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08 December 2020

To: All Councillors

As a Member or Substitute of the **Community & Environment Committee**, please treat this as your summons to attend a meeting on **Wednesday 16 December 2020 at 6.00pm** via the Zoom application. (Joining details will be provided separately).

Under Regulations made under the Coronavirus Act 2020, the meeting will be held virtually. As a member of the public you can view the virtual meeting via the District Council's website at www.derbyshiredales.gov.uk or via our YouTube channel.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'James McLaughlin'.

James McLaughlin
Director of Corporate and Customer Services

AGENDA

1. APOLOGIES/SUBSTITUTES

Please advise the Committee Team on 01629 761133 or email committee@derbyshiredales.gov.uk of any apologies for absence and substitute arrangements.

2. APPROVAL OF MINUTES OF PREVIOUS MEETING

14 October 2020, 02 November 2020 (Special)

3. PUBLIC PARTICIPATION

As the Council cannot hold meetings at the Town Hall, Public Participation can only take place using the Zoom application or by written representations. Members of the public are able to comment or ask questions on the items listed in the agenda and must give notice before 12 noon on the day preceding the meeting by:

Web-form: [Make your submission here](#)

Email: committee@derbyshiredales.gov.uk

Post: Democratic Services, Derbyshire Dales District Council, Town Hall, Matlock DE4 3NN

The Committee Team will assist any member of the public without access to electronic means by capturing their concerns over the telephone.

Phone: 01629 761133 (working days only 9am – 5pm)

Written representations, received by the deadline will be read out at the meeting, verbal contributors will be given instructions on how to join the meeting after giving notice.

All meeting proceedings open to the public will be streamed live on our YouTube channel when all non-exempt items are being considered. Recordings of the meeting will also be available after the event on the District Council's website

4. INTERESTS

Members are required to declare the existence and nature of any interests they may have in subsequent agenda items in accordance with the District Council's Code of Conduct. Those interests are matters that relate to money or that which can be valued in money, affecting the Member her/his partner, extended family and close friends. Interests that become apparent at a later stage in the proceedings may be declared at that time.

5. QUESTIONS PURSUANT TO RULE OF PROCEDURE NUMBER 15

To answer questions from Members who have given the appropriate notice.

Page No.

6. ASHBOURNE BY PASS – CONSULTATION BY DERBYSHIRE COUNTY COUNCIL

04 - 16

To receive a report advising Members of the public consultation being undertaken by Derbyshire County Council on options for a potential Ashbourne Bypass. The report allows Members to consider the submission of comments, on behalf of the District Council to Derbyshire County Council on the options being consulted upon by the deadline of 18th December 2020. That Derbyshire County Council be advised that the District Council supports the provision a western bypass for Ashbourne and that, on the basis of the alignment shown, it does not support the provision of an eastern bypass for Ashbourne and that it considers that, in order to improve both traffic and environmental conditions within Ashbourne town centre in the short to medium term, mitigation measures should be implemented as soon as feasibly possible..

7. BRAILSFORD NEIGHBOURHOOD PLAN

17 - 30

To receive a report setting out draft comments in respect of the Brailsford Neighbourhood Plan, and its general conformity to the District Council's strategic policies within the adopted Derbyshire Dales Local Plan. The report also outlines the next steps with regard to consultation and examination of the Brailsford Neighbourhood Plan.

- 8. COMMUNITY ASSET TRANSFER OF DENEFIELDS, MATLOCK 31 - 34**
- To receive a report to seek approval for the disposal a Community Asset by way of a 20 year lease of the area known as Denefields, Matlock to Matlock Town Council (MTC) following their request.. To note that the disposal above comprises an undervalue transaction permitted under the General Disposal Consent 2003.
- 9. COMMUNITY ASSET TRANSFER OF HEATHY LEA RECREATION GROUND, TANSLEY 35 - 38**
- To seek approval for the freehold transfer of Heathy Lea Recreation Ground, Tansley terms as outlined in paragraph 3 of the report as a Community Asset Transfer to Tansley Parish Council following their request. To note that the disposal above comprises an undervalue transaction permitted under the General Disposal Consent 2003.
- 10. DERBYSHIRE CLAUSE PROCEDURE 39 - 53**
- To consider the proposed introduction of a policy and amendments to procedures to streamline the administration and decision making processes associated with Derbyshire Clause dispensations.
- 11. DERBYSHIRE CLAUSES APPLICATION - ANNEXES to report Exempt 54 - 56**
- To consider whether to grant a dispensation and wave the Derbyshire Clause restriction to allow the sale of the properties detailed in this report for one transaction.

Members of the Committee - Councillors: Sue Bull, Matthew Buckler, Martin Burfoot, Helen Froggatt (Vice Chair), Chris Furness (Chair), Clare Gamble, Susan Hobson, David Hughes, Tony Morley, Peter O'Brien, Joyce Pawley, Garry Purdy, Mike Ratcliffe, Andrew Statham, Alasdair Sutton, Steve Wain and Mark Wakeman.

Substitutes – Councillors: Robert Archer, Jason Atkin, Sue Burfoot, Neil Buttle, Tom Donnelly, Richard FitzHerbert, Alyson Hill and Peter Slack

COMMUNITY AND ENVIRONMENT COMMITTEE
16th DECEMBER 2020

Report of the Chief Executive

ASHBOURNE BYPASS – CONSULTATION BY DERBYSHIRE COUNTY COUNCIL

PURPOSE OF REPORT

To advise Members of the public consultation being undertaken by Derbyshire County Council on options for a potential Ashbourne Bypass. The report allows Members to consider the submission of comments, on behalf of the District Council to Derbyshire County Council on the options being consulted upon by the deadline of 18th December 2020.

RECOMMENDATION

1. That Derbyshire County Council be advised that the District Council supports the provision a western bypass (Option 3) for Ashbourne.
2. That the District Council advises Derbyshire County Council that, on the basis of the alignment shown, it does not support the provision of an eastern bypass (Option 4) for Ashbourne.
3. That the District Council advises Derbyshire County Council that it considers that, in order to improve both traffic and environmental conditions within Ashbourne town centre in the short to medium term, mitigation measures should be implemented as soon as feasibly possible.

WARDS AFFECTED

Ashbourne North, Ashbourne South, and Clifton & Bradley

STRATEGIC LINK

One of the priorities in the Corporate Plan is to promote investment to stimulate the economy of our market towns. Removing some through traffic from the town centre by the investment in a new bypass for Ashbourne should create a better environment within the town centre and thereby have a stimulating effect on the local economy. Facilitating the development of Ashbourne Business Park and Phase1 Housing at Ashbourne Airfield is a key action under the “Supporting Better Homes and Jobs” strand of the Corporate Plan 2020-2024. This could be adversely impacted if the proposed eastern route is implemented.

1 BACKGROUND

- 1.1 As Members will be aware, a southern bypass for Ashbourne was constructed during the 1990’s as a means of relieving some the traffic that passed through the town centre at that time. However the southern bypass only removed some of the traffic from the

Town Centre, and especially not the HGVs which continue to pass through the town centre en-route from Buxton to the South.

- 1.2 The District Council has, for some time, through the Derbyshire Dales Local Plan acknowledged that traffic congestion, in particular from HGVs, in Ashbourne Town Centre has had a detrimental impact on the environmental quality, as well the character and appearance of the area. Furthermore, the District Council set out in the adopted Derbyshire Dales Local Plan that it was supportive of the principle of a second bypass to connect the A52 west of the town centre with the A515 to the north.
- 1.3 Notwithstanding the evidence of the impact of traffic congestion on Ashbourne town centre, all previous submissions to secure funding for the implementation of a western bypass for the town have not been successful. Despite these circumstances Derbyshire County Council has continued to examine existing traffic conditions in Ashbourne town centre and develop potential options to address the issues.
- 1.4 On 24th November Derbyshire County commenced a four week period of public consultation on options for improving traffic conditions within Ashbourne town centre. The public consultation was undertaken primarily online in a virtual consultation room: <https://ashbourne.consultation.ai/>
- 1.5 The public consultation comprises of seven information panels, along with three technical papers, which provide information on forecast traffic flows, environmental constraints and concept bypass alignments.
- 1.6 The consultation is described as an early stage consultation, which it defines as one which takes place prior to the selection of any preferred option, where limited design work has been undertaken and where the consultation seeks to gather views prior to any decisions being taken. The consultation makes it clear that at the present time there is no funding available to deliver any of the options, nor is there any guarantee that funding will be granted in the future.
- 1.7 A copy of the seven information panels, which includes illustrative routes for a western and eastern bypass are set out in **Appendix 1**. The deadline for the submission of representations is 18th December 2020.

2 REPORT

- 2.1 The consultation sets out four options as potential solutions:

Option 1 – Small Scale Schemes

Option 2 – Sturston Road/Derby Road/Park/Belper Road Junction Enhancement

Option 3 – Western Bypass – Route A and Route B

Option 4 – Eastern Bypass

- 2.2 Although it includes Option 1 as a potential solution, it discounts this on the basis that previous analysis has shown that amendments to the highway within the current highway boundary would not result in large improvements in journey times and would not remove HGVs from the town centre. The consultation, therefore, seeks views on providing more highway capacity within the town centre (Option 2) or taking traffic out of the town centre (Options 3 and 4).

- 2.3 The consultation goes on to seek views on providing a western bypass as opposed to providing capacity within the town centre or an eastern bypass.
- 2.4 The junctions identified in Option 2 are the primary source of delay within Ashbourne, and as such increasing capacity at these junctions could reduce delays without providing a bypass. This option has not been designed in detail and would involve the land acquisition around the junctions to increase the number of lanes available to traffic, and would not remove any HGVs from the town centre.
- 2.5 Two routes for a western bypass have been identified under Option 3. Both routes start at the same place. Route A would comprise of a 2800 metre route running further away from the edge of the built up area, and connecting with Buxton Road further north than Route B. Whereas Route B would comprise of a 2100 metre route running closer to the town than Route A and connecting further south to Buxton Road than Route A.
- 2.6 Option 4 consists of a 5300 metre route which runs from a point on the former Ashbourne airfield along a wide track to the east of Ashbourne, emerging onto Buxton Road in a similar location to Western Route A.
- 2.7 A detailed analysis of traffic forecasts accompanies the consultation. On the basis of the evidence provided this would appear to suggest the greatest level of traffic relief within the town centre derives from a Western Bypass, rather than an Eastern Bypass.
- 2.8 The consultation is also accompanied by a high level traffic light assessment of the environmental constraints that the options may have an impact on. These include:
- Air Quality
 - Cultural Heritage
 - Landscape Character and Visual Effects
 - Biodiversity
 - Geology & Soils
 - Noise & Vibration
 - Population and Human Health
 - Water Environment
 - Climate

2.9 A summary of the traffic light ratings for each of the Options is set out below:

Table 3-1 Summary of RAG Ratings

Option	Air Quality	Cultural Heritage	Landscape and Visual	Biodiversity	Geology and Soils	Noise and Vibration	Population and Human Health	The Water Environment	Climate	Overall RAG Rating
Western Bypass Scheme A	Green	Yellow	Yellow	Yellow	Yellow	Yellow	Yellow	Yellow	Green	Yellow
Western Bypass Scheme B	Yellow	Yellow	Yellow	Yellow	Yellow	Yellow	Yellow	Yellow	Green	Yellow
Eastern Bypass Scheme	Green	Yellow	Yellow	Yellow	Yellow	Yellow	Red	Green	Green	Red
Town Centre Improvement Option	Yellow	Yellow	Green	Green	Green	Yellow	Yellow	Green	Green	Yellow

The overall RAG rating (shown above) for each option is derived from all environmental factors. The accumulation of the overall RAG rating is based on professional judgement and is not a straight indicator of the potential for significant effects. This could be changed at a later stage where new baseline data is identified, and additional design detail becomes available.

RAG ratings are attributed as follows:

- **Red:** Environmental constraints that cannot be addressed using established and readily deliverable design solutions or mitigation thereby posing a threat to project delivery;
- **Amber:** Environmental constraints that, whilst likely to cause substantially adverse impacts, can potentially be resolved / mitigated but with possible implications for a project program; and
- **Green:** Environmental constraints that are likely to be resolved/ mitigated for a project program.

2.10 This suggests that the town centre options are likely to have the least detrimental environment affects because they take place within the built up area of the town rather than encroaching on the countryside beyond. It is noted for the Eastern Bypass that a Red RAG Rating had been identified as the current alignment begins within an area of land which is allocated for housing and development within the current Derbyshire Dales Local Plan and which has planning permission for housing and employment land uses. The current alignment does not appear to tie-in with the approved layout. This could represent a constraint that *'cannot be addressed using established and readily deliverable design solutions or mitigation thereby posing a threat to project delivery'*.

3 OFFICER COMMENTS

3.1 Notwithstanding the extant evidence presented as part of this public consultation it has been clear for a considerable number of years now that traffic congestion within Ashbourne town centre has been on the increase, and that the number of HGVs traversing from north to south has been having a detrimental impact upon its environmental quality. As such a 'do nothing' approach to traffic management within the town centre is not a viable option.

3.2 The opportunity to comment on the options set out in the consultation should therefore be welcomed, albeit that they are being presented on the basis that there is no guarantee that funding will be available in the future to deliver any of the options. Given the long held support for the provision of a bypass for the town, it is recommended that in principle the District Council offer its support to this initiative.

3.3 On the basis of the evidence presented it would appear that the provision of a western bypass, regardless of route, will remove the most traffic from the town centre. Either of the western routes may well be visually prominent from within the Peak District National Park, albeit that the northern Route A emerges onto Buxton Road closer to the boundary of the National Park. Furthermore Route A may have a greater impact upon the setting of Callow Hill Conservation Area, and a number of listed buildings compared

to Route B. These may however be offset by the benefits of removing traffic from the town centre where considerably more listed buildings are currently at risk.

- 3.4 The eastern route, is considerably longer than either of the western routes, and likely to be significantly more expensive, and as a consequence is not going to provide as much value for money when compared to either of the western routes. Whilst the eastern route may not be as visually prominent from the National Park, it is considered that the impact and uncertainty/delay that it may bring to the future development in the short to medium term of the allocated site in the adopted Derbyshire Dales Local Plan (up to 1400 new homes and 16 hectares of employment land) at the former Ashbourne Airfield outweigh any potential benefits that an eastern bypass may bring. Furthermore, it is understood that the new roundabout and future link road which are currently in the process of being constructed may not be capable of handling additional traffic that an eastern bypass may bring.
- 3.5 Members will be aware of existing air quality issues in the area of Buxton Road, Ashbourne. This issue manifests itself as exceedances of the air quality objective for nitrogen dioxide (NO₂) at 2 monitoring locations in the area. These exceedances are due to emissions from road traffic and therefore any measures to reduce road traffic in this area would be likely to have a beneficial effect on the levels of pollution experienced. Although it is not immediately evident from the published information, it is therefore logical to assume that the western routes would provide the most benefit in terms of addressing known levels of pollution within the town.
- 3.6 One potential consequential benefit for the District Council of the routes shown in the consultation is that the site identified in the adopted Derbyshire Dales Local Plan for a Gypsy and Traveller site under Policy HC6 does not appear to be adversely affected by any of the proposals. However, it is assumed that the position of the County Council in regard to the availability of this site for future consideration remains unchanged.
- 3.7 All of these factors will need to be taken into account during the development of any detailed work on a preferred option, and during the consideration of any subsequent planning application.
- 3.8 Taking all these factors into account it is considered that the District Council should advise Derbyshire County Council that it supports the development of a Western Bypass for Ashbourne (Option 3), and that on the basis of the current alignment shown that it indicate concern about the impact of an eastern bypass on the delivery of development at the Ashbourne Airfield.
- 3.9 Notwithstanding the recommendation of support for a Western Bypass, given that there is currently no identified funding available to deliver any of the three routes shown it likely to be some considerable time before the County Council is in a position to move towards implementation. In the meantime the traffic and environmental conditions in the town centre, without intervention, are likely to continue to deteriorate. It is therefore recommended that as part of this consultation that Derbyshire County Council be advised that the District Council consider that in order to address this situation that

mitigation measures be implemented within Ashbourne town centre as soon as feasibly possible.

4 RISK ASSESSMENT

4.1 Legal

There are no legal risks for the District Council associated with this public consultation.

4.2 Financial

As this is a capital project being led by the County Council, there is no financial risk to the District Council.

4.3 Corporate Risk

If Derbyshire Council consider that an eastern bypass is their preferred route this will have potential adverse economic impacts locally, because of the potential for creating delay and uncertainty about the viability of development on the former Ashbourne Airfield – a key priority for the Corporate Plan 2020-2024.

5 OTHER CONSIDERATIONS

- 5.1 In preparing this report, the relevance of the following factors has also been considered: prevention of crime and disorder, equalities, environmental, climate change, health, human rights, personnel and property.

6 CONTACT INFORMATION

Mike Hase, Policy Manager
Tel. 01629 761251
E-Mail mike.hase@derbyshiredales.gov.uk

7 BACKGROUND PAPERS

None

8 ATTACHMENTS

Appendix 1 – Ashbourne Public Consultation Boards

Introduction

Thank you for taking part in this *early stage* consultation.

We would like to get your views on potential improvement options for Ashbourne town centre.

We have examined the existing traffic conditions in the area and identified some potential options to address these issues; however, no decisions have yet been taken on the way forward. We are keen to understand your views before developing the available options.

Once we have your views, we will develop options into a preferred scheme based on this consultation and additional design and appraisal work.

National and / or Regional Funding may be required to deliver a scheme. At the present time, no specific funding stream has been identified.

There are **no guarantees** funding will be granted. All schemes must compete with each other for major scheme funding.

What is an *early stage* consultation?

Early Stage Consultation: (CURRENT EVENT)

- Occurs prior to selection of a preferred option;
- Option detail is limited as design and assessment work remains to be undertaken;
- Consultation focuses on the principle of options available;
- Consultation designed to gather views of those most affected by options, prior to decisions being taken.
- Participation of public / stakeholders is intended to help identify an option with broad support.
- Designs are indicative in nature and **NOT** final.

Preferred Option Consultation: (To Follow)

- Focuses on the detailed aspects of a scheme;
- Design drawings are at a higher level of detail;
- Impacts on specific properties are shown;
- Supported by more in-depth analysis and design work.


Highway Scheme Appraisal Process

The process being used by Derbyshire County Council has been informed by the Department for Transport's (DfT) Appraisal Process.

This identifies several steps prior to a preferred option being ready to be selected and investigated further.

This process is summarised below.

Stage 1: Option Development

- Step 1: Understanding the Current Situation;
- Step 2: Understanding the Future Situation;
- Step 3: Establishing the need for Intervention;
- Step 4: Defining Objectives / Define Geographic area of Impact to be Addressed by the Intervention;
- Step 5: Option Generation;
- Step 6: Undertake Initial Sift;
- Step 7: Develop and Assess Potential Options;  **We are here**
- Step 8: Develop the Options in an Option Assessment Report;
- Step 9: Develop and Scope the better performing options

Stage 2: Further Appraisal & Business Case Preparation

(202X– 202X – timescale uncertain)

Stage 3: Implementation (subject to successful funding bid)

(Post 202x—timescale uncertain).

Discounted Options

Option 1, Small Scale Schemes: Previous analysis has shown that amendments to the highway within the current highway boundary (including signal timing changes and enlarged one-way systems) would not result in large improvements in journey times and would not remove HGVs from the town centre. As such, these have not been included in this consultation.

You can, however, tell us if you think a large scale scheme *isn't* required using the feedback form.

Sustainable Transport: Sustainable transport measures are also unlikely to be a solution to the current problems as they would not address medium to long-distance through trips nor would they remove HGV movements. As such, this consultation does not include public transport options or active travel options (which are being pursued separately by Derbyshire CC).

However, the feedback form does ask you about your views on the recent scheme to make Compton Street one-way, which was installed as part of the COVID19 response.

Option 2 (Sturston Road / Derby Road / Park Road / Belper Road Junction Enlargement)

The majority of delays within Ashbourne are caused by two signalised junctions that are in close proximity. Theoretically, improvement to these junctions could reduce delays without providing a bypass. Option 2 is therefore included to identify the extent to which delay could be removed from Ashbourne town centre by the enlargement of the Derby Road / Sturston Road junction.

This scheme is not designed in detail. It would involve land acquisition around the junctions to increase the number of lanes, particularly where Derby Road meets Compton Road. The scheme would not remove HGVs from Ashbourne town centre and may impact on listed buildings.

Advantages

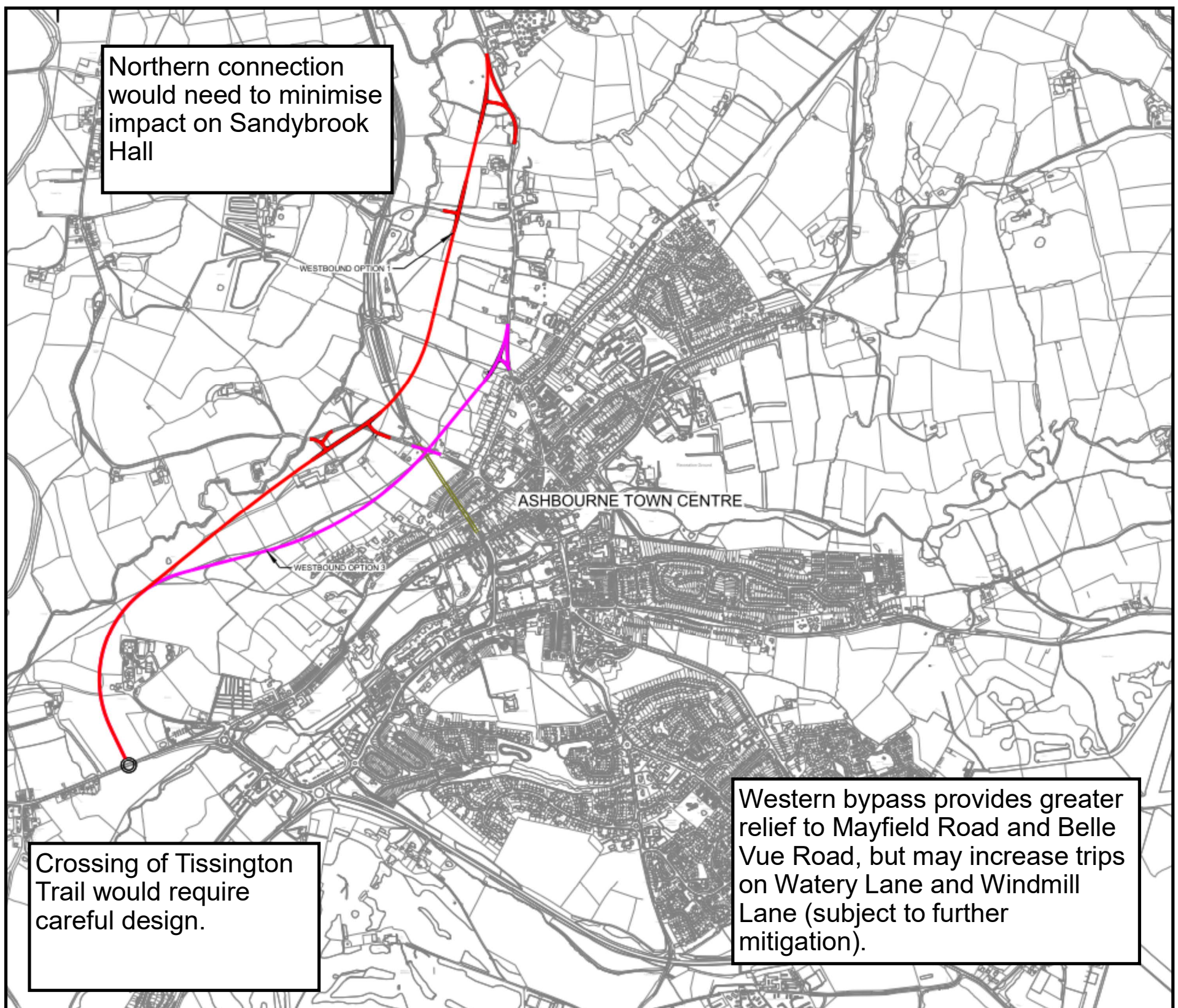
- Reduces journey time delays ✓
- No requirement for new route through countryside ✓

Drawbacks

- Increased disruption during construction ×
- Potential impact on listed buildings ×
- Visual / townscape impact within the town centre ×
- Does not remove HGVs from town centre ×

For this consultation, we need to know your view on providing more highway capacity *within* the town (Option 2), as opposed to taking traffic *out* of the town (Options 3 and 4).

Option 3 (Western Bypass)



A more detailed drawing of each western bypass option is available on this online portal.

Western bypass routes have been previously prepared for the town. There are several options, which connect at different locations onto the existing Buxton Road.

The main difference between Route A (further away from the town) and Route B (closer to the town) are that:

- The Tissington Trail is within tunnel where it passes Route B, but the trail must bridge over Route A.
- It is possible to provide a junction with Mappleton Road for Route A, but not for Route B (which bridges over Mappleton Road).
- Route B brings vehicles closer to existing residential property.
- Route A requires a junction closer to Sandybrook Hall.

Advantages

- Reduces journey time delays ✓
- Reduces impacts within the town ✓
- Removes some HGV traffic from the town ✓

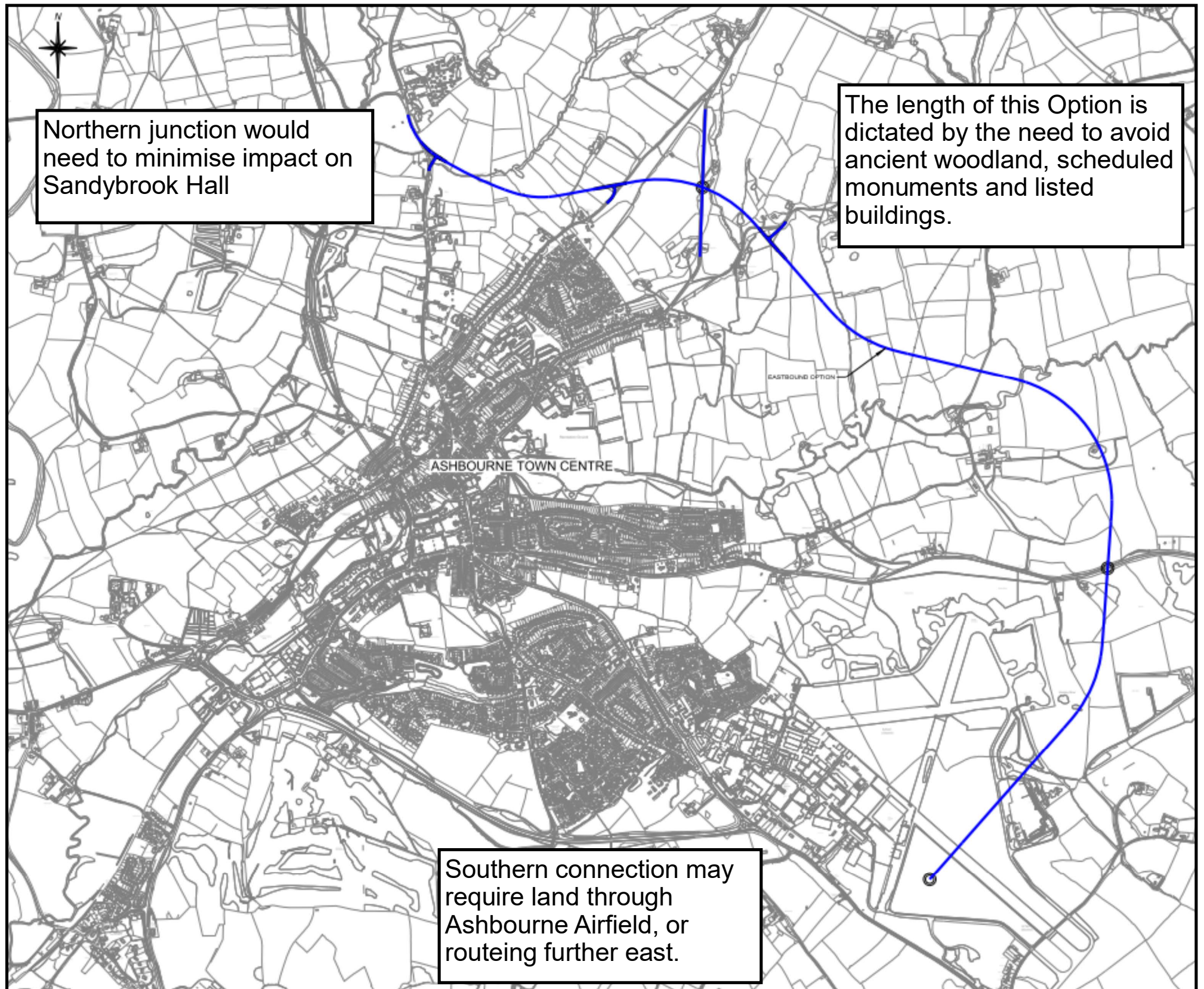
Drawbacks

- Potential impacts on Tissington Trail ✗
- Construction of new route through countryside ✗

For this consultation, we need to know your view on providing a western bypass, as opposed to providing capacity within the town (Option 2) or an eastern bypass (Option 4).

If you prefer a western bypass, we also need to know if you prefer a connection back onto Buxton Road further to the north (Route A), or further to the south (Route B), or if you favour a western route but have no preference.

Option 4 (Eastern Bypass)



A more detailed drawing of the eastern bypass is available on this online portal. Note: there are several potential eastern alignments available. If an eastern bypass is taken forward, further design work would be required to identify the optimum alignment. As such, this consultation is examining the principle of an eastern bypass only and not the specific design.

An eastern bypass could better remove trips through the town originating from the north east (e.g. Matlock, Cromford) and Belper. However, the length of the scheme means that fewer trips would use the bypass itself than the western bypass and it would remove fewer HGVs from the town centre. It would also be more expensive to construct.

Advantages

- Reduces journey time delays ✓
- Reduces impacts within the town ✓
- Removes some HGV traffic from the town ✓

Drawbacks

- Potential requirement of land through Ashbourne Airfield ✗
- Construction of new route through countryside ✗

For this consultation, we need to know your view on providing an eastern bypass, as opposed to providing capacity within the town (Option 2) or a western bypass (Option 3).

Forecast Traffic Flow Changes

A traffic model has been developed for the area around Ashbourne. This model has been developed to be compliant with guidance issued by the Department for Transport.

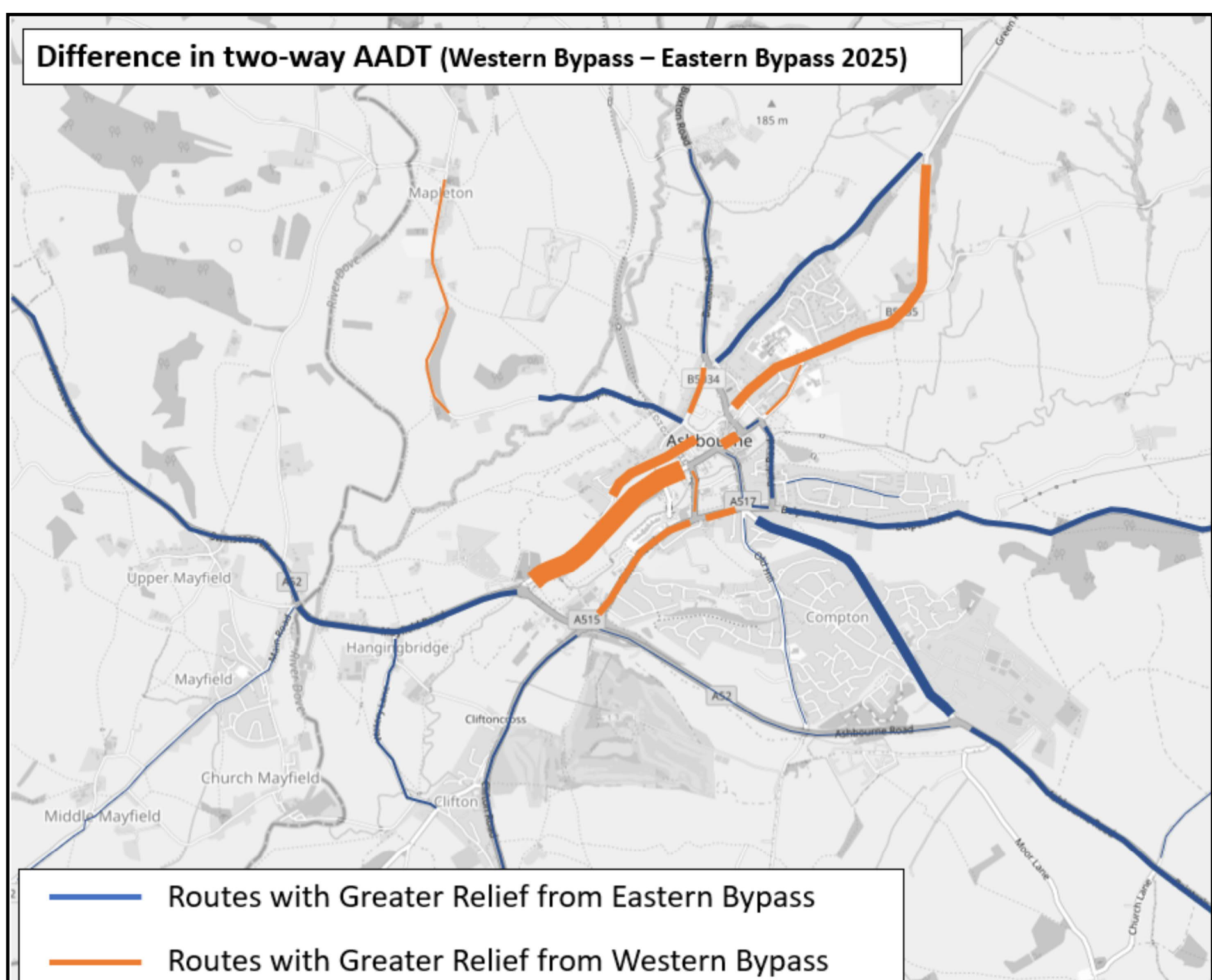
The model is based on traffic surveys and other data collected in 2019.

The model has been used to develop the following traffic flow forecasts:

- Do Minimum (what would happen in future, *without* the scheme);
- Do Something (what would happen in future, with Western Alignment A);
- Do Something (what would happen in future, with Western Alignment B);
- Do Something (what would happen in future, with Eastern Alignment); and
- Do Something (what would happen in future, with town Centre scheme).

A forecast of the 2025 Annual Average Daily Traffic (AADT) flows for key routes for each option are available on the online portal.

The graphic below compares forecast flows for the Western Bypass (option 3A) with forecast flows for the Eastern Bypass (option 4). It shows which routes carry fewer trips with either option, to illustrate which routes would benefit most from each option.



Your Views....

We are collecting your views on the Ashbourne traffic options, which will be taken into consideration when developing any options in the future.

For example, we want to know your views on:

What about impacts on journey times and congestion during the day?

Cycling conditions?

What about impacts on journey times and congestion during peak hours?

Walking conditions?

Accommodating traffic from future housing and economic development?

Will it impact the buses I use?

Road safety?

Do you prefer one of the proposed Options?

Why this is your preferred option?

Please make sure you fill out the feedback form to get your views heard!

COMMUNITY AND ENVIRONMENT COMMITTEE
16th DECEMBER 2020

Report of Director of Regeneration and Policy

BRAILSFORD NEIGHBOURHOOD PLAN

PURPOSE OF REPORT

The purpose of this report is to provide Members with the opportunity to formally comment on the contents of the Draft Brailsford Neighbourhood Plan, and the extent to which it is in general conformity to the District Council's strategic policies as set out in the adopted Derbyshire Dales Local Plan. The report also provides Members with details of the next steps of the process for the preparation of the Brailsford Neighbourhood Plan.

RECOMMENDATION

1. That the draft comments made in respect of the policies and proposals contained within the Brailsford Neighbourhood Plan as set out in Appendix 1 are approved and submitted to the examiner appointed to undertake the Examination of the Brailsford Neighbourhood Plan.
2. That a further report be presented to this Committee that sets out the Examiner's Report findings and any recommended modifications to the Brailsford Neighbourhood Plan.

WARDS AFFECTED

Brailsford and Ednaston

STRATEGIC LINK

The implementation of the Brailsford Neighbourhood Plan will provide a wider planning framework for the Derbyshire Dales, focused within Brailsford. The Neighbourhood Plan will complement policies set out within the Derbyshire Dales Local Plan (adopted 2017) and form part of the Development Plan for the District.

1 BACKGROUND

- 1.1 The Parish of Brailsford and Ednaston was designated as a Neighbourhood Area in accordance with Section 61G of the Town and Country Planning Act (as amended by the Localism Act 2011) on the 7th April 2015. The designation of a Neighbourhood Area is one of the statutory requirements to enable a Neighbourhood Plan to be adopted and formally become a part of the Development Plan, and be used in the determination of planning applications by the District Council.
- 1.2 Since that time Brailsford Parish Council, with the help of the Brailsford Neighbourhood Plan Steering Group and the local community have prepared a Neighbourhood Plan for their Parish. The Plan sets out the vision for the future of the Parish and planning

policies, which if 'made' will be used to help determine planning applications within the Neighbourhood Area.

- 1.3 The Draft Brailsford Neighbourhood Development Plan was subject to local consultation under Regulation 14 of the Neighbourhood Planning (General) Regulations (2012) between 10th March and 21 April 2017, and was submitted to the District Council for its formal publicity stage in June 2018. Following a review of the submitted plan, and its accompanying documents the District Council advised Brailsford Parish Council that further work was required to ensure that all its statutory requirements had been met before it could proceed to formal consultation under Regulation 16 of the Neighbourhood Planning Regulations.
- 1.4 Since that time the District Council has continued to assist Brailsford Neighbourhood Plan Steering Group and Parish Council with the preparation of a Neighbourhood Plan. In February 2020 a revised Neighbourhood Plan; Basic Conditions Statement; and Consultation Statement were again formally submitted to the District Council.
- 1.5 In accordance with Regulation 16 of the Neighbourhood Planning Regulations a six week period of public consultation on the draft Brailsford Neighbourhood Plan commenced on 9th November 2020, and will finish on 21st December 2020.
- 1.6 As part of the consultation on the Draft Plan, the District Council sent letters to all residents and businesses within the Parish of Brailsford and Ednaston, statutory stakeholders and local groups, advising them where the documents could be viewed and how representations can be made upon the Plan. Copies of the Draft Neighbourhood Plan and supporting documents were made available to view at Brailsford Post Office; on Brailsford Parish Council's website; and on the District Council's website at the following link www.derbyshiredales.gov.uk/brailsfordnp
- 1.7 To enable residents and consultees to make representations on the Draft Neighbourhood Plan, an online form was made available on the District Council's website at the above link. Further to this a press release has alerted the local media to the Neighbourhood Plan consultation.

2 DISTRICT COUNCIL REPRESENTATIONS

- 2.1 A detailed review of the policies and proposals contained within the Brailsford Neighbourhood Development Plan was undertaken during the local consultation (Regulation 14 Stage) undertaken in March 2017 and when the Plan was submitted under Regulation 15 in 2018.
- 2.2 The District Council in response has indicated its general support for the preparation of the Draft Brailsford Neighbourhood Plan. It did however express some concern that some of policies were written in a negative manner, duplicated or were contrary to policies in the adopted Derbyshire Dales Local Plan, had an unclear evidence base or sought to address issues that lie beyond the planning remit. Some of the comments made by the District Council were, however, taken into account by the Brailsford Neighbourhood Plan Steering Group in redrafting the Brailsford Neighbourhood Plan in readiness for submission to the District Council (Regulation 15 and 16 Stage). A copy of the Draft Brailsford Neighbourhood Plan is available using the following [link](#):
- 2.3 The current public consultation allows the District Council the opportunity make any formal representations on the contents of the draft Brailsford Neighbourhood Plan. In

order for the District Council's comments on the Brailsford Neighbourhood Plan to be taken into account by the Independent Examiner, the District Council is required to formally submit the comments by 21st December 2020. A thorough review of the Brailsford Neighbourhood Plan has been undertaken by Officers and it is recommended that the comments set out in Appendix 1 are endorsed by Members as the District Council's formal response to the Plan.

3 NEXT STEPS

3.1 To enable the Brailsford Neighbourhood Plan to come into force, it must meet the following 'basic conditions' as set out in Paragraph 8(2) of Schedule 4B to the Town and Country Planning Act 1990 as applied to Neighbourhood Plans by section 38A of the Planning and Compulsory Purchase Act 2004:

1. Have regard to national policies and advice contained in guidance issued by the Secretary of State.
2. The making of the neighbourhood plan contributes to the achievement of sustainable development.
3. The making of the neighbourhood plan is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area).
4. The making of the neighbourhood plan does not breach, and is otherwise compatible with, EU obligations.
5. The making of the Neighbourhood Development Plan does not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017.

3.2 The next step is for the Brailsford Neighbourhood Plan to be subject to an Examination by an Independent Examiner who will consider whether the statutory requirements and basic conditions have been met. In order to progress the preparation of the Brailsford Neighbourhood Plan, and with the agreement of the Brailsford and Ednaston Parish Council, Mr Andrew Matheson has been appointed as the Independent Examiner.

3.3 The Examiner will produce a report with his recommendations, the reasons for them and a summary of findings. The report can recommend:

- a. The draft plan is subject to a Referendum,
- b. Modifications as specified in the Report are made to ensure that the basic conditions are met and that the draft report as modified is submitted to a Referendum, or
- c. The proposal is refused.

3.4 Although the District Council has provided advice and support to Brailsford and Ednaston Parish Council throughout the preparation of the Plan to ensure that the basic conditions are being met, the policies and proposals contained within the Plan are an expression of how the Parish Council envisages the issues identified through their consultation should be addressed in the determination of planning applications.

3.5 Taking account of liaison with the Independent Examiner, the examination of the Brailsford Neighbourhood Plan is anticipated to commence in January 2021. Following the examination, a further report will be presented to a future meeting of this Community that sets out the Examiner's Report findings, any recommended

modifications to the Brailsford Neighbourhood Plan, and, potentially, final steps towards Referendum and subsequent planned adoption.

4 RISK ASSESSMENT

4.1 Legal

In compliance with Paragraph 6(2) of the Schedule, the local authority designated Brailsford as a Neighbourhood Area and since this designation the Brailsford Neighbourhood Plan Steering Group and Brailsford and Ednaston Parish Council have prepared a Neighbourhood Plan for consideration. The District Council has followed the consultation requirements set out within the Neighbourhood Planning (General) Regulations 2012 and before submitting the Neighbourhood Plan to an independent examiner the Local Authority must be satisfied that the conditions set out in Schedule 4B of the Town and Country Planning Act have been met. These conditions are set out above and have been considered in depth within the contents of this report.

The recommendation is to refer the Neighbourhood Plan for an independent examination. If the examiner is satisfied the criteria is met, the Neighbourhood Plan will then be referred for consideration at a final referendum. Therefore at this stage the legal risk is considered low.

4.2 Financial

The costs associated with the Neighbourhood Plan (mainly officer time, publicity and the independent examination and referendum, if appropriate) can be reclaimed from MHCLG. The financial risk is, therefore, assessed as low.

5 OTHER CONSIDERATIONS

5.1 In preparing this report, the relevance of the following factors has also been considered: prevention of crime and disorder, equalities, environmental, climate change, health, human rights, personnel and property.

6 CONTACT INFORMATION

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7 BACKGROUND PAPERS

7.1 Brailsford Neighbourhood Plan – Submission Version (Regulation 16 Stage)

Brailsford Neighbourhood Plan – Basic Conditions Statement (Regulation 16 Stage)

Brailsford Neighbourhood Plan – Consultation Statement (Regulation 16 Stage)

8 ATTACHMENTS

APPENDIX 1 – DISTRICT COUNCIL SCHEDULE OF REPRESENTATIONS

APPENDIX 1 – DISTRICT COUNCIL SCHEDULE OF REPRESENTATIONS

Section	Page	Comments
Location of Brailsford Parish in Derbyshire Dales District – Plan 1	5	The District Council provided a map for this purpose, however the one shown as Plan 1 within the Neighbourhood Plan continues to appear distorted and lacking in clarity. The quality of the images, graphics and maps need to be clear to provide context and interpretation to the Neighbourhood Plan policies within.
Location of Brailsford and Ednaston – Plan 2	6	The quality of this image is again poor and it is questionable whether it is required in addition to an improved Plan 1 (see comment above) which seeks to show the location of the Parish and the settlements of Brailsford and Ednaston therein.
Brailsford Parish Boundary – Plan 3	7	In regard to Plan 3, comments at Regulation 14 stage and during the evolution of the Neighbourhood Plan requested that the quality of the image needed to be improved and that the title should be amended to state ‘Brailsford Neighbourhood Area’ as designated on 7 th April 2015. These comments remain. It is considered paramount that the Neighbourhood Plan clearly includes a map showing the Designated Neighbourhood Area to which the Neighbourhood Plan applies.
Brailsford Village Conservation Area – Plan 4	8	The quality of Plan 4 should be improved to ensure that the scale is not distorted. A more appropriate location for a map of the Conservation Area maybe on page 12 where commentary is provided on the Conservation Area, its buildings and point of historical interest.
Introduction	9	The first paragraph refers to Plan 1 showing the Designated Neighbourhood Area reference to be amended to reflect rationalisation of maps. See comments above on Plan 3.
	9	The second paragraph on page 9 refers to the Neighbourhood Plan being ‘adopted’ after referendum. The text should be amended to refer to the Plan being ‘made’ after referendum in accordance with the statutory terminology.
	9	The fourth paragraph refers to the NPPF 2012 and ‘guiding principles’ of sustainable development. It is recommended that an updated reference to the objectives set out within section two of the NPPF published in February 2019 would be more appropriate, which states in order to achieve sustainable development the planning system has social, economic and environmental objectives.
About Brailsford	10	The first paragraph refers to Ednaston, Culland and Over Burrows, unfortunately Plan 1 is of insufficient quality for the reader to identify the location of these settlements.
Settlements	12	The last paragraph refers to Plan 3 in order to illustrate the designated Conservation Area. This reference should be to Plan 4. As stated above the quality of the image needs to be enhanced to provide clarity for the

Section	Page	Comments
		reader and its location within the document reconsidered.
Village Amenities	13	The narrative on page thirteen of the Neighbourhood Plan provides a good overview of local services and facilities. It is recommended that the tense of the fourth paragraph is updated to reflect that the brownfield site referred to is no longer undeveloped, as residential development on the site has now commenced following the grant of planning permission for 19 dwellings.
	15	Plan 5 is titled 'Proposed Settlement Development Boundary – Brailsford 2017'. This is the adopted Settlement Boundary from the Derbyshire Dales Local Plan 2017 and the title should be amended accordingly to read "Brailsford Settlement Development Boundary – Derbyshire Dales Local Plan 2017."
Parish Statistics	17	As stated at previous stages of plan preparation the Plan would benefit from stating the actual number of hectares that it covers, then this could be used to calculate the density of development within the village to provide context. Based on the Parish Boundary the Neighbourhood Plan area is 1,765 hectares, this could be included in the text. Similarly as advised previously to the Parish Council the comment stating there is a variance between the census parish and Neighbourhood Plan area is unnecessary, as it is the Neighbourhood Area designation that determines the extent of the Neighbourhood Plan.
	17-24	The section on Parish Statistics provides a valuable commentary on both census data about the Neighbourhood Area and the results from the Parish Survey. There should be reference to the full analysis of the Parish survey within the supporting Consultation Statement. The Section on Parish Statistics should clearly differentiate between factual information and that obtained via the Parish Survey.
Policy Context	25	Paragraph 6 refers to the Derbyshire Dales Local Plan – Adopted in 2017. The supporting footnotes (footnote 16 and 17) should be updated to reflect the adopted version of the Local Plan.
	25	The sixth Paragraph seeks to provide the context of Brailsford within the adopted Settlement Hierarchy of the Adopted Derbyshire Dales Local Plan. It is considered that the wording of the sixth paragraph should be amended to accurately reflect the wording of policy S2 – Settlement Hierarchy of the Local Plan which states in respect of Brailsford that it is a 'Third Tier Settlement - Accessible Settlement with Some Facilities; these villages possess some facilities and services, that together with local employment provide the best opportunities outside the first and second tier settlements for greater self – containment. They will

Section	Page	Comments
		provide for reduced levels of development in comparison to higher order settlements in order to safeguard, and where possible, improve their role consistent with maintaining or enhancing key environmental attributes'. As currently drafted the sixth paragraph does not accurately reflect the adopted Settlement Hierarchy and Spatial Strategy within the Local Plan.
The Neighbourhood Plan – How the Plan was made	29	The list of key actions should be updated to include submission of the Neighbourhood Plan and supporting documents to the Local Planning Authority in February 2020.
Vision and Parish Objective Statement	30	<p>The purpose of the Neighbourhood Plan is for its use in the determination of planning applications, the Vision and Objectives should emerge from the evidence. The first bullet point for the vision states:</p> <p>“Conserves the integrity of the village environment and the cohesion of its communities by setting a level of development (and its form) within the Parish consistent with the rural environment in which the Parish is located.”</p> <p>It is recommended that the wording of the vision is amended. The Neighbourhood Plan does not set any level of development within the Designated Area nor does it propose the allocation of any development sites. The parameters for the development strategy of the Area, both scale and location are established within the Adopted Derbyshire Dales Local Plan. It is noted the Neighbourhood Plan proposes policies on design and form of development.</p>
	30	<p>Comments made on the Neighbourhood Plan at Regulation 14 stage reiterated the need to ensure that the Plans Vision and Objectives were positively worded, reflected the evidence from the Parish Survey, were land use related and deliverable through the Neighbourhood Plan.</p> <p>Priority 1 states ‘managing any further expansion’ in respect of housing development, and Priority 4 states recommending new housing development ‘not solely through the approval of new housing estates’. Priority 6 refers to speed control mechanisms, again this is beyond the remit of the Neighbourhood Plan unless directly related to development by way of mitigation. These priorities would benefit from re wording as it they may not be deliverable through the Neighbourhood Plan.</p>
	31	The second to last paragraph states that the Neighbourhood Plan will be used by the Parish Council as an Action Plan to help shape its policies, activities and local spending. Work on the introduction of CIL for the Derbyshire Dales has been suspended and a Supplementary Planning Document on Development

Section	Page	Comments
		Contributions adopted in 2020. The securing and allocation of section 106 contributions must meet the statutory tests for planning obligations, the Neighbourhood Plan will not assist in securing additional funding.
Policy Areas	31	Comments provided at Regulation 14 stage emphasised the National Planning Policy Framework and Planning Practice Guidance that policies within Neighbourhood Plans should be clear and unambiguous to allow the decision maker to apply them with consistency in the determination of planning applications. Furthermore policies should be supported by appropriate evidence and should be distinct to reflect and respond to the unique characteristics and planning context of the specific neighbourhood area for which it has been prepared. Whilst revisions have been made to seek to address some of these previous comments concern remains that some elements of the Neighbourhood Plan are not positively worded, duplicate policies in the adopted Derbyshire Dales Local Plan or have an unclear evidence base.
Policy Area 1: Housing	32	<p>It is noted that contextual information and the reasons for the housing policies are provided, however the policies as submitted appear to duplicate policies in the Local Plan and do not entirely address matters that are unique to the Neighbourhood Area. The housing policies should be complementary and consistent with Local Plan Policies.</p> <p>The policies in this section of the Plan should be merged into one policy with an overarching introduction that 'Planning permission will be granted for new development where;' and then criteria to encompass the local matters set out in policy H1 – H6 not already covered within the Local Plan and drawn from local evidence.</p>
Policy H1	34	This policy duplicates policies, HC4 – Affordable Housing and HC11 Housing Mix and Type in the Adopted Derbyshire Dales Local Plan. The policy states that development should be designed as small scale clusters, it is unclear what the term small scale clusters means in the context of residential land allocations within the Derbyshire Dales Local Plan. Clarity as to whether this means ensuring developments have different character areas within them or that development should come forward in smaller sites rather than as part of larger strategic allocations. This requires further clarity and amendment to ensure that the policy can be used in the determination of planning applications and does not duplicate the Local Plan or undermine its deliverability.

Section	Page	Comments
Policy H2	34	Elements of this policy duplicate Local Plan policies, particularly the elements which state support for brownfield and infill development. In respect of conversion the policy requires schemes to contribute positively to local character. Evidence to support how the local character has been defined, established or will be assessed in the determination of planning applications is lacking. The policy introduces consideration of development on traffic impact, this is a separate issue and would be better suited to the section on traffic management within the Neighbourhood Plan. The impact of traffic impact and mitigation are material considerations.
Policy H3	34	The policy refers to the use of 'complementary building materials', this term may benefit from clarification to aid decision making. It is noted page 12 of the Neighbourhood Plan refers to the Conservation Area Appraisal and prominent building materials within the village. Further evidence may assist to support the introduction of this policy, for instance how prominent are red brick and plain clay tiles within the village.
Policy H4	34	Support for affordable self and local build development is welcomed in the Neighbourhood Plan. However compliance with and duplication of policy HC3 'Self Build Housing Provision' of the Local Plan should be assessed. The requirement for local builders and craftspeople to provide these developments goes beyond the scope of land use planning.
Policy H5	34	The intentions of the policy are supported however the wording of H5 duplicates existing Local Plan policies on the design of development and Conservation Areas.
Policy H6	34	This policy refers to a detailed Design Principles Statement included as an Annex to the Neighbourhood Plan. The Design Principles Statement provides the very evidence and local justification for the policy. The principles should be incorporated into the Neighbourhood Plan or could be used to inform a separate design policy within the Neighbourhood Plan, which could encompass the points made about local complementary materials.
Policy Area 2 – Traffic Management and Accessibility	36	This section of the Neighbourhood Plan includes 'Development and Investment Policies' and 'Community Objectives' the need to separate the two requires clarity. Local Plan policies HC18, HC19 and HC20 address the management of travel demand and accessibility, with the proposed policies in this section of the Neighbourhood Plan duplicating considerations made through the Local Plan, particularly TMA1 and TMA2. Further revision of the policies is required to ensure that they relate to issues that can be addressed through the determination of planning applications. If the community objectives are

Section	Page	Comments
		not intended to be used for the determination of planning applications this should be referenced in the supporting text.
Policy TMA1	42	Rewording of the policy to require “development within the neighbourhood area” to consider traffic management would be more appropriate rather than referring to both the settlement boundary defined in the Local Plan and the wider parish boundary. This would ensure a consistent approach was taken to development proposals across the parish of Brailsford and Ednaston.
	42	The policy seeks ongoing funding for footpath and pavement maintenance in and approaching Brailsford village to meet the recommendations in the DfT Report ‘ <i>Inclusive Mobility</i> . These works should be identified by the Local Highway Authority when assessing new development and be necessary to make the development acceptable in planning terms. There are no sites identified in the plan for new development. The policy is therefore considered to be of limited relevance and merely duplicates Local Plan policies and the advice provided by the Highways Authority.
Policy TMA2	43	Policy TMA2 – It is not proportionate or reasonable to require all future planning applications to include achievable sustainable travel plans. Consideration should be given to the level of development that requires a travel plan in consultation with the Local Highway Authority. The term ‘achievable sustainable travel plan’ is vague and should be revised. As stated above elements of this policy duplicate those within the adopted Derbyshire Dales Local Plan (HC19/HC20) and appear unjustified.
Policy TMA3- 6	43	Policies TMA 3 – 5 reads that development which delivers these community aims (no matter how unacceptable in other areas) will be supported. These policies are aspirational and again should be linked to planned development, in order to make it acceptable in planning terms. Elements of the Community Objectives are none planning related and would benefit from rewording. The overall purpose of the objectives should be clarified if they are not intended to be used in the determination of planning applications.
Policy Area 3 – Green and Open Spaces	44	As stated at previous stages of plan development the policies within the Neighbourhood Plan should be in general conformity with the policies in the adopted Local Plan and positively support them, drawing upon local evidence and issues identified. The District Council remains of the view that this section of the Plan duplicates considerable elements of the adopted Local

Section	Page	Comments
		Plan, particularly policy PD1, PD3 and PD4. The policies need to be written in a manner in which they may be used and applied in the determination of planning applications.
Plan 7 - 8	44-45	The quality of the images requires improvement to aid the presentation of the Neighbourhood Plan. A number of the images are of poor quality and are hard to decipher making the detail hard to identify. There may be benefits to some of the plans being amalgamated to include more than one environmental issues for instance one plan showing existing green space and public open space.
Policy GSL1 and GSL2	46	As submitted these policies duplicate adopted Local Plan policies (PD1, PD3 and PD4) and are worded in a negative manner. The local evidence to support the identified 'green spaces' and associated community value should be identified. The elements of Policy GSL2 referring to policy S10 and infrastructure could draw reference to the adopted Developer Contributions Supplementary Planning Document. Any financial obligation towards infrastructure must meet all the statutory tests for the use of S106 Obligations..
POLICY GSL3	46	This policy is aspirational and should be written in a manner that it may be used in the determination of planning applications and implemented. Requiring linkages to established green infrastructure where possible may not always be feasible particularly where developers may not control land beyond the development site.
Policy Area 4 - Local Landscape and Wildlife Plan 9 – Plan 14	49-55	The quality of the images for these plans as submitted is currently poor. Improvements to the plans and illustrations would add value to the Neighbourhood Plan and assist the reader. Further plans showing the extent of ancient woodland, Grade 2 Agricultural Land and Environmental designations such as wildlife sites and SSSIs could be included to further demonstrate the wealth of valued landscapes and habitats within the Neighbourhood Area.
Policy Area 4 – Local Landscape and Wildlife	51	Reference to Plan 10 in the first paragraph should be amended to read Plan 11.
Policy LW1	56	The aims of this policy appear to duplicate those in Local Plan policy PD1 and PD5 which seek to ensure that development does not have an adverse impact on landscape character. Further evidence is required to justify the policy, for instance what constitutes an area to be regarded as high landscape sensitivity within the Parish and sites which would affect the prevailing vistas, and/or would be visually prominent. How would the impact of development be assessed and how have important vistas and visually prominent sites been identified.

Section	Page	Comments
Policy LW2 and LW3	56	These two policies have a degree of overlap with existing Local Plan policies (PD3, PD5, PD6) and provide guidance rather than set out a specific policy requirement for use in the determination of a planning application. Reference to the use of SUDs and Maintenance agreements are noted and further information on such matters is available within the adopted Supplementary Planning Document on Development Contributions.
Policy LW4	56 -57	The evidence for a policy on 'dark skies' initiatives within the Plan should be provided, otherwise there would not appear to be any justification for such a policy within the Neighbourhood Plan.
Policy Area 5 – Community Wellbeing Provision of Local Facilities and Amenities	58	It is noted that revisions to the context section have been made to add information on the services and facilities within the village, it is considered however that additional detail from the Parish Survey on how valued the services and facilities are could be included to further enhance this section of the Plan, and thus inform the policies, vision and objectives.
Policy CW1 and CW2	61	Policy CW1 and CW2 are negatively worded and duplicate policies within the Local Plan (policy HC15 and S10). Policy CW2 will require input from stakeholders such as the Derby and Derbyshire Clinical Commissioning Group and Severn Trent to determine infrastructure capacity. As consultees to planning applications such bodies would be invited to make representations on proposals which may affect the capacity of existing services and facilities. Policy S10 of the Local Plan seeks to ensure that development is supported by appropriate infrastructure at the right time.
CW3	61	The threshold for any contributions should be set, in line with government guidance and should be linked to planned development where it can be demonstrated that investment is reasonably related in scale and kind to that development. As submitted this policy is aspirational rather than a sound policy. As advised at previous stages of plan preparation elements of this policy continue to relate to non-land use matters such as space for yoga at the Brailsford Institute. Policy S10 of the Local Plan seeks to ensure that development is supported by appropriate infrastructure at the right time. The adopted Supplementary Planning Document on Planning Obligations provides further policy guidance. As currently drafted this neighbourhood plan policy adds little to the current policy framework.
CW6 and CW7	62	Policies CW6 and 7 go beyond planning controls and seek to control crime and antisocial behavior. As stated above as Community Objectives it should be made clear

Section	Page	Comments
		that these will not be used in the determination of planning applications.
Annex 1 – Design Principles Statement	63	This annex provides design policies and principles for the designated Neighbourhood Area and is founded on local evidence, research and the findings from the Parish Survey. The District Council, does however, question why this work is only included as an annex to the Neighbourhood Plan, when it better seen as an integral part of the Plan, where it will add benefit and provide detailed design policies. It is recommended that the annex should be embedded in the main body of the Plan and could be used to provide design policies for the future determination of planning applications. The contents of the annex requires updating to remove reference to saved Local Plan policies, the 2005 Local Plan and include updated referencing to the 2017 Adopted Local Plan.
Basic Conditions Statement	3	<p>The Basic Conditions Statement has been amended and reflects the comments provided by the Local Planning Authority at Regulation 14. Para 1.3 refers to the Neighbourhood Plan meeting the Basic Conditions and the Town and Country Planning Act 1990. For completeness it is considered that the Statement should also refer to the relevant tests as set out within the National Planning Practice Guidance that a Neighbourhood Plan now has to contribute towards as follows:</p> <p>The basic conditions are set out in paragraph 8(2) of Schedule 4B to the Town and Country Planning Act 1990 as applied to neighbourhood plans by section 38A of the Planning and Compulsory Purchase Act 2004. The basic conditions are:</p> <ul style="list-style-type: none"> a. having regard to national policies and advice contained in guidance issued by the Secretary of State it is appropriate to make the order (or neighbourhood plan). b. having special regard to the desirability of preserving any listed building or its setting or any features of special architectural or historic interest that it possesses, it is appropriate to make the order. This applies only to Orders. c. having special regard to the desirability of preserving or enhancing the character or appearance of any conservation area, it is appropriate to make the order. This applies only to Orders. d. the making of the order (or neighbourhood plan) contributes to the achievement of sustainable development.

Section	Page	Comments
		<p>e. the making of the order (or neighbourhood plan) is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area).</p> <p>f. the making of the order (or neighbourhood plan) does not breach, and is otherwise compatible with, EU obligations.</p> <p>g. prescribed conditions are met in relation to the Order (or plan) and prescribed matters have been complied with in connection with the proposal for the order (or neighbourhood plan)</p> <p>The Neighbourhood Plan should be updated to ensure that the Basic Conditions reflects the guidance in the NPPG.</p>
Consultation Statement	4	<p>Table 3 within the Consultation Statement provides a useful commentary of the evolution and preparation of the Neighbourhood Plan. For clarity and completeness it is recommended that the table is updated to include further dates at the start of 2020, to reflect that the Plan was submitted to the Local Planning Authority in February 2020. Appendix 1 (Parish Questionnaire) and Appendix 2 (Summary of Parish Survey Responses) of the document remain blank.</p>

COMMUNITY AND ENVIRONMENT COMMITTEE
16th DECEMBER 2020

Report of the Estates & Facilities Manager

COMMUNITY ASSET TRANSFER OF DENEFIELDS, MATLOCK

PURPOSE OF REPORT

To recommend a disposal by 20 year lease of Denefields, Matlock as a Community Asset Transfer to Matlock Town Council (MTC) following their request.

RECOMMENDATION

1. That the terms outlined in paragraph 3 of this report for a Community Asset Transfer by way of a 20 year lease of the area of land known as Denefields as shown edged red on the plan at Appendix 1 to Matlock Town Council (subject to public open space consultation) are agreed.
2. That it is noted that the disposal in 1. above comprises an undervalue transaction permitted under the General Disposal Consent 2003.
3. That each party meets their own legal costs.
4. That DDDC undertake and pay for public open space consultation.

WARDS AFFECTED

Matlock St Giles

STRATEGIC LINK

The transfer of the site to a Town Council for use as open space accords with the District Council's priorities under "People" to engage with community groups and encourage projects run by community groups and to achieve a sustainable financial position by prudent management of resources and reviewing services whilst also supporting the objective under "Place" to keep the Derbyshire Dales Clean, Green and Safe as expressed in the Corporate Plan 2020-24.

1 BACKGROUND

- 1.1 Matlock Town Council requested the extension of their existing lease by email on 21 October 2020. The Town Council are applying for grants and the length of lease prohibits the eligibility for some grants.

2 CURRENT SITUATION

2.1 The area is currently leased to Matlock Town Council under a six year lease expiring on 28 February 2022.

3 PROPOSED RECOMMENDATIONS

3.1 It is proposed that the Town Council be offered the area under a new 20 year lease of the land shown edged red on the plan at Appendix 1 on the following terms:-

- 20 year lease commencing 1 January 2021 at a rent of £1pa payable on demand.
- To manage the property as a conservation area in a good and husbandlike manner and in compliance with proper standards of health and safety and encourage the regeneration of trees and hedgerows and wildflowers and as an open space available to the public at large when not required for MTC purposes
- MTC to maintain and repair all boundary fences, hedges, gates
- MTC is not to assign, sub lease or part with possession
- Each party to bear their own legal costs. DDDC to be responsible to undertake and pay for Public Open Space consultation

4 VALUATION

4.1 The proposed terms for the Community Asset Transfer of Denefields comprise an undervalue transaction as permitted under the General Disposal Consent 2003.

4.2 It is considered by the Council's Valuer that the unrestricted value of the lease transfer equates to a rent of £260pa (and a net present value of £4,200 over 20 years).

4.3 Under the General Disposal Consent 2003, Local Authorities are permitted to dispose of any interest in land held under the Local Government Act 1972 which they consider to contribute to the promotion or improvement of the economic, social or environmental wellbeing of the area at less than best consideration subject to various conditions.

4.4 It is considered that the proposed terms for the transfer of Denefields at Matlock to MTC on the terms stated would comply with this legislation.

5 CONSULTATION

5.1 The relevant Ward Members and Town Council have been consulted on the proposed transfer and any comments received will be reported verbally at the meeting.

6 OTHER EXPRESSIONS OF INTEREST

6.1 None received

7 RISK ASSESSMENT

7.1 Legal

The legal risk is assessed as low subject to appropriate legal checks and due diligence being completed, including but not limited to the following matters:-

- the title to the property is checked to ensure that there are no matters preventing such a disposal;
- that the relevant procedural requirements regarding such a disposition are satisfied such as open space notice;
- that state aid rules are considered and not breached.

Under the circular 06/03 Local Government Act 1972 General Disposal Consent 2003 the council have a statutory duty to sell land at the best price reasonably obtainable. Disposals as an undervalue is subject to the condition that the undervalue does not exceed £2 million. Further if the disposition at an undervalue will help secure the promotion or improvement of the economic, social or environmental well-being of its area the specific consent is not required.

7.2 Financial

Although it is an undervalue transaction, the proposed new lease of Denefields at Matlock to MTC on the terms stated will remove a future maintenance liability for the Council, while ensuring it is still used as a public open space. Therefore the financial risk is assessed as low.

8 OTHER CONSIDERATIONS

- 8.1 In preparing this report, the relevance of the following factors has also been considered: prevention of crime and disorder, equalities, environmental, climate change, health, human rights, personnel and property.

9 CONTACT INFORMATION

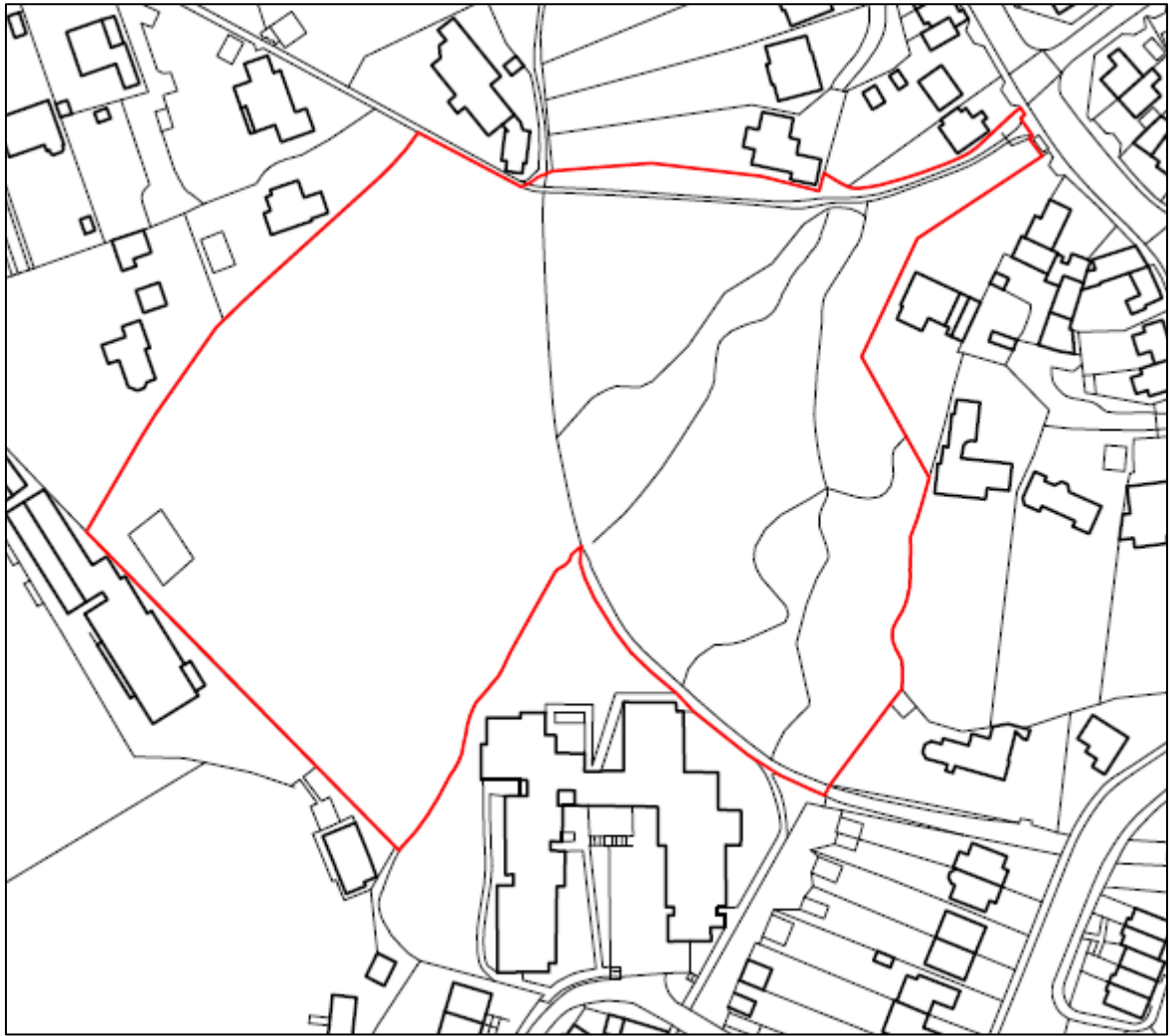
- 9.1 Mike Galsworthy - Estates & Facilities Manager
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10 BACKGROUND PAPERS

- 10.1 None

11 ATTACHMENTS

- 11.1 Appendix 1 – Site Plan



COMMUNITY AND ENVIRONMENT COMMITTEE
16th DECEMBER 2020

Report of the Estates & Facilities Manager

COMMUNITY ASSET TRANSFER OF HEATHY LEA RECREATION GROUND, TANSLEY

PURPOSE OF REPORT

To recommend the freehold transfer of Heathy Lea Recreation Ground, Tansley as a Community Asset Transfer to Tansley Parish Council following their request.

RECOMMENDATION

1. That the terms outlined in paragraph 3 of this report for a freehold Community Asset Transfer of the recreation ground as shown edged red on the plan at Appendix 1 to Tansley Parish Council (subject to public open space consultation) are agreed.
2. That it is noted that the disposal in 1. above comprises an undervalue transaction permitted under the General Disposal Consent 2003.
3. That each party meets their own legal costs.
4. That DDDC undertake and pay for public open space consultation.

WARDS AFFECTED

Matlock St Giles

STRATEGIC LINK

The transfer of the site to a Parish Council for use as recreation ground accords with the District Council's priorities under "People" to engage with community groups and encourage projects run by community groups and to achieve a sustainable financial position by prudent management of resources and reviewing services whilst also supporting the objective under "Place" to keep the Derbyshire Dales Clean, Green and Safe as expressed in the Corporate Plan 2020-24.

1 BACKGROUND

- 1.1 Tansley Parish Council requested the transfer of Heathy Lea Recreation Ground in a letter to the Chief Executive dated 25 July 2019.

2 CURRENT SITUATION

- 2.1 The recreation ground is owned by DDDC. Whilst the maintenance of the football ground is undertaken by others, The District Council is ultimately responsible for the maintenance of the boundary walls and features.

3 PROPOSED RECOMMENDATIONS

- 3.1 It is proposed that the freehold of the recreation ground shown edged red on the plan at Appendix 1 be transferred to TPC on the following terms:-
- Peppercorn transfer of £1 consideration.
 - Subject to existing condition and title covenants
 - There will be a pre-emption clause if TPC plan to dispose and/or an option to purchase for DDDC to acquire the property for £1 if the property is to be used for anything other than the provision of a recreation ground or minor ancillary use.
 - TPC is to be responsible for the registration of the property with Land Registry within 3 months of completion
 - Each party to bear their own legal costs. DDDC to be responsible to undertake and pay for Public Open Space consultation

4 VALUATION

- 4.1 The proposed terms for the Community Asset Transfer of Heathy Lea Recreation Ground comprise an undervalue transaction as permitted under the General Disposal Consent 2003.
- 4.2 It is considered by the Council's Valuer that the unrestricted value of the transfer equates to £48,000.
- 4.3 Under the General Disposal Consent 2003, Local Authorities are permitted to dispose of any interest in land held under the Local Government Act 1972 which they consider to contribute to the promotion or improvement of the economic, social or environmental wellbeing of the area at less than best consideration subject to various conditions.
- 4.4 It is considered that the proposed terms for the transfer of the recreation ground at Tansley to TPC on the terms stated would comply with this legislation.

5 CONSULTATION

- 5.1 The relevant Ward Members and Local Council have been consulted on the proposed transfer and any comments received will be reported verbally at the meeting.

6 OTHER EXPRESSIONS OF INTEREST

- 6.1 None received

7 RISK ASSESSMENT

7.1 Legal

The legal risk is considered as low subject to appropriate legal checks and due diligence being completed including but not limited to the following:-

- that suitable conditions are included within the legal paperwork to ensure that the land is used in the future for the benefit of the community
- the title to the property is checked to ensure that there are no matters preventing such a disposal. The property is possessory title only and therefore the buyer may ask for indemnity insurance in relation to this;
- that the relevant requirements regarding such a disposition are satisfied such as open space notice;
- that state aid rules are considered and not breached.

Under the circular 06/03 Local Government Act 1972 General Disposal Consent 2003 the council have a statutory duty to sell land at the best price reasonably obtainable. Disposals as an undervalue are subject to the condition that the undervalue does not exceed £2 million. Further if the disposition at an undervalue will help secure the promotion or improvement of the economic, social or environmental well-being of its area the specific consent is not required.

7.2 Financial

Although it is an undervalue transaction, the proposed the freehold transfer of Heathy Lea Recreation Ground to Tansley Parish Council as a Community Asset Transfer on the terms stated will remove a future maintenance liability for the Council, while ensuring continuity of a community service. Therefore the financial risk is assessed as low.

8 OTHER CONSIDERATIONS

- 8.1 In preparing this report, the relevance of the following factors has also been considered: prevention of crime and disorder, equalities, environmental, climate change, health, human rights, personnel and property.

9 CONTACT INFORMATION

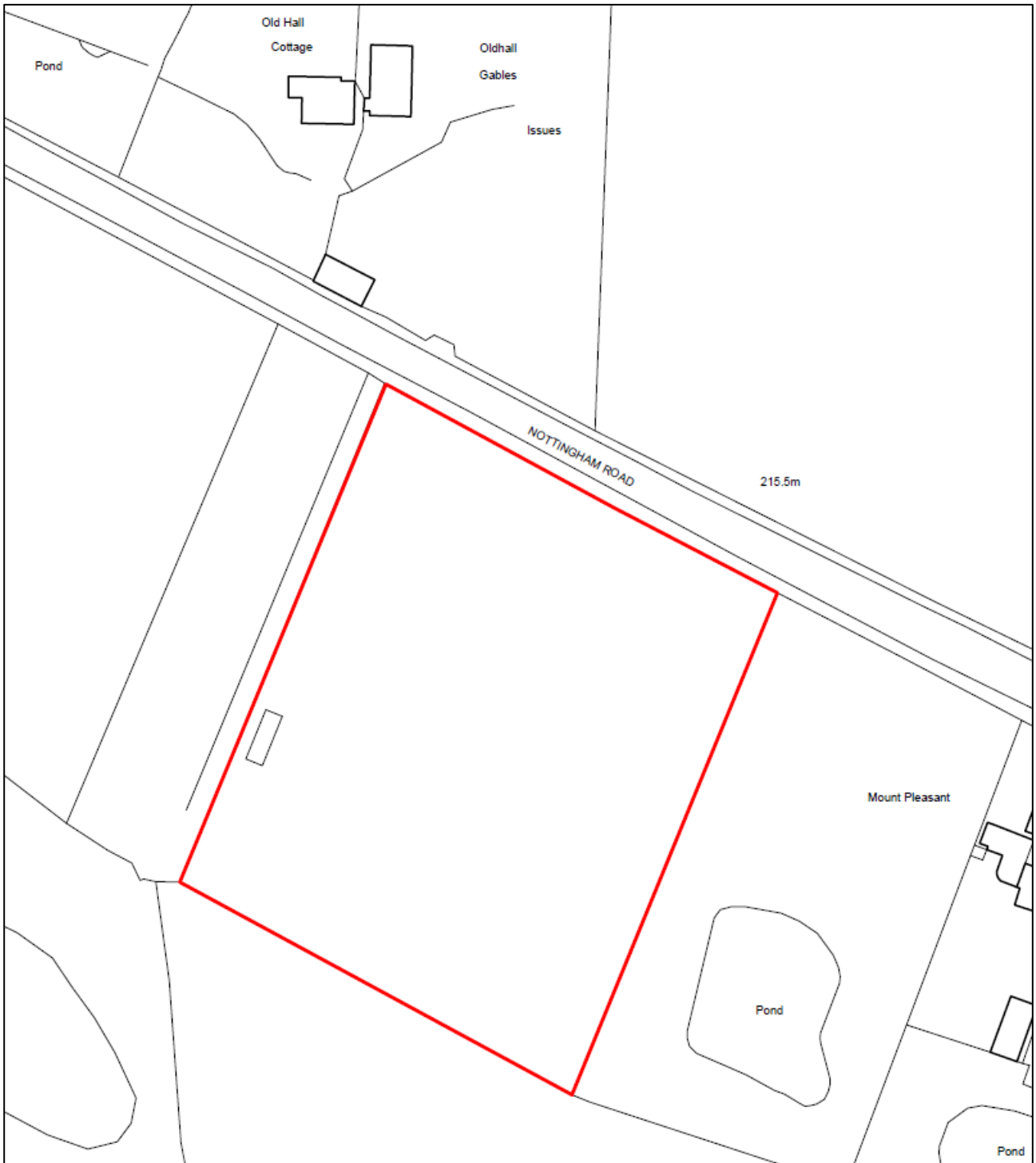
- 9.1 Mike Galsworthy - Estates & Facilities Manager
Telephone: 01629 761207
Email: mike.galsworthy@derbyshiredales.gov.uk

10 BACKGROUND PAPERS

- 10.1 None

11 ATTACHMENTS

11.1 Appendix 1 – Site Plan



COMMUNITY AND ENVIRONMENT COMMITTEE

16th DECEMBER 2020

Report of the Director of Corporate and Customer Services

DERBYSHIRE CLAUSE PROCEDURE

PURPOSE OF REPORT

To consider the proposed introduction of a policy and amendments to procedures to streamline the administration and decision making processes associated with Derbyshire Clause dispensations.

RECOMMENDATION

1. To authorise the Director of Corporate and Customer Services to consult on the adoption of the new policy for Derbyshire Clauses as attached at Annex 1 and, following consultation, refer the policy to Council for approval.
2. Subject to Council approving the proposed policy, to recommend that Council delegate authority for decision making according to the policy for Derbyshire Clauses to the Director of Corporate and Customer Services, Legal Services Manager, Principal Solicitor or Solicitor.
3. To recommend to Council that authority be delegated to the Licensing and Appeals Committee to consider appeals against such decisions.
4. To recommend to Council to approve charging a fee for Derbyshire Clause dispensations, set at £465.
5. To remove the existing delegation relating to companies where at least one of the directors satisfies the qualifying conditions.
6. To amend the delegation relating to returning to the area to provide care to include those that wish to move to the area to be care for rather than just to provide care.
7. To delegate authority to the Director of Corporate and Customer Services to offer owners and potential purchasers the option to purchase the removal of the restriction for a fee agreed by the Estates and Facilities Manager.

WARDS AFFECTED

Wards within the Peak District National Park

STRATEGIC LINK

Providing a higher quality customer experience by streamlining processes to achieve faster decisions that affect residents and potential residents.

1 BACKGROUND

- 1.1 Prior to the Council transferring its housing stock to a registered social landlord, the Council held a number of properties that were rented out for social housing. Tenants of the properties were entitled, after a period of time, to apply to exercise their right to buy the Council House they rented.
- 1.2 Sections 37 and 157 of the Housing Act 1985 allowed for a restriction (known as a covenant) to be placed on the deeds of those properties situated within the Peak District National Park at the point the property was sold. The covenant put a condition on any subsequent sale of the property. That covenant restricted to whom the property could be sold, namely to persons meeting the following criteria:-

- Persons who have lived or worked within Derbyshire or the Peak District National Park for a period of three years before the transaction

The Council has also previously agreed to allow the sale of a property in the following circumstances:-

- A person who has a local connection in the area and is returning to the area to care for another relative.
 - To members of the armed forces with a local connection returning to live in the area
 - To companies where at least one of the directors satisfies the qualifying conditions.
 - To be given to companies whose stated aim is to provide housing for those satisfying the qualifying criteria. Consent will be conditional on compliance with this requirement.
- 1.3 If the property is being bought by more than one person, then only one person must meet the criteria. The covenant is also permanent and stays on the property on any subsequent sale.
- 1.4 The reason for this covenant was to ensure that ex-council properties were continued to be used for people that held a local connection in order to discourage these houses being used as second homes or holiday lets and also the covenant reduces the price of the property thus assisting in providing affordable homes.
- 1.5 The Constitution delegates the decision to grant consent to proposed transactions to any person meeting the above criteria. If the person does not meet the criteria, then the delegation states that “all other cases to be referred to Committee for the exercise of their discretion.”
- 1.6 This however delays the sale of properties affected by this clause and owners have reported losing sales due to the length of time it takes to get a decision from the Council. This is not considered to be providing a good customer service, especially

taking into account the length of time it takes to purchase a property, with the conveyance sometimes taking up to three months or more.

2 PROPOSALS TO DEAL WITH DERBYSHIRE CLAUSES

- 2.1 It is considered that the most appropriate way to speed up decision making is to delegate decision making on Derbyshire Clauses to officers, within a policy framework agreed by Members to ensure that there is a consistent approach to decision making.
- 2.2 It is also proposed that if those applying for a dispensation, if dissatisfied with the officer's decision, they would have a right to appeal the decision which Members would consider.
- 2.3 This process is considered to be giving better customer service and accountability for the following reasons
 - a. It would allow for decisions to be made quickly when the above criteria does not apply.
 - b. A policy would provide information to sellers and buyers when the Council is likely to allow a dispensation to be allowed. Therefore parties' would not waste time in viewing properties that they are unlikely to be able to buy.
 - c. It also would provide parties with clear guidance as to what evidence they would need to submit in order for the Council to consider the application.
 - d. It would allow for consistent decision making in line with Members' policy direction.
 - e. It would also allow Members to consider applicants for dispensations if applicants were dissatisfied with the decision.
- 2.4 It is envisaged that the decisions will be taken by the Council's legal officers with the Director of Corporate and Customer Services also be given authority to make decisions as the more officers that can exercise the discretion, the less likely for delay due to officers having other priorities or being on leave.
- 2.5 Under the Constitution responsibility for Derbyshire Clauses is delegated to the Community and Environment Committee, however any new policy must be approved by full Council.
- 2.6 The current system is not providing a good customer experience and if the decisions were not delegated to officers it would mean that the only way for quick decisions to be made would be for numerous urgent meetings of the Community and Environment Committee to be convened, which will cause further delays associated with organising a committee meeting and the increase costs associated with this decision making process.
- 2.7 The delegation of this function to officers needs to be accompanied by a policy framework agreed by Members to guide that decision making process. Furthermore, Members would be involved in considering appeals against officers exercising delegated authority where individual consider that the wrong decision was made or personal circumstances have not been fully considered. As the Licensing and Appeals

Committee exists for such a process, it is recommended that this body be delegated authority to consider such appeals.

- 2.8 On this basis, authority is sought to consult on the draft policy and then to refer the policy, post consultation, to Council seeking its approval. Furthermore, only Council can reallocate areas of responsibility from this Committee to the Licensing and Appeals Committee, which is required as a change to the Constitution if that committee is to hear any appeals.

3 CHARGES

- 3.1 The Council cannot charge for services that they are required to provide unless statute allows, however they can charge for services that are discretionary.
- 3.2 To provide confirmation that someone meets the criteria when there is a covenant on the deeds is a function that is required by the Council and therefore the authority cannot charge for this letter. However if the Council receives a request to exercise its discretion to allow a purchase, then this is a service the Council does not have to provide and can charge for that service.
- 3.3 It is recommended that a charge of £465 is levied for this application and take into account officer time in valuing the property, reviewing the evidence, considering the request, drafting the decision letter and also for the cost of holding a Licenising and Appeals Sub-Committee if a refusal is appealed. These costs are averaged out over the year and assumes that there will be three appeals per year.

4 PROPOSED AMENDMENTS TO DELEGATIONS

- 4.1 The original delegations to officers by the Partnership and Regeneration Committee on 16 March 2006 did not include the delegation to allow companies with directors that comply with the criteria to purchase the properties.
- 4.2 This delegation has been included over the last 14 years, but it is not believed to be assisting in the provision of properties to local people at affordable prices.
- 4.3 If sold to a company, there is no requirement in the delegation that the relevant director must live in the property. If the property is let, there is a requirement that the tenants must meet the criteria but no requirement that it must be let at below market rent and due to the lack of rental properties in the smaller villages it may not attract a reduced rental income.
- 4.4 Therefore it is recommended that this delegation should be removed in order to meet the original aims of the restriction.
- 4.5 It is also recommended to extend the delegation regarding the provision of care as a reason for returning to the area. The current delegation is to grant permission for those moving to the area to provide care, but this does not include those who may wish to move to the area to be cared for.
- 4.6 If a family is settled in the area with jobs, children in school and an elderly relative needs care, the Council would under the present framework refuse to grant permission for the elderly relative to move into a relevant property. However, if a family needed to move, where they may need to move their children to different schools or find new jobs for example, the Council would grant permission under the existing framework. Having

reviewed this provision, it is considered to be disproportionate and in need of amendment.

5 SELLING THE COVENANT

5.1 Members are asked to consider whether to sell the Covenant, thus potentially releasing properties from this restriction and providing income to the Council.

5.2 The Options are as follows

Option 1 – ***Keep the Covenant***

PROS - The properties continue to be restricted to people who can prove a local connection. This stops villages having their numbers reduced as properties are turned into holiday lets or second homes and potentially the properties can be bought by people who have grown up in the village.

CONS – Owners of the properties have reported that they are stuck in their homes finding it very difficult to sell even after reducing the price of the property and thus potentially being in negative equity situation. Houses have been on the market in some cases for more than 12 months or even with the price being reduced without any offers as the people expressing interest cannot purchase the property due to the restriction. Also the price of properties in the Peak District National Park are already too high for families to afford to stay in the village, the Council needs to provide affordable housing and capital receipts could be used for that purpose.

Option 2 – ***Sell the Covenant***

PROS – The Covenant can result in a property losing sometimes 25% of the value of the home, by selling this covenant it can allow people to sell their house and not feel they are trapped and would also mean the Council receives a capital receipt to be used on other vital Council projects. Also as a result it may bring new life into a village with new families moving into the area. Also Officer time is saved in not having to issue letters of Consent or deal with appeals

CONS - This could result in villages losing that local connection and a reducing in the number of residents with holiday lets and second homes.

5.3 The Council regularly receives representations from owners of these properties saying they cannot sell and even if they do find a buyer it takes a lot longer than if the restriction was not in place. They feel that the home is trapping them, especially if they have to move for work. One resident reported that he may lose his new job because he could not sell his house to move and commuting was no longer a viable option.

5.4 Local estate agents also have said that they are tending to sell the properties on shared ownership in the Ashbourne area and these properties are not attracting the affordable housing market buyers, but more from interested buyers from outside the area.

6 RISK ASSESSMENT

Legal

- 6.1 The streamlining of the decision making process backed by an approved policy reduces the risk of legal challenge, this the legal risk is low.

Financial

If Council approves a fee for Derbyshire Clause dispensations, this would be treated as revenue account income and would offset the Council's costs.

If Council approves the principle of allowing the restriction to be sold, any proceeds over £10,000 would be treated as capital receipts and could be used to finance future capital projects. Proceeds under £10,000 would be treated as revenue account income.

The financial risk is assessed as low.

7 OTHER CONSIDERATIONS

- 7.1 In preparing this report, the relevance of the following factors has also been considered: prevention of crime and disorder, equalities, environmental, climate change, health, human rights, personnel and property.

8 CONTACT INFORMATION

- 8.1 Lee Gardner, Legal Services Manager, Tel. 01629 761319 or Email Legal@derbyshiredales.gov.uk

9 BACKGROUND PAPERS

None

10 ATTACHMENTS EXEMPT

Appendix 1 – Draft Derbyshire Clause Policy

**DERBYSHIRE DALES
DISTRICT COUNCIL**

**POLICY ON
DERBYSHIRE
CLAUSES**

**UNDER THE HOUSING
ACT 1985**

1. INTRODUCTION

- 1.1 Section 19 of the Housing Act 1980, subsequently replaced by Section 157 of the Housing Act 1985 (as amended) and Section 37(5) of the Housing Act 1985, allowed for a restriction (known as a covenant) to be placed on the deeds of certain properties situated within the Peak District National Park. These covenants were granted for the benefit of Derbyshire Dales District Council (“District Council”)
- 1.2 The reference in conveyancing documents referring to the above sections are commonly referred to as a Derbyshire Clause or alternatively Peak Park Clauses.
- 1.3 The effect of these restrictions is that any purchaser of one of these properties needs a letter from the District Council stating that they either meet the specified criteria or that they have been granted permission to purchase the property.
- 1.4 The clause is a permanent clause and stays with the property on any subsequent sale. Therefore, any future purchasers must also satisfy the same criteria or obtain permission from the District Council.
- 1.5 Please note that if the intention for the purchasers at any point during the ownership of the property, to lease or rent out the property, then the tenant’s must also need to meet the specified criteria and permission of the District Council is also required.
- 1.6 In either event, the purchaser needs to obtain a letter of consent from the District Council to be able to register the sale (or lease) at the HM Land Registry. Failure to obtain such letter of consent means any purchase (or lease) of the property is void and the Land Registry may refuse to register the transaction.
- 1.7 There are currently 863 properties within the Derbyshire Dales District which contain the Derbyshire Dales Clause. This clause only applies to former District Council properties within the Peak District National Park boundary (for example Bakewell, Hathersage, Youldgreave).
- 1.8 This policy is intended to give guidance on what evidence the District Council would want to see before issuing the consent letter and in what circumstances that the District Council may consider granting permission where the purchaser does not meet the criteria.

2. EXEMPTIONS

- 2.1 Section 160 of the Housing Act 1985 contain a number of exemptions where a Letter of Consent is not required these include:-
 - The property is transferred or leased to a spouse/civil partner or former spouse/civil partner and they meet the criteria

- The property is transferred or leased to a family member that has been residing in the property throughout the period of 12 months before the transfer and they meet the criteria.
- The transfer or lease is from joint to sole owners and the sole owner meets the criteria; or from a sole to a joint owner (the joint owner does not need to meet the criteria as the previous sole owner already complies).
- The transfer of a property to a beneficiary under a will
- A transfer of property under section 24 or 24A of the Matrimonial Clauses Act 1973.
- Transactions under section 2 of the Inheritance (Provision for Family and Dependents) Act 1975
- Transactions under section 17 of the Matrimonial and Family Proceedings Act 1984
- Transactions under paragraph 1 of Schedule 1 to the Children Act 1989
- Transactions under Part 2 or 3 of Schedule 5, or paragraph 9 of Schedule 7, to the Civil Partnership Act 2004
- The transaction is of a result of a Compulsory Purchase

2.2 You also do not need permission if you

- Take in a lodger and continue to live in the property;
- If you re-mortgage your property

2.3 The Land Registry will however on occasions request a letter from the District Council to confirm it is an exempt transaction in order to complete the registration.

3. CRITERIA FOR CONSENT

3.1 The District Council will provide a Letter of Consent where purchaser meets the following criteria:

1. Persons who have lived or worked within Derbyshire or the Peak District National Park for a period of three years before the transaction

The District Council must issue a Letter of Consent if the criteria above is satisfied however the District Council has determined that they will also grant a Letter of Consent in the following circumstances

2. A person who has a local connection in the area and is returning to the area to care for or be cared for by, another relative.
3. To members of the armed forces with a local connection returning to live in the area
4. To be given to companies whose stated aim is to provide housing for those satisfying the qualifying criteria. Consent will be conditional on compliance with this requirement.

3.2 For further details and information relating to the evidence required is detailed below however were possible more than one piece of evidence

should be produced to prove each point, preferably a minimum of three pieces of evidence.

3.3 Persons who have lived or worked within Derbyshire or the Peak District National Park

- 3.3.1 In order to satisfy the requirement to have lived within Derbyshire or the Peak District National Park (“the Area”) you must be able to prove you are living and have lived within a property that lies within the required area for three complete years immediately preceding the transaction.
- 3.3.2 If purchasing a property jointly, only one person needs to prove the three year connection.
- 3.3.3 It is not sufficient to show that between the two of you that you have lived in the area for three years.
- 3.3.4 For example if one partner had lived in the areas covering 2015 and 2016 and then moved out of the area but the other purchaser can prove they lived in the area for one year in 2017, that would not qualify.
- 3.3.5 Also if at the time you apply for the letter of consent you must still be living or working in the area. If for any reason you move out of the area for any period of time or have stopped working in the area, the three year period restarts.
- 3.3.6 When applying for consent the proposed purchaser should supply sufficient evidence to support their request. Examples include Council Tax bills, Bank or Credit Card Statements, utilities bills or if renting, rental agreements covering the full period.
- 3.3.7 The evidence MUST show their name and address and they should provide three pieces of evidence for each year to show continual residence and one of the statements should be dated within the last month to show that the applicant is still resident in the area.
- 3.3.8 If you wish to apply for the consent letter because you have worked in the area for three years. The District Council would require to see your signed contract of employment showing where your employment is based and a letter from your employer stating where your employment is based and stating how long they have worked from that base of employment and recent evidence to show you are still employed prior in the area immediately preceding the transaction.
- 3.3.9 Many companies will have multiple offices and employees may be required to work from other offices from time to time. As long as the employee has the specified place of employment at an office within the area they will qualify.

3.3.10 If however the employee is required to work from multiple offices, all of which are not within the area or their place of employment is outside the area but they are required to work at an office from time to time within the area as part of their duties, this will not qualify.

3.3.11 To apply under the three year rule it is possible to combine the periods together as long as it is three years with no gaps. So you could have worked in the area for 2 years, moved into the areas and been here for at least a year, but have since changed jobs and no longer work in the Area.

3.4 **A person who has a local connection in the area and is returning to the area to care for or be cared for by, another relative**

3.4.1 A local connection refers to someone who lived or worked in the Area previously for a minimum of three years within the last ten years.

3.4.2 Having immediate family that live in the area can also provide a local connection, if those relatives have lived in the area for at least three years immediately preceding the transaction.

3.4.3 Immediate family mean grandparents, parents, sons and daughters (including step parents and children) brothers or sisters, nieces and nephews.

3.4.4 Evidence will need to be provided to show that those relatives are immediate family and have lived in the areas for at least three years prior to the application

3.4.5 The second part of this test is caring for another relative.

3.4.6 To clarify for this exemption you must be able to provide evidence of what care that person requires and that the person requires someone living close to them to provide that care.

3.4.7 Care can include those that are elderly or for those with a young family and seek assistance with childcare. This can also include those moving to the Area so that family already in locality can provide care.

3.4.8 To qualify under the care provisions, you are required to provide evidence to show that care is needed on a regular basis and it is above that which is provided by the state.

3.5 **To members of the armed forces with a local connection returning to live in the area**

3.5.1 To qualify for the armed forces consent you must either be a serving person in the armed forces or discharged in the last six months after serving your minimum term or being discharged due to medical grounds and must be able to show a local connections.

3.5.2 The minimum length of service in each branch of the forces currently are as follows:

- Army (over 18s): Four years
- Army (under 18s): Until 22nd birthday
- Navy: Three and a half years after completion of training or four years' service, whichever is longer
- Air force: Three years after completion of training or four years' service whichever is longer

3.5.3 In addition to the criteria stated in point 2 above as to what is a local connection, this will also include any person stationed in the Area for a period of six months while on active service.

3.6 To be given to companies whose stated aim is to provide housing for those satisfying the qualifying criteria. Consent will be conditional on compliance with this requirement.

3.6.1 This criteria is for any Registered Social Landlord approved and regulated through the Homes & Communities Agency, to enable them to purchase the property for re-letting for social housing purposes to tenants that would meet the qualifying criteria.

4. SALE BY AUCTION

4.1 The District Council has been asked on occasions to give written permission by Auctioneers to sell a property by auction which is subject to a Derbyshire Clause.

4.2 The Council will provide written permission for a property to be sold by auction but this is not a letter of Consent for the purposes of registering the land transaction with HM Land Registry.

4.3 Any permission letter will require the Auctioneer to state in any auction catalogue and advertisement that the property is subject to a Derbyshire Clause and that any bidder must meet the criteria and/or obtain a letter of Consent prior to bidding.

4.4 The District Council does not guarantee to provide a letter of Consent to a successful bidder in respect of a property sold by auction therefore allowing the sale to complete.

4.5 Any bidder that successfully purchases a property at auction without obtaining a letter of Consent prior to bidding does so at their own risk and the District Council is not liable for any losses for the bidder failing to confirm they can legally complete the transaction.

5. LETTER OF CONSENT TO SELLER

- 5.1 The letter of Consent is normally issued to the purchaser of the property. The Council will in rare circumstances consider issuing a general letter of Consent to the seller where they are suffering substantial hardship or emotional hardship.
- 5.2 This could include (but not limited to) where the seller has marketed the property for over a year, reduced the price to a level below market value for a long period of time with no offers from valid purchasers.
- 5.3 The sellers are facing repossession of the property and needs a quick sale to avoid a mortgage possession.
- 5.4 The seller needs to move to care urgently for sick or venerable family members and needs to sell quickly.
- 5.5 The issuing of a general letter to the seller will only be issued in exceptional circumstances and the District Council would need to see substantial evidence of the situation to agree to a general waiver.

5.6 Applicants that do not satisfy the criteria

- 5.6.1 Where a prospective purchaser fails to provide satisfactory evidence to qualify, then the District Council is not under obligation to provide consent for the purchase to complete.
- 5.6.2 However, the District Council has discretion as to whether to grant consent, where a prospective purchaser maintains the restriction is unduly harsh.
- 5.6.3 In deciding whether to grant an exception to the restrictive covenant, the Council will consider the following issues:-
- The prospective purchaser is in key employment and is moving to the Area to take up work in key services, for example Police, Fire, Teacher, NHS or similar key services which have problems recruiting.
 - The purchaser will meet the 3 year requirement once the purchase is complete. Any Consent may state that completion cannot take place before a certain date.
 - The property have been marketed actively, noting the restrictive covenant details, for at least four months, at a price which takes account of the local occupancy restriction, overvalued properties will not be considered.
 - The Seller has reduced the price more than once in order to obtain a purchaser.
 - The prospective purchaser must be making the purchase to use the property as their only home and not for rental.
 - The prospective purchaser can demonstrate that they cannot afford to purchase such an alternative property, not having the local occupancy restrictive covenant, at its open market value.

- Where the purchaser has move away for a short period of time for good reason
- Where the purchaser has moved away for a long period of time but prior to that spent a substantial part of their life living or working in the area.
- Any other substantial reason the District Council deem appropriate.

5.6.4 When considering granting a Consent letter the District Council will take all matters into consideration and usually require at least 2 of the above reasons to agree to issue the letter, but that does not guarantee that Consent letter will be issued.

5.6.5 The District Council will however not consider the following to be good reasons to waive the restriction:

- Living close to but not in the Area.
- Owning a business that benefits those living in the Area.
- Being unable to sell the property with no efforts to reduce the price to attract a buyer or effectively market the property.

5.7 Owners intending to sell a property subject to a Derbyshire Clause

5.7.1 Sellers of properties are responsible for:

- Making their Estate Agent aware of the Derbyshire Clause
- Notifying the Solicitors acting in the sale of the Derbyshire Clause restrictions an early stage.
- Notifying purchasers that if they intend to rent the property now or in the future that they must obtain a letter of Consent and that prospective tenant must meets the same residency or employment criteria as required if purchasing the property; and the property will be the tenant's only, or principal home.

5.8 Applying for a letter of Consent

5.8.1 The prospective purchaser should only apply for a letter of Consent once they have identified a prospective property.

5.8.2 The District Council does not charge a fee for a letter of Consent where the applicant meets the criteria, however if the Applicant is asking for the Council to exercise its discretions a fee of £465 is payable.

5.8.3 The request should be sent either by post addressed to:

Derbyshire Clause Application
 FAO: Legal Services Manager
 Derbyshire Dales District Council
 Town Hall
 Bank Road
 Matlock DE3 4NN

Or by email to legal@derbyshiredales.gov.uk with Derbyshire Clause Application in the subject heading.

- 5.8.4 The application should contain the applicant's contact details, including telephone and email address in case further information is required, the full names of everyone purchasing or leasing the property, details of the property and details of the seller, including the estate agents details, full reason in why you are applying for the Consent letter and any documents to support the application.
- 5.8.5 The District Council aim to make a decision and if acceptable issue a Consent letter within 10 working days from receiving the fee if applicable and all the required information and documentation.

6. **APPEAL**

- 6.1 If the District Council has refused to issue a Consent letter, the applicant can appeal the decision to members of the Council's Licensing and Appeals Committee. Any request to appeal must be made within 21 days of receiving the refusal letter and the District Council may refuse to refer the decision to member if made after this time.
- 6.2 The ability to appeal does not deny the applicant the right to complaint through the District Council's complaints procedure, however the failure to take advantage of this ability may be taken into consideration when replying to the complaint.

Draft- Version 1	L.R.Gardner	19/10/2020
V 2	Incorporating Helen Boden's suggestions	10/11/2020
V 3	Director of Corporate and Customer Services review	04/12/2020

**THE APPENDICES TO THIS REPORT ARE
EXEMPT FROM PUBLICATION UNDER
LOCAL GOVERNMENT ACT 1972
SCHEDULE 12A SECTION 1, 2 AND 3**

ITEM NO. 11

COMMUNITY AND ENVIRONMENT COMMITTEE
16th DECEMBER 2020

Report of the Director of Corporate and Customer Services

DERRBYSHIRE CLAUSE APPLICATIONS

PURPOSE OF REPORT

To consider whether to grant a dispensation and wave the Derbyshire Clause restriction to allow the sale of the properties detailed in this report for one transaction.

RECOMMENDATION

1. That the application for relief from the Derbyshire Clause for one transaction in respect of the property identified within Appendix 1 be determined.
2. That the application for relief from the Derbyshire Clause for one transaction in respect of the property identified within Appendix 2 be determined.
3. That the application for relief from the Derbyshire Clause for one transaction in respect of the property identified within Appendix 3 be determined.

WARDS AFFECTED

Dovedale and Parwich
Winster and South Darley

STRATEGIC LINK

Providing a higher quality customer experience by determining application to purchase properties covered by the Derbyshire Clause.

1 EXEMPT REPORT

- 1.1 The appendices to this report are considered exempt under the Local Government Act 1972 Schedule 12A sections:
 - sc1 - Information relating to any individual
 - sc2 - Information likely to reveal the identity of an individual
 - sc3 - Information relating to the financial or business affairs of any particular person
- 1.2 The main content of this report is not exempt, however each appendix refers to an individual application for a dispensation of the Derbyshire Clause to allow the purchase of an individual property. Therefore the appendix will contain information relating to

the buyer and seller, personal information relating to their link to Derbyshire and also regarding a financial transaction, namely the purchase of a property.

- 1.3 By placing the information in the appendices, it allows for the main report to remain non-exempt and also allows for each individual applicant to see their information without disclosing other applicant's information and avoids the need for individual exempt report.

2 REPORT

2.1 Sections 37 and 157 of the Housing Act 1985 allowed for a restriction (known as a covenant) to be placed on the deeds of those properties situated within the Peak District National Park at the point the property was sold. The covenant put a condition on any subsequent sale of the property. That covenant restricted to whom the property could be sold, namely to persons meeting the following criteria:-

- Persons who have lived or worked within Derbyshire or the Peak District National Park for a period of three years before the transaction

2.2 The Council has previously determined that it will allow the sale in the following circumstances:-

- A person who has a local connection in the area and is returning to the area to care for another relative.
- To members of the armed forces with a local connection returning to live in the area
- To companies where at least one of the directors satisfies the qualifying conditions.
- To be given to companies whose stated aim is to provide housing for those satisfying the qualifying criteria. Consent will be conditional on compliance with this requirement.

2.3 The Council's Constitution states that if a person requesting permission to purchase a property subject to a Derbyshire Clause does not meet the above criteria, then the decision on whether to allow the purchase must be referred to committee for determination.

2.4 If permission is granted the Council will issue a letter consenting to the sale, which will allow the purchase to be registered at HM Land Registry.

2.5 The applicants detailed in the attached Annexes have all requested permission to purchase a Derbyshire Clause effected property and therefore seek authority to allow the purchase to go ahead. Each annex contains a summary of the information provided to the council with officer recommendations in order of members to make a decision.

3 RISK ASSESSMENT

Legal

3.1 Without the Council considering each application the seller and buyer cannot complete the property transaction. Failure to consider the application could increase the risk to

the Council of complaint to the Ombudsman. This report reduces this risk, therefore the risk is low.

Financial

3.2 There are no financial implications in this report.

4 OTHER CONSIDERATIONS

4.1 In preparing this report, the relevance of the following factors has also been considered: prevention of crime and disorder, equalities, environmental, climate change, health, human rights, personnel and property.

5 CONTACT INFORMATION

5.1 Lee Gardner, Legal Services Manager
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6 BACKGROUND PAPERS

6.1 None

7 ATTACHMENTS

7.1 Appendix 1 – Information in respect of a property in Parwich, Ashbourne

7.2 Appendix 2 – Information in respect of a property in Elton, Matlock

7.3 Appendix 3 – Information in respect of a property in Fenny Bentley, Ashbourne