perhaps in order to establish the principle of development the appellants submitted the employment scheme, Scheme B. Notwithstanding the weight of advice to the contrary and its conclusions on the emerging Local Plan, the Council decided to support this scheme, giving weight to the benefits of job creation and full weight to policy ER3 [17,29,32,91,112].

151. Although clearly preferring the mixed use scheme, the appellants claim that there is a reasonable prospect of the site being used for employment purposes, delivering jobs albeit over a 10-12 year period. There is little evidence of that. Even the Council, a supporter of the proposal, has doubts about whether the employment scheme would in fact be built. Vaillant simply want the flexibility to expand should the opportunity arise and the certainty of being able to meet any future needs. While support for a major local employer is important, the future expansion of Vaillant is not dependent on the success of the schemes since it is specifically allowed for in the emerging Local Plan. Given the appellants' own view of the poor quality of the site for employment use, it is clear that the public benefits of job creation have been somewhat overstated [63,91,92,112].

### **Obligations and conditions**

152. In each case the s106 Agreement is necessary to make the development acceptable in planning terms, is directly related to the development and is fairly and reasonably related in scale and kind to the development. The planning obligations therefore meet the relevant CIL Regulations and the tests set out in Framework 204 [119-122].
153. In each case the suggested conditions are appropriate to an outline planning permission and are a necessary and reasonable means of securing compliance with a range of measures intended to protect local residents and to control the impact of the development on the local area [123-126]. The suggested conditions are set out in Annex A (the mixed use scheme) and Annex B (the employment scheme) attached to this report.

### **The overall planning balance**

154. In accordance with Framework 134 it is necessary to weigh the less than substantial harm to heritage assets against the public benefits of the proposals. 'Less than substantial' does not necessarily mean insignificant and, as a matter of law, each incidence of harm must be given considerable importance and weight.

#### *The mixed use scheme – Scheme A*

155. The proposed development would bring clear benefits. The provision of 150 new dwellings in circumstances where there is a significant shortfall in housing supply is a major benefit, as is the inclusion of 45 affordable dwellings to meet a pressing need; the resolution of parking problems and additional floorspace for Vaillant is a benefit, but one that is tempered by the present lack of intention to build the factory extension and the fact that expansion space would in any event be safeguarded by policy ED6 of the emerging Local Plan; there would be a boost to the local economy, a significant benefit, helping to maintain the vitality and viability of the town; and there would be construction jobs, albeit temporary.
156. Against that, the development proposal would cause serious harm to the unchanged historic countryside into which the pioneering industrial development

was inserted and which now provides a valued rural landscape setting for the built development. Being able to appreciate the 18<sup>th</sup>/19<sup>th</sup> century industrial complexes in an 18<sup>th</sup>/19<sup>th</sup> century landscape is an important attribute of the Derwent Valley Mills WHS. Taking account of the negative impact on the significance of Pottery Farm and the setting of the Belper and Milford Conservation Area, the loss of part of the valued relict landscape would reduce the authenticity of that attribute, causing permanent and irreversible damage to the outstanding universal value and significance of one of the country's most valuable heritage assets.

157. I have taken account of the recently published White Paper "Fixing Our Broken Housing Market" but find that this scheme would seriously compromise core planning principles set out in national and local planning policy. On balance, giving significant weight to the identified harm to the WHS and the other heritage assets, I consider that the public benefits of the proposed development do not outweigh that harm.

*The employment scheme –Scheme B*

158. This proposal complies with Local Plan policy ER3 and, to an extent, is consistent with Framework policies on building a strong and competitive economy. However, as explained above, policy ER3 is no longer fully consistent with the Framework as a whole and, in view of the events that have occurred since it was adopted in 2006, carries limited weight. The proposal would bring some benefits, including a significant number of full time jobs, although there is considerable uncertainty about delivery. Expansion space would be provided for Vaillant, although that will likely become possible without development of the rest of the site, in accordance with emerging AVBLP policy ED6. There would be part-time construction jobs and some boost to the local economy.
159. As above, weighed against the benefits is the harm that would be caused to the significance of designated heritage assets, and in particular the Derwent Valley Mills WHS, an asset of international importance. I consider on balance that the harm is a material consideration of such weight that it is more than sufficient to indicate that the proposed development should be determined otherwise than in accordance with the development plan.

## **Recommendations**

### **Scheme A: APP/M1005/W/17/3183493**

160. I recommend that the appeal be dismissed.
161. Should the Secretary of State disagree with my conclusions and decide to allow the appeal I recommend that planning permission should be granted subject to the conditions set out in Annex A.

### **Scheme B: APP/M1005/V/18/3194115**

162. I recommend that the application for planning permission be refused.
163. Should the Secretary of State disagree with my conclusions and decide to grant planning permission for the employment scheme I recommend that it should be subject to the conditions set out in Annex B.

*Colin Ball*

Inspector

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

John Mitchell of Counsel	Instructed by Venice McDonald, Principal Solicitor to the Council.
He called:	
Melanie Lloyd Morris BA(Hons) DipArchCons IHBC MRTPI	Mel Morris Conservation.
Deborah Evans MA CMLI	Landscape Architect.
Jon Millhouse BA(Hons) MRTPI	Planning Consultant and Director, Planning and Design Practice Ltd.

### FOR THE APPELLANT:

Andrew Williamson BA(Hons) DipTP MRTPI and	Consultant, Walker Morris LLP.
Alison Ogley LLB(Hons) PGDip LLM	Partner, Walker Morris LLP.
They called:	
Brian Denney BSA(Hons) DipLA CMLI CENV MIEMA	Environmental Planning Director, Pegasus Group.
Stephen Carter BSc PhD MCIfA FSAScot	Senior Heritage Consultant, Headland Archaeology (UK) Ltd.
Steven Eggleston BSc BEng CMILT MCIHT	Partner, i-Transport LLP.
Simon Chadwick BSc(Hons) MRICS	National Planning Director, WYG Planning.

### FOR HISTORIC ENGLAND

Robert Walton of Counsel	Instructed by Beth Harries, Historic England.
He called:	
Eillis Scott BA(Hons) MSc PgD	Principal Adviser, Heritage at Risk, West Midlands Office, Historic England.

### FOR DERWENT VALLEY MILLS WORLD HERITAGE SITE PARTNERSHIP

Adam Lathbury BA(Hons) MA PGDip IHBC CMLI	Head of Conservation, Heritage and Design, Derbyshire County Council.
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### FOR PROTECT BELPER

Val Pickard (assisted by others)	Secretary, Protect Belper.
She called:	
Robert Large	Local resident.
David Clark	Local resident.
Helen Jackson	Local resident.
Kim Lowe	Local resident.
Cllr Tim Sutton	Belper Town Council.

## INQUIRY DOCUMENTS

- IN/1 Pre-inquiry note and programme
- IN2.1 Written submissions Scheme A
- IN2.2 Written submissions Scheme B
- IN/3 Site visit itinerary
- IN/4 Letters dated 8 May 2018 closing the inquiry

## CORE DOCUMENTS

### 1. Policy, Guidance and Evidence

- CD 1.1 National Planning Policy Framework
- CD 1.2 Planning Practice Guidance
- CD 1.3 Amber Valley Borough Local Plan 2006
- CD 1.4 Amber Valley Local Plan Policy Savings Direction - 8<sup>th</sup> April 2009
- CD 1.5 Inspector's Report to the Amber Valley Borough Local Plan 2006
- CD 1.6 Development Brief submitted to AVBC Planning board for consultation August 2011
- CD 1.7 BE Survey of Employment Land Needs in Amber Valley in 2016
- CD 1.8 "Fixing Our Broken Housing Market"
- CD 1.9 Amber Valley Borough Local Plan Draft published for consultation between 17 March 2017 and 28 April 2017.
- CD 1.10 Emerging Amber Valley Borough Local Plan pre-submission draft (November 2017)
- CD 1.11 '*Nomination of the Derwent Valley Mills for Inscription on the World Heritage List*' the Derwent Valley Mills Partnership, 2000
- CD 1.12 ICOMOS Evaluation of the proposed WHS, September 2001
- CD 1.13 Statement of Outstanding Universal Value, 2010
- CD 1.14 Derwent Valley Mills World Heritage Site Management Plan 2014-2019 and Appendices
- CD 1.15 Convention concerning the protection of the world cultural and natural heritage ['World Heritage Convention']. UNESCO 1972
- CD 1.16 Operational Guidelines for the Implementation of the World Heritage Convention. UNESCO July 2017
  
- CD 1.17 World Heritage and Buffer Zones. UNESCO 2009
- CD 1.18 Guidance on Heritage Impact Assessments for Cultural World Heritage Properties. ICOMOS 2011
- CD 1.19 Historic England Good Practice Advice Note 1.
- CD 1.20 Historic England Good Practice Advice Note 2. Managing significance in decision-taking in the historic environment (2016)
- CD 1.21 Historic England Good Practice Advice Note 3. The Setting of Heritage Assets (2<sup>nd</sup> Edition 2017)
- CD 1.22 Belper Conservation Area Character Statement. Amber Valley Borough Council 1995
- CD 1.23 East Midlands Regional Landscape Character Assessment, 2010
- CD 1.24 The Landscape Character of Derbyshire, Derbyshire County Council,

- 2003
- CD 1.25 Amber Valley Borough Council Landscape Sensitivity Study, Wardell Armstrong, 2016
- CD 1.26 Letter from the Minister of State for Housing and Planning to the Chief Executive of the Planning Inspectorate – 27<sup>th</sup> March 2015
- CD 1.27 Historic Environment Assessment of Potential Housing Sites 2016-17 (Amber Valley Borough Council)
- CD 1.28 English Heritage 'Seeing History in the View: a Method for Assessing Significance Within View' (2011)
- CD 1.29 AVBC Screening Opinion in relation to Employment application
- CD 1.30 AVBC Historic Environment Assessments of Potential Housing Sites 2016-
- CD 1.31 Amber Valley Core Strategy Strategic Land Allocation Review– Historic Environment Statement – ECUS
- CD 1.32 Statutory descriptions and conservation entries for the relevant heritage assets
- CD 1.33 Derwent Valley Mills WHS and Buffer Zone boundary Map
- CD 1.34 Manual for Streets
- CD 1.35 Manual for Streets 2
- CD 1.36 The 6 Cs Design Guide
- CD 1.37 The Guidelines for the Environmental Assessment of Road Traffic
- CD.1.38 DMRB Volume 11 Sec 3 :Part 8
- CD 1.39 Draft Revised NPPF
- CD 1.40 AVBC Report to Full Council 18<sup>th</sup> January 2006
- CD 1.41 National Landscape Character Area '50: Derbyshire Peak Fridge and Lower Derwent'
- CD 1.42 Belper Heritage & Character Assessment – Aecom Oct 2016  
*Duplication*
- CD 1.44 Derwent Valley Mills World Heritage Site Management Plan 2007  
*Duplication*
- CD 1.46 Derby HMA Strategic Housing Market (SHMA) Amber Valley Addendum 2016
- CD 1.47 AVBC Report to Council 18 January 2006
- CD 1.48 AVBC Report to Council 12 April 2006
- CD 1.49 Footpath Plan
- CD 1.50 AVBC report to Council 5.6.17
- CD 1.51 GLVIA

## **2. Planning Application AVA/2016/0754 – Mixed Use Scheme**

- CD 2.1 Planning Application Forms and Certificates
- CD 2.2 Planning Support Statement & Appendices
- CD.2.3 Design & Access Statement Rev D
- CD.2.4 Illustrative Master Plan HG0199/011 Rev D
- CD.2.5 Site Location Plan HG0199/001
- CD.2.6 Badger Survey Report
- CD.2.7 Protected Species assessment
- CD.2.8 Tree Survey
- CD.2.9 Phase 1 Desktop Site Investigation
- CD.2.10 Noise Assessment
- CD.2.11 Transport Assessment

- CD.2.12 Outline Travel Plan
- CD.2.13 Flood Risk Assessment
- CD.2.14 Landscape & Visual Impact Assessment
- CD.2.15 Geophysical Assessment
- CD.2.16 Archaeology Assessment
- CD.2.17 Coal Mining Risk Assessment
- CD.2.18 Heritage Statement
- CD.2.19 Japanese Knotweed Management Plan
- CD.2.20 Letter to AVBC 23/8/16
- CD.2.21 Letter to AVBC 27/8/16
- CD.2.22 Letter to AVBC 13/09/16
- CD.2.23 Letter to AVBC 01/10/16 enclosing additional information
- CD.2.24 Landscape and visual rebuttal prepared by Pegasus
- CD.2.25 Heritage rebuttal prepared by Landpro
- CD.2.26 Illustrative Master Plan HG0199/011 Rev E
- CD.2.27 Highway comments Armstrong Stokes & Clayton
- CD.2.28 LLFAS (DC) Climate Change Data  
Duplication – 2.21
- CD.2.30 Preliminary Ecological Appraisal & Original Protected Species Assessment submitted to AVBC 3/01/17
- CD.2.31 Drainage and Highways information submitted to AVBC 30/1/17
  - Drainage
    1. 100year40 Resi Pond
    2. 24706\_T survey Hub
    3. 24706\_T survey Hub
    4. 24706\_T
    5. Full Page Photo 1
    6. Full Page Photo 2
    7. HG0199 Built Form Master Plan
  - Highways
    1. 100GA
    2. 7058 ASC report
    3. Fig TN01
    4. Fig TN02
    5. Fig TN03
    6. Fig TN04
    7. Kilbourne Road – John O Gaunt Way 2020 Base
    8. Kilbourne Road – John O Gaunt Way 2020 With Development
    9. Master Plan
    10. P138 fig 3.2
- CD.2.32 Red Line Plan HG0199-AP-01 3/2/17
- CD.2.33 Email to AVBC advising red line to be amended further 08/02/17
- CD.2.34 Red Line Plan 101 Rev A submitted 07/03/17
- CD.2.35 Red Line Plan HG0199-AP-01 11/3/17
- CD.2.36 Tree Survey submitted to AVBC 17/03/17
- CD.2.37 Letter from Vaillant to AVBC 23/03/17
- CD.2.38 DCC strategic consultation response (including comments from County Councillors, County Planning and the County Landscape Architect)
- CD.2.39 DCC letter 7/4/17 – Highways
- CD.2.40 Letter from Historic England to AVBC regarding mixed-use appl. (10 August 2016)

- CD 2.41 AVBC Housing Trajectory August 2017
- CD 2.42 AVBC Housing Trajectory January 2018
- CD 2.43 Letter from DVMWHS Partnership to AVBC dated 26.8.16
- CD 2.44 Report to Planning Board
- CD 2.45 Planning Decision dated 22 May 2017
- CD 2.46 Peveril representations to submitted Local Plan
- CD 2.47 Belper Area profile in Local Plan evidence base
- CD 2.48 Third party representations
- CD 2.49 Legal advice to Council for Planning Board meeting
- CD 2.50 Minutes of the planning board 15.5.17

### **3. Planning Application AVA/2017/1040 – Employment Scheme**

- CD 3.1 Planning Application Forms and Certificates
- CD 3.2 Planning Support Statement & Appendices
- CD 3.3 Design & Access Statement
- CD 3.4 Illustrative Master Plan HG0199 011-EMP-F
- CD 3.5 Site Location Plan HG0199-AP-01-A
- CD 3.6 Ecological Appraisal
- CD 3.7 Updated Ecological Appraisal
- CD 3.8 Tree Survey 1
- CD 3.9 Tree Survey 2
- CD 3.10 Phase 1 Desktop Site Investigation
- CD 3.11 Noise Assessment
- CD 3.12 Transport Assessment
- CD 3.13 Travel Plan
- CD 3.14 Flood Risk Assessment
- CD 3.15 Landscape & Visual Impact Assessment
- CD 3.16 Geophysical Assessment
- CD 3.17 Archaeology Assessment
- CD 3.18 Coal Mining Risk Assessment
- CD 3.19 Heritage Statement
- CD 3.20 FRA Addendum
- CD 3.21 DCC letter 19/10/17 – Highways
- CD 3.22 Letter from Historic England to AVBC regarding employment appl (12 October 2017)
- CD 3.23 Letter from DVMWHS Partnership to AVBC regarding employment appl (10 October 2017)
- CD 3.24 Letter from Derbyshire County Council to AVBC regarding employment appl (2017)
- CD 3.25 Report to Planning Board
- CD 3.26 Minutes of Planning Board

### **4. Appeal Documents**

- CD 4.1 Letter from Vaillant Limited dated March 2018
- CD 4.2 Armsons letter dated 22<sup>nd</sup> February 2018
- CD 4.3 Letter from Peveril Securities dated March 2018
- CD 4.4 Letter from Rigby & Co 20<sup>th</sup> February 2018
- CD 4.5 Plan prepared to show the difference between the allocated area and the appeal site
- CD 4.6 LPAs December 2017 Statement of Case



- CD 4.7 Derwent Valley Mills World Heritage Site Statement of Case in relation to the mixed use proposals
- CD 4.8 AVBC Statement of Case
- CD 4.9 E-mail from DVMWHS Partnership to PINS giving notice of intention to appear at inquiry (30 November 2017)
- CD 4.10 Written Representations by Ellis Scott on behalf of Historic England (5 December 2017)
- CD 4.11 Statement of Common Ground
- CD 4.12 Illustrative Master Plan HG0199/011 Rev F

## 5. Relevant Appeal Decisions and Case Law

- CD 5.1 Suffolk Coastal District Council v Hopkins Homes Ltd and another; Richborough Estates Partnership LLP and another v Cheshire East Borough Council [2017] UKSC 37
- CD 5.2 Phides Estates (Overseas) Ltd v SSCLG [2015] EWHC 827 (Admin)
- CD 5.3 Appeal Ref. APP/M1005/W/15/3132791  
Land at Kedleston Road and Memorial Road, Allestree, Derbyshire
- CD 5.4 Cheshire East Borough Council v (1) Secretary of State for Communities and (2) Renew Land Developments Ltd -9<sup>th</sup> March 2016 – CO/5040/2015
- CD 5.5 Stroud District Council v (1) Secretary of State for Communities and Local Government (2) Gladman Developments Ltd – 6<sup>th</sup> February 2015 – CO/4082/2014
- CD 5.6 Hopkins Homes Ltd v Secretary of State and another. Cheshire East Borough Council v Secretary of State and another.
- CD 5.7 Appeal Ref: APP/M1005/A/10/2142571 Land at Hill Top Farm, Mill Lane, Belper, DE56 1LH.
- CD 5.8 Appeal Ref: APP/M1005/A/11/2163645  
Land off Waingroves Road, Ripley, Derbyshire DE5 9TB
- CD 5.9 Appeal Ref: APP/M1005/A/13/2199128  
Land west of Holborn View, Codnor, Derbyshire.
- CD 5.10 Appeal Ref: APP/M1005/A/10/2125188  
Land off Nailers Way, Belper, Derbyshire DE56 0HT
- CD 5.11 Appeal Ref: APP/M1005/A/10/2125194  
Land off Nailers Way, Belper, Derbyshire DE56 0HT
- CD 5.12 Appeal A Ref: APP/C1055/W/15/3137935  
Land off North Avenue, Darley Abbey, Derby DE22 1EZ
  
- CD 5.13 Appeal Ref: APP/M1005/W/15/3006136  
Land north of Inns Lane, South Wingfield, Derbyshire
- CD 5.14 Appeal Ref: APP/D0840/W/15/3006077  
Land South of St George's Road, Hayle
- CD 5.15 Barnwell Manor' Court of Appeal judgement ([2014] EWCA Civ 137)  
*Duplication*
- CD 5.17 Land south of Chacewater Hill, Chacewater, Cornwall  
(APP/D0840/W/31253632)
- CD 5.18 R (Leckhampton Action Group) v Tewkesbury BC [2017] EWHC 198  
(Admin)
- CD 5.19 Kedleston Road Judicial Review
- CD 5.20 Widdrington, Northumberland case

## **COUNCIL'S DOCUMENTS**

CO1	Opening statement
CO2.1	Ms Lloyd Morris' proof of evidence
CO2.2	Ms Lloyd Morris' appendices 1-4
CO2.3	Ms Lloyd Morris' appendix 4 at A3
CO2.4	Ms Lloyd Morris' appendix 5 part 1 viewpoints at A3
CO2.5	Ms Lloyd Morris' appendix 5 part 2 technical methodology
CO2.6	Ms Lloyd Morris' rebuttal proof of evidence
CO2.7	Ms Lloyd Morris' rebuttal appendix
CO3	Ms Evans' landscape statement
CO4	Mr Millhouse's proof of evidence
CO5	AVBC 5 year actual and projected housing build rates
CO6	Closing statement

## **HISTORIC ENGLAND'S DOCUMENTS**

HE1	Opening submissions
HE2.1	Ms Scott's proof of evidence and appendices 1-9
HE2.2	Ms Scott's rebuttal proof of evidence
HE3	Closing submissions

## **DERWENT VALLEY MILLS WHS PARTNERSHIP DOCUMENTS**

DVM1.1	Mr Lathbury's proof of evidence
DVM1.2	Mr Lathbury's appendices A-L
DVM1.3	Closing statement

## **PROTECT BELPER'S DOCUMENTS**

PB1	Introduction
PB2.1	Mr Large's proof of evidence 1
PB2.2	Mr Large's proof of evidence 2
PB3.1	Mr Clark's proof of evidence 1
PB3.2	Mr Clark's proof of evidence 2
PB4	Mrs Jackson's proof of evidence
PB5	Ms Lowe's proof of evidence
PB6	Cllr Sutton's proof of evidence
PB7	Bundle of shared supporting documents
PB8	Bundle of speaking notes
PB9	Closing statement

## **APPELLANTS' DOCUMENTS**

PV1.1	Opening statement
PV1.2	[2017] EWHC 1456 (Admin) Steer v SoS, Catesby & AVBC
PV1.3	[2018] EWHC 195 (Admin) R oao Shimbles v Bradford MBC
PV1.4	Appeal Decision ref: APP/Y3615/W/16/3151098

PV2.1	Mr Denney's proof of evidence
PV2.2	Mr Denney's appendices 1-4 at A3
PV3	Dr Carter's proof of evidence
PV4.1	Mr Eggleston's proof of evidence
PV4.2	Mr Eggleston's appendices 1-26
PV5.1	Mr Chadwick's proof of evidence
PV5.2	Mr Chadwick's appendices 1-9
PV6.1	Draft s106 Agreement Scheme A and summary
PV6.2	Draft s106 Agreement Scheme B and summary
PV6.3	CIL Compliance statement
PV7.1	Suggested conditions Scheme A
PV7.2	Suggested conditions Scheme B
PV8.1	Closing statement
PV8.2	CO/292/2000 R v Rochdale MBC ex parte Milne
PV9.1	Certified copy of executed s106 Agreement Scheme A
PV9.2	Certified copy of executed s106 Agreement Scheme B

## **ANNEX A**

### **Scheme A: APP/M1005/W/17/3183493**

Schedule of conditions to be attached to a planning permission:

- 1) Details of the appearance, landscaping, layout, and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: Amended Site Location Plan (drawing number HG0199/001 dated 10/03/2017)
- 5) Prior to the submission of any reserved matters application a Development Brief, to demonstrate how the development minimises its visual impact, including in relation to the Derwent Valley Mills World Heritage Site, shall be submitted to and approved in writing by the Local Planning Authority. The Development Brief shall define:-
  1. The extent of development zones and the areas to be left free from development;
  2. The maximum quantum of built development within each zone;
  3. Key access routes within the site;
  4. Key landscape features including areas of open space and landscape corridors within each zone;
  5. A colour scheme and style for the Vaillant expansion employment unit;
  6. A landscape strategy framework for the whole site;
  7. A security specification and management plan for the residential and employment zones;
  8. details of renewable energy installations within the whole site.All reserved matters submissions for the buildings within the site shall demonstrate compliance with the approved Development Brief.
- 6) No development shall commence until a scheme indicating proposed floor levels of all buildings, and the relationship of such to the existing dwellings adjoining the application site has been submitted to and approved in writing by the Local Planning Authority, and the development shall be constructed in accordance with the agreed levels. The hereby approved dwellings shall not exceed 8 metres in height and the Vaillant plant extension building shall not exceed 12 metres in height, relative to the agreed floor levels.

- 7) No development shall commence until measures to protect the site from historic mining risk are submitted to and approved in writing by the Local Planning Authority as follows:
  1. A scheme of intrusive site investigations;
  2. The undertaking of the above approved scheme;
  3. The submission of a report of findings arising from the intrusive site investigations;
  4. The submission of a scheme of remedial works for approval.The approved remediation scheme shall be implemented in full.
- 8) No development shall commence until:
  1. The application has been subjected to a detailed scheme for the investigation and recording of contamination and a report has been submitted to and approved in writing by the Local Planning Authority;
  2. Detailed proposals in line with current best practice for the removal, containment or otherwise rendering harmless such contamination (the 'Contamination Proposals') shall be submitted to and approved in writing by the Local Planning Authority;
  3. For each part of the development, 'Contamination Proposals' relevant to that part shall be carried out either before or during such development as appropriate;
  4. If during development works any contamination should be encountered which was not previously identified and is derived from a different source and/or of a different type to those included in the 'Contamination Proposals' then the revised 'Contamination Proposals' shall be submitted to and approved in writing by the Local Planning Authority;
  5. If during development work site contaminants are found in areas previously expected to be clean then their remediation shall be carried out in line with the agreed 'Contamination Proposals';
  6. Prior to the commencement of any construction works in any area that has been subject to remediation, a verification report shall be submitted to and approved in writing by the Local Planning Authority.
- 9) If any part of the site is to be raised or filled using materials brought from outside the application site, details of those materials shall be first submitted to and approved in writing by the Local Planning Authority to ensure all such materials are free from unacceptable levels of contamination. All evidence shall be submitted to and agreed in writing by the Local Planning Authority prior to any material being brought onto site.
- 10) All existing and proposed noise-sensitive dwellings, as identified in the acoustic report 'Noise Assessment' (ref: 47069548\_A001\_04, URS, May 2015), shall be protected from noise from operations at Vaillant Ltd.'s site such that an assessment carried out in accordance with British Standard 4142:2014 'Methods for rating and assessing industrial and commercial sound' does not exceed a difference of +4db (likely to be an indication of an 'adverse impact' depending on context) to occur at any of the noise-sensitive properties, and such that the following noise levels are not exceeded:

- 50dB LAeq, 16 hour (free field) in outdoor living areas between 07:00 and 23:00 hours;
- 35dB LAeq, 16 hour inside living rooms and bedrooms between 07:00 and 23:00 hours;
- 40dB LAeq, 16 hour inside dining rooms/areas between 07:00 and 23:00 hours;
- 30dB LAeq, 8 hour and an LA max of 45dB in bedrooms between 23:00 and 07:00 hours.

Development shall not begin until the individual noise-sensitive premises have been identified and details of the noise mitigation measures necessary to comply with the above have been submitted to, and approved in writing by, the Local Planning Authority. Development shall be carried out, and maintained, in accordance with the approved details. A further acoustic report verifying compliance with the above shall be submitted to, and approved in writing by, the Local Planning Authority before the occupation of any of the new noise-sensitive premises and within a period following implementation of the permission agreed with the Local Planning Authority with respect to existing dwellings.

- 11) Prior to installation of any external lighting, the following shall be submitted to, and approved in writing by, the Local Planning Authority:

1. location and mounting heights of luminaires;
2. details of luminaires;
3. illuminance levels (Lux) across the site
4. Lamp tilts
5. operating times, including timers or passive infra-red detectors.

All works shall be fully implemented in accordance with the approved scheme before use commences and shall be operated and maintained in accordance with it at all times.

- 12) No development shall commence until a construction environmental/highways method statement has been submitted to and approved in writing by, the Local Planning Authority. The approved statement shall be adhered to throughout the construction period and shall provide for:

1. no construction works, or deliveries to and from the site, outside the hours of 08:00-18:00 on weekdays, 08:00-13:00 on Saturdays and not at all on Sundays or public holidays;
2. measures to control emission of dust/dirt from construction and vehicles
3. a scheme for recycling/disposing of waste
4. no burning of materials on-site
5. measures for the control of works causing noise or vibration
6. construction traffic routing plan
7. the proposed temporary means of construction access
8. site accommodation

- 9 storage of plant and materials
- 10. areas for parking and manoeuvring of site operatives' and visitors' vehicles
- 11. loading, unloading and manoeuvring of goods vehicles
- 12. prevention of debris being carried onto the highway
- 13) No development shall commence until a scheme demonstrating modifications to the existing access to Nottingham Road has been submitted to and approved in writing by the Local Planning Authority, including visibility splays of 2.4m x 50.3m to the west and 50.7m to the east, the area in advance maintained free from any obstruction exceeding 1m in height (600mm if vegetation) relative to the adjacent carriageway channel level and measures to include providing a safe harbourage for right turning vehicles, deterring on street parking and encouraging pedestrian movements across Nottingham Road, and a timescale for the works. Once approved the works shall be fully implemented on site in accordance with the approved scheme prior to the premises the subject of the application being occupied.
- 14) No development shall commence until a scheme is submitted to and approved in writing by the Local Planning Authority demonstrating the proposed relocation and improvements to bus infrastructure on the frontage of the site. Once approved the scheme shall be fully implemented on site in accordance with the approved scheme prior to the premises subject of the application being occupied.
- 15) Prior to commencement of use of any commercial floorspace, space shall be provided within the site curtilage for the parking/ loading and unloading/ picking up and setting down passengers/ manoeuvring of residents/ visitors/ staff/ customers/ service and delivery vehicles (including secure/ covered cycle parking), located, designed, laid out and constructed all as agreed in writing with the Local Planning Authority and maintained throughout the life of the development free from any impediment to its designated use.
- 16) No development shall take place to the construction of the access road to serve the Vaillant expansion land until an employees car park with a capacity of 130 spaces has been first constructed and made available for use.
- 17) Prior to the first occupation of a dwelling, a residential Travel Plan including travel plan targets comprising immediate, continuing and long-term measures to promote and encourage alternatives to single occupancy car use, shall be prepared, submitted to and approved in writing by the Local Planning Authority. The approved Travel Plan shall then be implemented, monitored and reviewed in accordance with the agreed Travel Plan Targets.
- 18) Prior to the first occupation of any commercial floorspace, a Commercial Travel Plan including travel plan targets comprising immediate, continuing and long-term measures to promote and encourage alternatives to single occupancy car use, shall be prepared, submitted to and approved in writing by the Local Planning Authority. The approved Travel Plan shall then be implemented, monitored and reviewed in accordance with the agreed Travel Plan Targets.
- 19) No development shall commence until a scheme of biodiversity enhancement, and a phasing scheme for its implementation, (namely the

incorporation of bat roost features and nesting opportunities for house sparrow, starling, swift and house martin within the development) is submitted to and approved in writing by the Local Planning Authority. The agreed biodiversity enhancement scheme shall be implemented fully in accordance with the approved details.

- 20) No development shall commence until details for the disposal of surface water and foul sewage serving the site are submitted to and approved in writing by the Local Planning Authority. Any agreed scheme shall be implemented in full prior to the development being brought into use.
- 21) The hereby approved development shall be carried out in accordance with the approved Flood Risk Assessment and the applicant's note dated 1 October 2016 Reference SPS/0011.



## **ANNEX B**

### **Scheme B: APP/M1005/V/18/3194115**

Schedule of conditions to be attached to a planning permission:

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan (drawing number no HG0199/AP-01) dated 01/08/2017
- 5) Prior to the submission of any reserved matters application a Development Brief, to demonstrate how the development minimises its visual impact, including in relation to the Derwent Valley Mills World Heritage Site, shall be submitted to and approved in writing by the Local Planning Authority. The Development Brief shall define: -
  1. The extent of development zones and the areas to be left free from development;
  2. The maximum quantum of built development within each zone;
  3. Key access routes within the site;
  4. Key landscape features including areas of open space and landscape corridors within each zone;
  5. A colour scheme and style for the Vaillant expansion employment unit and other employment units;
  6. A landscape strategy framework for the whole site;
  7. A security specification and management plan for the employment zone;
  8. details of renewable energy installations within the whole site.All reserved matters submissions for the buildings within the site shall demonstrate compliance with the approved Development Brief.
- 6) No development shall commence until a scheme indicating proposed floor levels of all buildings, and the relationship of such to the existing dwellings adjoining the application site has been submitted to and approved in writing by the Local Planning Authority, and the development shall be constructed in accordance with the agreed levels. The hereby approved Vaillant plant extension building shall not exceed 12 metres in height and business/office units shall not exceed 8 metres in height, relative to the agreed floor levels.
- 7) No development shall commence until measures to protect the site from historic mining risk are submitted to and approved in writing by the Local Planning Authority as follows:

1. A scheme of intrusive site investigations;
  2. The undertaking of the above approved scheme;
  3. The submission of a report of findings arising from the intrusive site investigations;
  4. The submission of a scheme of remedial works for approval.
- The approved remediation scheme shall be implemented in full.
- 8) No development shall commence until:
1. The application has been subjected to a detailed scheme for the investigation and recording of contamination and a report has been submitted to and approved in writing by the Local Planning Authority;
  2. Detailed proposals in line with current best practice for the removal, containment or otherwise rendering harmless such contamination (the 'Contamination Proposals') shall be submitted to and approved in writing by the Local Planning Authority;
  3. For each part of the development, 'Contamination Proposals' relevant to that part shall be carried out either before or during such development as appropriate;
  4. If during development works any contamination should be encountered which was not previously identified and is derived from a different source and/or of a different type to those included in the 'Contamination Proposals' then the revised 'Contamination Proposals' shall be submitted to and approved in writing by the Local Planning Authority;
  5. If during development work site contaminants are found in areas previously expected to be clean then their remediation shall be carried out in line with the agreed 'Contamination Proposals';
  6. Prior to the commencement of any construction works in any area that has been subject to remediation, a verification report shall be submitted to and approved in writing by the Local Planning Authority.
- 9) If any part of the site is to be raised or filled using materials brought from outside the application site, details of those materials shall be first submitted to and approved in writing by the Local Planning Authority to ensure all such materials are free from unacceptable levels of contamination. All evidence shall be submitted to and agreed in writing by the Local Planning Authority prior to any material being brought onto site.
- 10) All existing and proposed noise-sensitive dwellings, as identified in the acoustic report 'Noise Assessment' (ref: 47069548\_A001\_04, URS, May 2015), shall be protected from noise from operations at Vaillant Ltd.'s site such that an assessment carried out in accordance with British Standard 4142:2014 'Methods for rating and assessing industrial and commercial sound' does not exceed a difference of +4db (likely to be an indication of an 'adverse impact' depending on context) to occur at any of the noise-sensitive properties, and such that the following noise levels are not exceeded:
- 50dB LAeq, 16 hour (free field) in outdoor living areas between 07:00 and 23:00 hours;

- 35dB LAeq, 16 hour inside living rooms and bedrooms between 07:00 and 23:00 hours;
- 40dB LAeq, 16 hour inside dining rooms/areas between 07:00 and 23:00 hours;
- 30dB LAeq, 8 hour and an LA max of 45dB in bedrooms between 23:00 and 07:00 hours.

Development shall not begin until the individual noise-sensitive premises have been identified and details of the noise mitigation measures necessary to comply with the above have been submitted to, and approved in writing by, the Local Planning Authority. Development shall be carried out, and maintained, in accordance with the approved details. A further acoustic report verifying compliance with the above shall be submitted to, and approved in writing by, the Local Planning Authority before the occupation of any of the new noise-sensitive premises and within a period following implementation of the permission agreed with the Local Planning Authority with respect to existing dwellings.

- 11) Prior to installation of any external lighting, the following shall be submitted to, and approved in writing by, the Local Planning Authority:

1. location and mounting heights of luminaires;
2. details of luminaires;
3. illuminance levels (Lux) across the site
4. Lamp tilts
5. operating times, including timers or passive infra-red detectors.

All works shall be fully implemented in accordance with the approved scheme before use commences and shall be operated and maintained in accordance with it at all times.

- 12) No development shall commence until a construction environmental/highways method statement has been submitted to and approved in writing by, the Local Planning Authority. The approved statement shall be adhered to throughout the construction period and shall provide for:

1. no construction works, or deliveries to and from the site, outside the hours of 08:00-18:00 on weekdays, 08:00-13:00 on Saturdays and not at all on Sundays or public holidays;
2. measures to control emission of dust/dirt from construction and vehicles
3. a scheme for recycling/disposing of waste
4. no burning of materials on-site
5. measures for the control of works causing noise or vibration
6. construction traffic routing plan
7. the proposed temporary means of construction access
8. site accommodation
- 9 storage of plant and materials

10. areas for parking and manoeuvring of site operatives' and visitors' vehicles
11. loading, unloading and manoeuvring of goods vehicles
12. prevention of debris being carried onto the highway
- 13) No development shall commence until a scheme demonstrating modifications to the existing access to Nottingham Road has been submitted to and approved in writing by the Local Planning Authority, including visibility splays of 2.4m x 50.3m to the west and 50.7m to the east, the area in advance maintained free from any obstruction exceeding 1m in height (600mm if vegetation) relative to the adjacent carriageway channel level and measures to include providing a safe harbourage for right turning vehicles, deterring on street parking and encouraging pedestrian movements across Nottingham Road, and a timescale for the works. Once approved the works shall be fully implemented on site in accordance with the approved scheme prior to the premises the subject of the application being occupied.
- 14) No development shall commence until a scheme is submitted to and approved in writing by the Local Planning Authority demonstrating the proposed relocation and improvements to bus infrastructure on the frontage of the site. Once approved the scheme shall be fully implemented on site in accordance with the approved scheme prior to the premises subject of the application being occupied.
- 15) No development shall take place to the construction of the access road to serve the Vaillant expansion land until an employees car park with a capacity of 130 spaces has been first constructed and made available for use.
- 16) Prior to the commencement of use of any commercial floorspace a revised Travel Plan including travel plan targets comprising immediate, continuing and long-term measures to promote and encourage alternatives to single occupancy car use, shall be prepared, submitted to and approved in writing by the Local Planning Authority. The approved Travel Plan shall then be implemented, monitored and reviewed in accordance with the agreed Travel Plan Targets.
- 17) No development shall commence until a scheme of biodiversity enhancement, and a phasing scheme for its implementation, (namely the incorporation of bat roost features and nesting opportunities for house sparrow, starling, swift and house martin within the development) is submitted to and approved in writing by the Local Planning Authority. The agreed biodiversity enhancement scheme shall be implemented fully in accordance with the approved details.
- 18) No development shall commence until details for the disposal of surface water and foul sewage serving the site are submitted to and approved in writing by the Local Planning Authority. Any agreed scheme shall be implemented in full prior to the development being brought into use.
- 19) The hereby approved development shall be carried out in accordance with the approved Flood Risk Assessment dated August 2017 Reference 23184/08-17/5077.



# Ministry of Housing, Communities & Local Government

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## RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

**These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).**

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

### SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

#### **Challenges under Section 288 of the TCP Act**

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

### SECTION 2: ENFORCEMENT APPEALS

#### **Challenges under Section 289 of the TCP Act**

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

### SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

### SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.