

SOUTH DERBYSHIRE DISTRICT COUNCIL PART 2 LOCAL PLAN REVIEW



ISSUES AND OPTIONS CONSULTATION

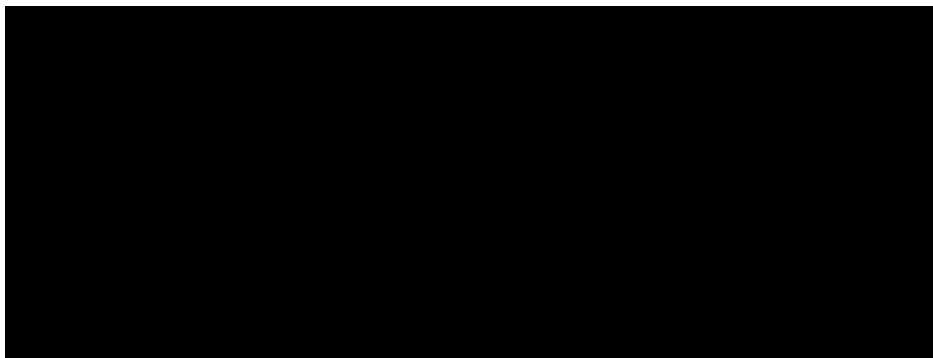
REPRESENTATIONS

January 2026

Project Name: South Derbyshire Local Plan Part 2 Review
Representations

Client Name: Northern Trust

Prepared By: SM/BW



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Revision: 1

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1. INTRODUCTION

1.1 OVERVIEW

1.1.1 Marrons is instructed by of Northern Trust to prepare these representations to the South Derbyshire District Council Part 2 Local Plan Review. South Derbyshire District Council (“the Council”) has started work on updating the adopted Local Plan Part 2, which sets out the non-strategic policies and site allocations used to guide future planning decisions.

1.1.2 The current issues and options consultation (Regulation 18) seeks views on what the new Local Plan should cover and how the district should develop up to 2041. The consultation invites views on the challenges facing the District, and the potential options for addressing them.

1.1.3 Review of the Part 1 Local Plan is ongoing and underwent its Regulation 19 consultation in March/April 2025. As explained by paragraph 1.42 of the Regulation 19 draft of the Part 1 Local Plan Review:

*“The South Derbyshire District Council Part 1 Review is a **focussed update** to the adopted plan with the purpose of ensuring the district’s plan reflects national planning policy **and allocates key strategic sites which will assist with meeting Derby’s unmet housing need.**”* [Emphasis Added]

1.1.4 Accordingly, the Part 1 review focuses on options for strategic sites on the edge of Derby, on the assumption that this, and this alone, is the most sustainable way to meet housing needs in the District to 2041.

1.1.5 The Part 1 Plan Review is progressing under the transitional provisions set out within paragraph 234 of the National Planning Policy Framework (“NPPF”), December 2024. Therefore, it will be examined against the provisions of the NPPF, December 2023. However, the potential review of the Part 2 Plan, to which this current consultation relates, will be undertaken against the NPPF 2024. All references to the NPPF below, therefore are references to the 2024 edition of the NPPF unless indicated otherwise.

1.1.6 The NPPF sets out tests of soundness at paragraph 36. These are:

- **Positively prepared** – based on a strategy that seeks to meet objectively assessed needs, including unmet needs from neighbouring authorities where it is reasonable to do so;
- **Justified** – founded on an appropriate strategy that is reasonable, realistic and based on proportionate evidence;

- **Effective** – deliverable over the plan period and based on effective joint working on cross-boundary strategic matters; and
- **Consistent with national policy** – enabling the delivery of sustainable development in accordance with the NPPF.

1.1.7 Below we set out responses to selected questions within the consultation document. Where the responses are lengthy, a summary answer has been provided followed by further detail.

2. APPROACH TO THE LOCAL PLAN

“Question 1: Should the Council produce a Local Plan Part 2 Review under the existing planning system, or should a single full Local Plan Review be undertaken under the new system?”

Produce a Local Plan 2 Review under the existing system

Produce a single Full Local Plan under the new system

Other”

RESPONSE

Summary:

For the reasons set out below, Council should produce a full local plan.

The remit of the Part Plan 1 Review was expressly limited to meeting Derby’s unmet need on the edge of Derby and contains no district-wide spatial strategy for housing whatsoever.

The Council’s own clear commitment in the Regulation 19 Part 1 Plan Review confirms that a comprehensive plan review was to follow, not a freestanding Part 2 review.

Because Part 1 sets no pattern, scale or distribution of growth for the wider District outside of the Derby fringe, the local planning authority cannot now use a non-strategic Part 2 bring one forward.

That would reverse the plan-making hierarchy set out in the NPPF and amount to introducing strategic policy through a non-strategic plan. A Part 2 review which would establish a spatial strategy for housing for the rest of the District would therefore be plainly inconsistent with national policy.

Relationship with the Part 1 Plan Review

2.1.1 The review of the Part 1 Local Plan is ongoing. It underwent its Regulation 19 consultation in March and April 2025. Paragraph 1.42 of the Regulation 19 draft explains that:

*“The South Derbyshire District Council Part 1 Review is a **focused update** to the adopted plan, designed to ensure that the District’s plan aligns with national planning policy and **allocates key strategic sites to assist in meeting Derby’s unmet housing need.**”*

[Emphasis Added]

- 2.1.2 Accordingly, the Part 1 Plan Review concentrates on options for strategic sites on the edge of Derby, on the assumption that this is the most sustainable way to meet Derby's unmet housing needs to 2041. It therefore proposes several strategic site allocations on the edge of the city.
- 2.1.3 The Part 1 Plan Review also incorporates Policy REV1: Review of the Local Development Plan, which **confirms that plan-making for a comprehensive South Derbyshire District Local Plan will begin immediately upon adoption of the Part 1 Review.**
- 2.1.4 Paragraph 1.44 of the Regulation 19 version reiterates this commitment, stating that, on adoption of the Part 1 Review, the process of a comprehensive plan review will commence, bringing together the current Part 1 and Part 2 plans and **considering issues such as retail provision, the future development of Swadlincote, and the planning of service villages and rural areas across the District.**
- 2.1.5 The approach of undertaking a review to the Part 2 plan rather than a comprehensive plan marks a substantial departure from the approach set out by the Council in the Part 1 Plan Review.
- 2.1.6 The Part 1 Plan Review is intended as a partial review to address unmet need from the Derby urban area. Policy REV1 of the Part 1 review was intended to "bridge the gap" between a plan that effectively only addresses only a single strategic issue – unmet need from Derby – and a comprehensive plan, which addresses housing need across the District of South Derbyshire.
- 2.1.7 Given the narrowly defined scope of the Part 1 Plan Review, it did not seek to address housing needs in other parts of the District, nor did it consider any sites or strategies for growth outside the Derby fringe. This was an inevitable consequence of its limited purpose: to address unmet housing need arising solely from Derby. As a result, the Plan contains no strategic housing policies for the remainder of South Derbyshire, neither in terms of overall numbers nor spatial distribution.
- 2.1.8 It is therefore concerning to us that these fundamental strategic issues, matters which should have been examined transparently and rigorously through the Part 1 Review, might be dealt with instead through the Part 2 Plan, which is non-strategic. This approach fragments the logical sequence of plan-making and creates a situation in which the relationship between the Part 1 and Part 2 reviews is incoherent.

Strategic and Non-Strategic Policies

- 2.1.9 There is nothing within the Part 1 Plan Review that provides any strategic direction for the rest of the District beyond the Derby fringe. It contains no spatial apportionment to the District's settlements, no district-wide distribution strategy, and no indication that such matters would be deferred to a separate Part 2 plan. In the absence of any strategic framework for the wider District

being set through the Part 1 Plan Review, it is deeply concerning that the Council could now seek to address these strategic issues through a non-strategic plan.

2.1.10 Paragraph 20 of the National Planning Policy Framework states that:

“Strategic policies should set out an overall strategy for the pattern, scale and design quality of places...and make sufficient provision for: housing (including affordable housing), employment, retail, leisure and other commercial development.”

2.1.11 By design, the Part 1 Plan does not set out an “overall strategy” for the District as a whole, but only for the Derby urban fringe in order to address the city’s unmet need. Non-strategic policies cannot then be used to “fill in the gaps” to deliver that wider strategy. The National Planning Policy Framework distinguishes clearly between strategic and non-strategic policies and requires that strategic matters be dealt with through the strategic plan. In this case, the strategic plan is the Part 1 Plan Review.

2.1.12 However, because the Part 1 Review contains no strategy for housing growth beyond the proposed allocations on the Derby fringe, the non-strategic Part 2 Plan Review cannot legitimately introduce that missing strategy. To do so would invert the plan-making hierarchy set out in the NPPF, and would, in effect, use a non-strategic plan to retroactively establish strategic spatial policy.

NPPF Transitional Provisions

2.1.13 A further concern arises from the fact that the Council itself acknowledges that the Part 2 Review will be examined under the 2024 NPPF, whereas the Part 1 Review is being examined under the transitional arrangements and therefore against the 2023 NPPF.

2.1.14 This creates a situation in which two halves of what should be, in practice, a single Local Plan strategy will be tested against two different national policy frameworks. On its own, that divergence would already warrant caution. However, when read alongside the Issues and Options document, it appears that the Council is now considering using the non-strategic Part 2 Review to introduce or pre-empt matters that properly belong within the scope of the strategic Part 1 Review.

2.1.15 The approach of reviewing the Part 2 local plan to address gaps in the Part 1 Plan Review would also avoid addressing higher levels of housing need that would arise under the 2024 NPPF/standard method. By introducing strategic policies that do not deliver or respond to the level of objectively assessed housing need indicated by the 2024 standard method, the Part 2 Plan would not be positively prepared.

Conclusion

2.1.16 Overall, we consider that any using of a Part 2 Review to introduce, supplement or compensate for strategic policy would fail the soundness tests because:

- It avoids meeting housing needs (not positively prepared).
- It has not been tested through reasonable alternatives (not justified).
- It creates an internally incoherent strategy split across two Plans (not effective).
- It inverts the statutory hierarchy by introducing strategic matters in a non-strategic plan (not consistent with national policy).

3. HOUSING SUPPLY & NEED

“Question 2: Where should housing needs be met? Please provide site details including projected delivery timescales and the specific need being met.”

RESPONSE

Summary:

The Part 2 Plan cannot legitimately determine where housing needs should be met because the Council has not set a district-wide spatial strategy through the Part 1 Review, as required by the NPPF.

The Part 1 Review considered only Derby-fringe options, failed to test reasonable alternatives for towns, service villages or rural settlements, and did not address locally specific housing needs identified in the LHNA.

It also relies heavily on two large SUEs with long lead-in times and unproven delivery assumptions, meaning even minor delays would push completions beyond 2041. The overall supply in the Part 1 Review, at best, matches the minimum requirement, offers no flexibility, and in fact there is a 57-dwelling supply shortfall against the minimum housing requirement.

In order to provide the appropriate flexibility and contingency, a 20% supply buffer is required. While smaller and medium-sized sites across the District’s towns and villages could provide quicker and more flexible delivery, any such distribution must follow a coherent, District-wide strategy established through strategic policies.

- 3.1.1 As per our response to question one, the Part 2 Plan cannot properly answer the question of where housing needs should be met because the Council has not set a district-wide spatial strategy through the Part 1 Review.
- 3.1.2 The NPPF is clear that decisions about the pattern and distribution of growth are strategic matters that must be established in the strategic plan, not through a non-strategic Part 2 document. In the absence of a district-wide strategy for meeting housing growth outside of the Derby fringe tested against the reasonable alternatives through Sustainability Appraisal, any attempt by the Part 2 Plan to identify where housing needs should be met would be unsound.
- 3.1.3 However, recognising that the Council has nonetheless asked the question, the following points can be made:

Balanced Growth / Distribution

- 3.1.4 Part 1 Review did not consider the full spatial pattern of need across South Derbyshire. The Sustainability Appraisal work only evaluated scenarios focused on Derby's unmet need and did not test genuine alternatives involving the District's towns, key service villages, or rural settlements. The Sustainability Appraisal underpinning the Part 1 review confirms that options were "narrowly framed" around Derby's fringes and that no reasonable alternatives were developed for growth beyond the fringe.
- 3.1.5 The Part 1 Plan review has therefore failed to consider locally-specific settlement-based needs, including the roles and functions of rural communities and market-accessible villages across the District. Evidence from the Council's Local Housing Needs Assessment clearly identifies housing pressures outside of Derby, including acute affordable housing needs, yet these have not been spatially planned for.
- 3.1.6 The Derby-centric focus of the Part 1 Plan Review has failed to meet housing need within the rest of the District which has not been properly understood or planned for. This clearly indicates that further housing should be directed to the District's towns and villages.

Flexibility & Contingency

- 3.1.7 The Part 1 Plan Review relies heavily on two very large Sustainable Urban Extensions on the edge of Derby. These emerging allocations have inherently long lead-in times, and we strongly disagree with the statement on page 10 of the issues and options consultation document that the delivery profiles for these sites have been informed by "realistic assessments."
- 3.1.8 No such evidence was provided at any stage of the Part 1 Plan Review process and are not provided now. In any event, even minor delays to the delivery of these SUEs would push a substantial proportion of their anticipated completions beyond 2041, with the result that the Plan's minimum housing requirement could not be delivered within the plan period.
- 3.1.9 As set out in our representations to the Part 1 Plan Review, the components of supply identified within the Part 1 Plan Review equate to exactly the minimum housing requirement and no allowance for flexibility or contingency has been made to account for delayed delivery. It has now emerged, as set out in page 8 of the Issues and Options consultation document, that there is in fact a shortfall of 57 dwellings against the **minimum housing requirement** within the Part 1 Plan Review.
- 3.1.10 Whilst we agree with the statement on page 8 of the consultation document that the plan review should allocate enough sites to ensure flexibility in the supply, that opportunity has been lost because the strategic policies of the Part 1 Plan Review focus on meeting Derby's unmet need on the edge of Derby and do not consider the amount or distribution of housing need elsewhere within the District or the need to provide a supply buffer for flexibility and contingency. A non-

strategic Part 2 plan cannot now rectify that deficiency for the reasons explained in our response to Question 1.

- 3.1.11 There is no clarity within the Issues and Options consultation document as to what is meant by “housing needs” in this context, nor whether it refers to the shortfall of 57 dwellings identified on page 8 or to some other figure.
- 3.1.12 In any case, the 57-dwelling figure simply represents the additional supply required to achieve parity with the minimum housing requirement; it does not reflect the true extent of the shortfall if the Council’s desire is to provide contingency and flexibility to ensure an effective strategy for the Plan period. As set out in our representations to the Part 1 Review, the overall supply more or less sits at the minimum requirement, meaning that substantial additional allocations are required to provide the necessary flexibility. We recommended a 20% buffer to ensure a resilient and deliverable supply.
- 3.1.13 Smaller and medium-sized sites at the fringes of the District’s rural settlements and towns are particularly well-placed to provide this contingency. Consistent with paragraph 73 of the NPPF, such sites typically have shorter lead-in times and are built out more quickly, making them critical to maintaining delivery across the plan period. However, any apportionment of growth must still form part of a coherent district-wide spatial strategy, tested through a legally compliant Sustainability Appraisal that considers all reasonable alternatives. This can only be undertaken through a coherent review of the District’s strategic policies, not through making non-strategic allocations in isolation.

Land at Winchester Drive, Linton

- 3.1.14 Notwithstanding the above, should the Council see fit to make additional site allocations through the Part 2 Plan review, we would advocate that Land at Winchester Drive, Linton represents a suitable and sustainable location to accommodate proportionate growth.
- 3.1.15 This Site has previously been promoted through the Local Plan process, most recently the Strategic Housing and Economic Land Availability Assessment (SHELAA) in April 2024. The Site has historically been split into two smaller parcels, though it is now promoted as one single parcel. The two parcels are shown on the extract below and have been assigned SHELAA reference numbers 103 (smaller parcel) and 212 (consolidated parcel).



Figure 1 Extract from SHELAA mapping

3.1.16 Situated on the edge of the village of Linton, this Site is a logical and appropriate site for residential development, capable of accommodating 120 dwellings across the 5.6ha site.

3.1.17 With Linton being a Key Service Village, served by a range of local services and facilities, it is well placed to contribute a fair apportionment of housing need. Effectively a second tier settlement, the Council's Settlement Hierarchy Topic Paper states that Key Service Villages are usually large villages containing a wide range of services and facilities. To qualify they must have a bus service and a convenience store plus at least seven other services. They are considered to be the most sustainable locations for development outside of urban areas.

3.1.18 A review of local services indicates that the village is served by the no.22 bus to Burton on Trent and Swadlincote, and also benefits from the following amenities within the settlement (distance from Site given in brackets):

- Linton Primary School (500m)
- Park (200m)
- Sports Pitches (200m)
- Post office and shop (350m)
- Village Hall (280m)
- Public House (350m)

3.1.19 In terms of constraints, there are no listed buildings or conservation areas on or near the Site that the development would impact upon. There is a public right of way within the Site which would be incorporated into the Public Open Space to create a pleasant route for the benefit of all residents and footpath users. There are no protected trees, or any areas of ecological constraint

in the vicinity, save from the River Mease Nutrient Neutrality Catchment. However, the Site is only likely to be within the catchment in so far as surface water is concerned, which will be able to be mitigated through sustainable drainage treatment which will be included in any forthcoming drainage scheme.

3.1.20 Landscape is not an area of concern, with the Derbyshire County Council Landscape Architect identifying the Site as having a low landscape constraint (green on a RAG rating) within the SHELAA.

3.1.21 Likewise flooding is not a point of concern, being entirely within Flood Zone 1.

3.1.22 Linton is closely related to a number of urban areas, including Swadlincote which lies approximately 2km to the north east, and 5km from Burton on Trent to the north west. Both towns offer an array of services to be expected from a larger town including employment, shops, schools, healthcare services, and a leisure centre. These settlements are linked by road as well as having bus links from Linton. These connections strengthen Linton's status as a sustainable settlement.

3.1.23 Throughout the Local Plan process, in promoting this Site, background work has been undertaken to substantiate the proposals. This has included a detailed review of the education context locally which is attached in full at Appendix 1. To briefly summarise, Linton Primary School is situated within a large site with room for expansion. While it is close to capacity, this is due to pupils travelling in from other settlements. Forecasts show falling rolls across other local schools which will reduce pressure at Linton. In addition, given that the existing school site has room for expansion, any additional capacity which may be considered to be required as a result of development within the settlement can be accommodated within the existing site.

3.1.24 In terms of secondary provision, The Pingle Academy in Swadlincote is the nearest school to Linton, and there are a further two secondary schools in Swadlincote. The three schools have a combined capacity of 3,151 pupil places, which as of the 2029/2030 academic year are anticipated to have a combined 592 spare places available. This far exceeds the child yield of the development proposed.

3.1.25 In the most recently published SHELAA, the Site has been considered "available and achievable" which is reflective of the low level of constraints, single ownership, and sustainable location.

3.1.26 It should be noted that within the SHELAA, the Site was assigned a 'red' RAG rating on a very limited number of items.

3.1.27 Firstly, a red rating was given for access to sports pitches. This is potentially an error, given that the Site is located immediately adjacent to the village recreation ground which includes a small

informal football pitch as well as a basketball court with markings for various other sports. There is also an existing formal, high standard, sports pitch at land between Linton and Overseal, just 1.4km from the Site, which is accessible via a metalled and lit pavement. For a settlement of this size the sports provision is good, and those facilities are readily accessible from the Site.

3.1.28 In respect of healthcare it is noted that the nearest health centre (Greasley Dale Health Centre) is located 3km to the north east of the Site within Castleton Park (Church Greasley). There is also a health centre located centrally in Swadlincote next to the bus station, and therefore accessible by bus. Therefore while all potential sites within Linton, and indeed the majority of villages in the Southern Parishes, do not have close access to a health centre, but one is available via a range of transport modes. A large proportion of GP appointments are also now made over the phone, reducing the need for in-person appointments compared to pre-2020.

3.1.29 It is accepted that the Site is greenfield. We also note that there are no previously developed or brownfield sites put forward in Linton. Any allocation in the village, which will be necessary in consideration of its status as a Key Service Village, will require a small loss of greenfield land. It should be noted favourably that this Site comprises mainly of poorer quality agricultural land, with elements of Grade 3. Given that the Site is located on the edge of the settlement and is well served by public transport and local services, there may be potential for densities to be maximised in line with government policy and this could therefore help reduce the need for greater greenfield losses elsewhere in the District including in locations with higher quality agricultural land.

3.1.30 The SHELAA rates the Site as amber in many categories, including:

- Trees and hedgerows
- Retail provision
- Employment provision
- Pedestrian and cycle links
- Utilities and power
- Topography

3.1.31 Hedgerows and hedgerow trees within the Site will be retained where possible and landscape elements will be integrated into the design of the proposed scheme in order to help assimilate any development into the wider environment. The Site will include 20% National Forest Tree Planting. Overall there is a high potential to mitigate any losses to hedgerows and trees.

3.1.32 In respect of retail provision there is a 'The Village Hub', including a post office with shop within easy walking distance to the Site, being approximately 350m away. This shop is open 7am to 7pm, offering a range of conveniences including the post office, free cash withdrawals, photocopying, day to day shopping, and convenience foods. Owing to this provision being in such close proximity to the Site, we would assert that the RAG rating for retail should be green.

3.1.33 Overall the Site is considered to be a sustainable location for development, and is suitable, achievable and available.

Question 3: "Are there any other mechanisms that the plan should consider to securing housing delivery in addition to allocating specific sites (e.g. identifying indicative broad locations/areas for future growth adjacent to existing settlements, extending settlement boundaries, supporting certain changes of use)? Yes/No Please provide a reason for your answer."

3.1.34 The Part 2 Plan cannot properly consider mechanisms for securing housing delivery such as identifying broad locations, extending settlement boundaries, or supporting other forms of growth because all of these mechanisms are strategic in nature. As set out in our earlier responses, the Council has not established a district-wide spatial strategy through the Part 1 Review, which only addressed Derby's unmet need and did not determine how housing growth should be distributed across South Derbyshire. Strategic decisions about the pattern, scale and distribution of development must be set in the strategic plan and tested through Sustainability Appraisal against reasonable alternatives, not introduced through a non-strategic Part 2 document.

3.1.35 Without a district-wide strategy, any additional mechanisms to secure delivery would be devoid of strategic context and the appropriate sustainability appraisal testing, risk predetermining spatial outcomes in isolation, and would therefore be unsound. This includes identifying broad growth areas, altering settlement boundaries, or facilitating changes of use that imply a settlement-level or District-wide distribution of housing. These choices can only be made through a coherent review of strategic policies.

Question 4: "Are there any other issues that the Council should consider when ensuring the timely delivery of the right homes in the right places (e.g. policy criteria for looked after children, re-allocating implemented employment allocations)? Yes/No Please provide reasons for your answer."

3.1.36 In responding to this question, it is important to recognise that while the Part 2 Local Plan cannot set new strategic policies or determine the distribution of housing where there is no corresponding strategic policy, there are nevertheless certain non-strategic mechanisms that could legitimately support the timely delivery of appropriate homes.

- 3.1.37 One such mechanism would be the inclusion of a policy similar to that used in the Settlements and Countryside Local Plan (Part 2) for Daventry District (Policies RA1 and RA2), which allow development outside settlement confines where it is clearly demonstrated that the proposal meets an identified local need that cannot reasonably be met within the defined settlement boundary.
- 3.1.38 In the former Daventry District, this is supported through evidence in the form of a Housing Needs Survey or a Housing Needs Assessment, ensuring that the exception operates only where there is a robust and up-to-date demonstration of need. A comparable approach in South Derbyshire would enable the most sustainable rural settlements to address genuine, evidenced local housing requirements in a proportionate manner, while maintaining overall control over the scale and form of development.
- 3.1.39 Although the Part 2 Local Plan will ultimately be examined under the 2024 NPPF, it is also relevant that the draft 2025 NPPF, currently subject to consultation, signals an emerging direction of travel that supports development outside settlements where it would address an evidenced unmet need.
- 3.1.40 Policy S5 of the draft NPPF 2025 proposes that certain forms of development should be approved unless the adverse impacts would significantly and demonstrably outweigh the benefits, including proposals that help meet unmet housing need. While the emerging Framework is not yet in force, this direction of travel reinforces the value of a local needs-based policy that allows sustainable rural settlements to grow in response to evidenced circumstances rather than being constrained solely by settlement boundaries which may not adequately reflect the scale or nature of housing need.

4. ACCELERATING HOUSING DELIVERY

Question 7: “What could the Council do to speed up the delivery on strategic allocations? Please provide details?”

- 4.1.1 In response to this question, it is important to state at the outset that the premise is fundamentally flawed. The Council cannot “speed up” the delivery of strategic allocations in any meaningful sense. Delivery timetables for large, complex strategic sites are driven by factors outside the Council’s control, including land assembly, major infrastructure requirements, market absorption rates, resourcing and the willingness and capacity of developers to bring schemes forward.
- 4.1.2 What the Council *can* do is ensure that its strategic plan makes available a sufficient range and choice of sites, in the right places and at the right time, to provide the flexibility necessary to maintain delivery across the plan period to meet objectively assessed needs. This requires a proper contingency allowance and a robust understanding of deliverability, neither of which is adequately reflected in the Part 1 Plan Review.
- 4.1.3 As we explained in our earlier responses, the Part 1 Plan Review relies heavily on a small number of large, complex Sustainable Urban Extensions on the edge of Derby. These sites have inherently long lead-in times, significant infrastructure requirements and, as we set out in our representations to the Part 1 Review, considerable uncertainties regarding their delivery trajectories. Those concerns have never been satisfactorily addressed. Indeed, the Issues and Options document for the Part 2 Review now reveals that the Part 1 Review contains a shortfall even against the minimum housing requirement, confirming that the absence of any contingency allowance was a serious and consequential omission and one that cannot now be rectified through the Part 2 Plan.
- 4.1.4 If South Derbyshire wishes to improve the timeliness and certainty of delivery on its strategic allocations, it must ensure that the strategic plan sets out a clear spatial strategy supported by a sufficient range of deliverable and developable sites to maintain momentum across the plan period. That includes providing an appropriate level of contingency and responding to the full objectively assessed housing need through a distribution strategy that is justified and deliverable. The Part 1 Review does not do this, and the Part 2 Review cannot remedy it.

Question 7: “Should the Council allocate Land South of Mackworth for development within the plan period? Yes/No Please provide a reason for your answer.”

- 4.1.5 In response to the question of whether Land South of Mackworth should be allocated for development within the plan period, we do not consider that the Council has provided sufficient evidence to justify such an allocation at this stage. The Part 1 Local Plan Review identified this land only as a potential area for up to 250 homes **beyond** the plan period to 2041. The Issues and

Options document for the Part 2 Review now implies, without any accompanying explanation or evidence, that these homes could instead come forward within the plan period. No information or context is provided about what has changed, why the delivery assumptions have been brought forward, or whether any of the previously identified constraints have been resolved.

- 4.1.6 The site at land South of Mackworth would be delivered in conjunction with land off Brun Lane that Amber Valley Borough Council has identified for future residential development in their Local Plan. In viewing the site as such, it should be noted that the Brun Lane site was initially proposed within Amber Valley's draft Local Plan as a strategic allocation of 2,000 homes. However, through the course of the Plan's examination it was made clear that the landowner is presently unwilling to release all of the land for development. This meant that the site could not be relied upon and was removed as an allocation and instead identified as an "Area for Future Housing Growth".
- 4.1.7 Given that the site forms part of a wider strategic development within Amber Valley, there is a real possibility that infrastructure dependencies, cross-boundary coordination, phasing requirements and long lead-in times will restrict its timely delivery. These are precisely the kinds of constraints that prevented the site being considered deliverable within the plan period during the Part 1 Review. Nothing in the Part 2 consultation demonstrates that these constraints have been reassessed, addressed or evidenced, and we therefore have no confidence that the site could contribute reliably to housing supply within the timescales suggested.
- 4.1.8 In addition, the allocation of this Site has not been subject to any robust Sustainability Appraisal testing against reasonable alternatives, either around Derby or across the wider district. The Part 1 SA (the Council's own admission) only assessed narrowly framed Derby-fringe options and did not consider reasonable alternatives in towns, service villages or rural settlements. The Part 2 Review provides no updated SA, no comparative assessment and no districtwide evaluation of options. Allocating Land South of Mackworth without this assessment would be unsound.
- 4.1.9 Even if the site were deliverable within the plan period, the supply of 250 dwellings would be wholly inadequate to meet the flexibility and contingency required for an effective housing strategy. While it would address the recently identified shortfall of 57 dwellings and provide a small buffer, it would still fall significantly short of providing the headroom necessary to maintain delivery and respond to delay, particularly given the heavy reliance on large and complex strategic allocations in the Part 1 Review. A 250-unit site does not provide the level of contingency required when the strategic plan itself contains no districtwide spatial strategy and no broader distribution of supply across different settlements.

 **Marrons**

24th April 2024

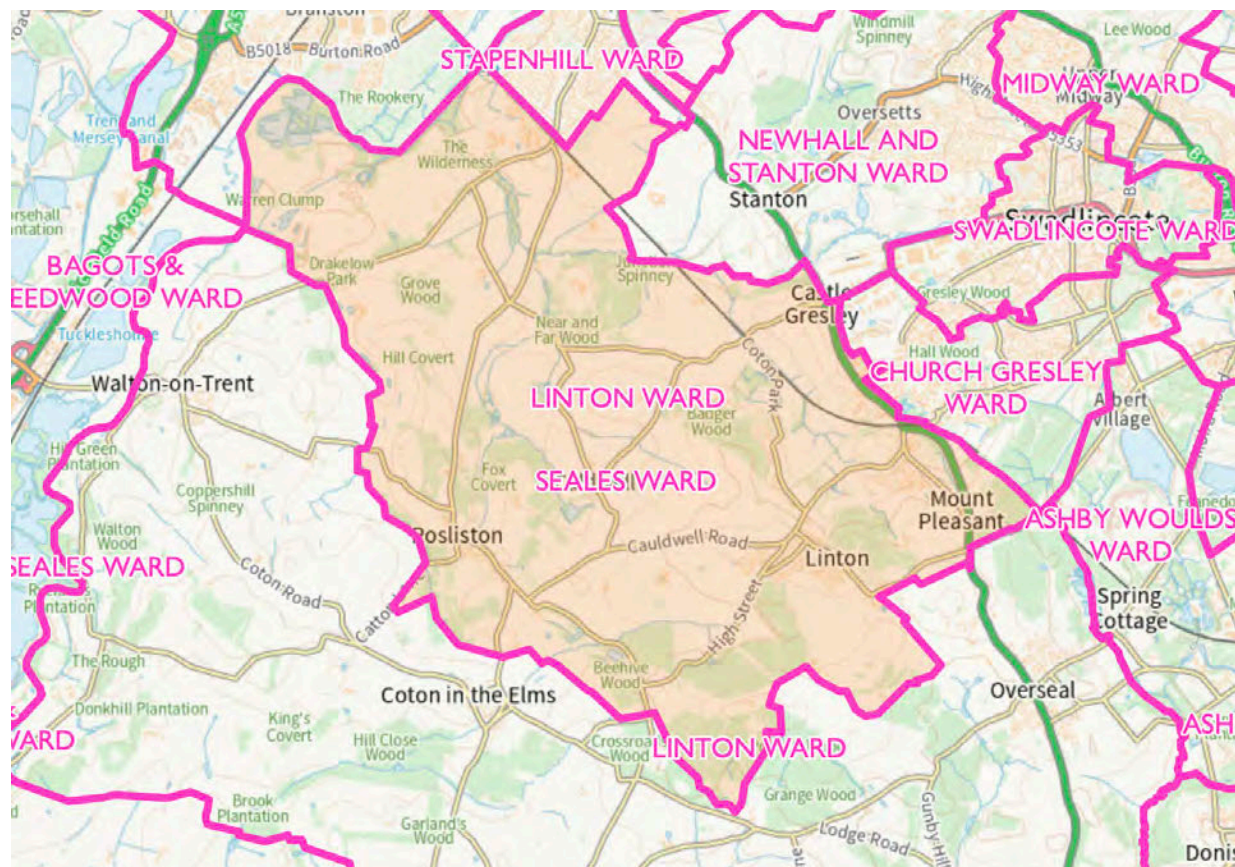
REF: 120 DWELLINGS IN LINTON, SOUTH DERBYSHIRE – EDUCATION REVIEW

The purpose of this Report is to scrutinise the Education landscape in relation to the development of 120 dwellings discussed above and shown below in Map 1:



Map 1: Approximate Development Boundary

Linton is a settlement and civil parish in South Derbyshire, England, 5 miles south east of Burton-on-Trent. The settlement is located within the Linton Ward (“the Ward”) within the South Derbyshire District Council (“SDDC”) Planning Area. The Education Authority is DCC. The Ward Map and the development’s location within the Ward can be seen below in Map 2:



Map 2: Ward Map Boundary

SDDC is not currently a Community Infrastructure Levy (“CIL”) charging authority, meaning that if development mitigation is required it will be secured via Section 106 planning obligations.

For a planning obligation to be acceptable, it must be necessary. In respect of an education planning obligation, to be necessary, there must be an insufficient number of places to accommodate the forecast number of children seeking a school place compared to the number of children expected to come forward on the proposed development. Thus, the obligation must be linked to a change (upwards) in the official number of school places.

This document will undertake the following tasks: firstly, it will look at the child yield multipliers utilised by DCC in order to ensure that they are appropriate for the area; second, it will look at the planning obligation cost multipliers to ensure they are in line with the national averages and Department for Education’s (“DfE”) Guidance, Securing Education Planning Obligations (August 2023) which is endorsed by MHCLG PPG Paragraphs: 007 Ref ID: 23b-007-20190315 and 008 Ref ID: 23b-008-20190315; finally, it will look at the Education landscape,

in order to establish whether planning obligations are appropriate and required under the CIL Regulations, specifically the tests of CIL Regulation 122 (2). This note looks specifically at Primary and Secondary School provision, and SEN provision, as DCC is likely to request funding towards all of these Educational elements.

Generating Primary and Secondary School aged children requires the addition of new Primary/Secondary School places respectively, and the implications for that could be infrastructure that has a value. The necessity requirement dictates that there must be the equivalent increase of the Capacity and Admission Number of a school that would serve the development. The Capacity of a school is published differently depending upon its type. The Admission Number is the number of places for each age group. For a maintained school (maintained by the local education and children's services authority) it is the Net Capacity and for an Academy/Free School it is set out in the Funding Agreement with the Education Secretary of State. This obligation on the Council should be stipulated in the Section 106. "Improving" educational facilities is not appropriate use of planning obligations. Pre-existing deficits, upgrades and maintenance issues are funded from different sources.

To first discuss the child yield of DCC:

Child Yield

Paragraphs 17 and 18 of the Department for Education's ("DfE") best practice guidance states:

Pupil yield factors should be based on up-to-date evidence from previous local housing developments, so you can predict the education needs for each phase and type of education provision arising from new development. To understand how pupil yield builds up in developments over time, you can consider pupil yield from developments completed 10 or more years ago as well as those built more recently. You are under no obligation to review pupil yields continually, but we recommend refreshing your data approximately every five years.

Pupil yield factors allow you to estimate the number of early years, school and post-16 places required as a direct result of development, underpinning local plan policies and the contributions agreed in planning obligations. We have published separate research data and guidance on estimating pupil yield, to assist local authorities producing and using pupil yield evidence.

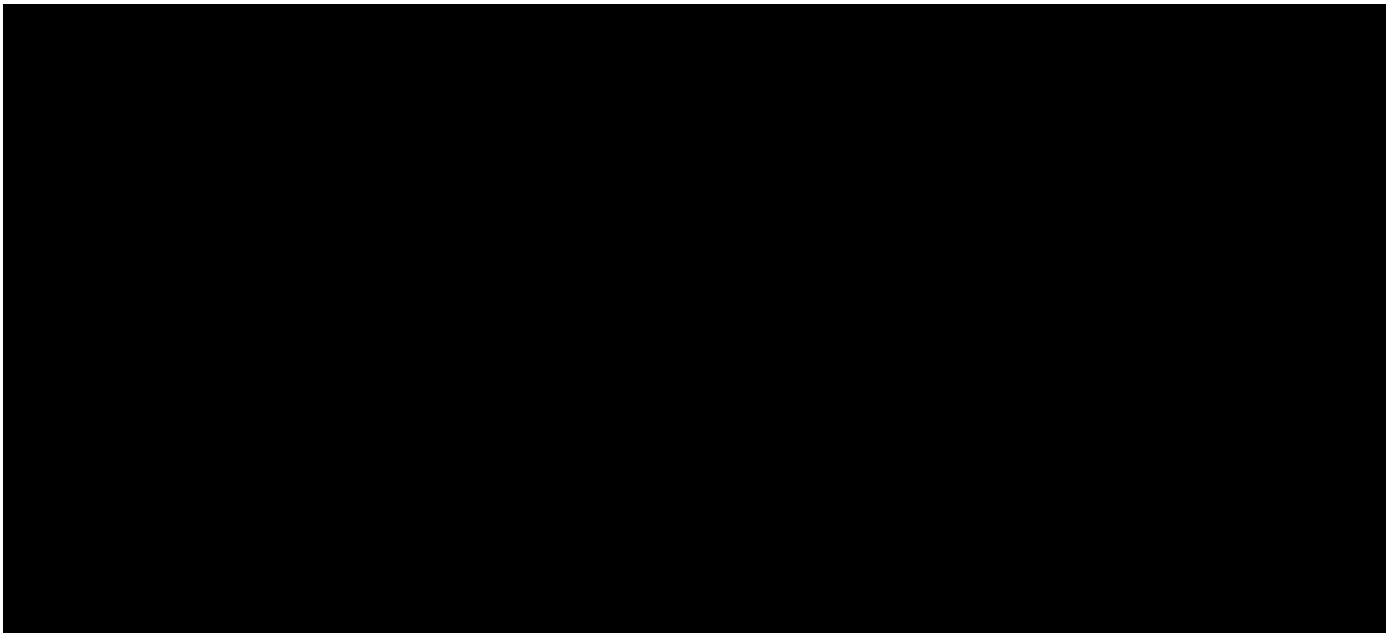
The research data discussed above in relation to South Derbyshire showed the following child yield averages:

Year	LocalAuthority	EducationPhase	EducationType	TenureType	Housing...	Numb...	Num...	Numb...	PupilYield
2021/22	South Derbyshire	Early Years	Mainstream	All	All	All	442	5782	0.076444137
2021/22	South Derbyshire	Post-16	Mainstream	All	All	All	77	5782	0.013317191
2021/22	South Derbyshire	Primary	Mainstream	All	All	All	1778	5782	0.307506053
2021/22	South Derbyshire	Secondary	Mainstream	All	All	All	851	5782	0.147180906

Table 1: SDDC Child Yield Multipliers

The figures in Table 1 include the child yields for flats and one bedroom dwellings, and thus are an average across the whole of the administrative area.

DCC is utilising the following yields:



The figures above are consistent with DCC's Developer Contributions Protocol¹ dated 1st April 2023. This equates to 0.24 Primary School aged pupils per dwelling, and 0.28 Secondary and Sixth Form pupils per dwelling. Finally, there are forecast to be 0.007 SEN pupils per dwelling.

It is unusual for a child yield multiplier for Secondary to be higher than Primary. New developments tend to be populated with a higher proportion of younger children (Early Years and Reception being the highest).

¹ <https://www.derbyshire.gov.uk/site-elements/documents/pdf/environment/planning/developer-contributions-protocol.pdf>

What should be noted, however, is that DCC assume a 100% stay-on rate for Sixth Form, whereas most EA's discount this by 50% due to only a proportion of pupils staying on to Sixth Form after Year 11. However, DCC has been challenged on this previously and has maintained their stance. In an Appeal scenario, this would not stand-up to scrutiny. However, outside of that, this is their approach. DCC's child yield multipliers generally are not excessive and can be accepted.

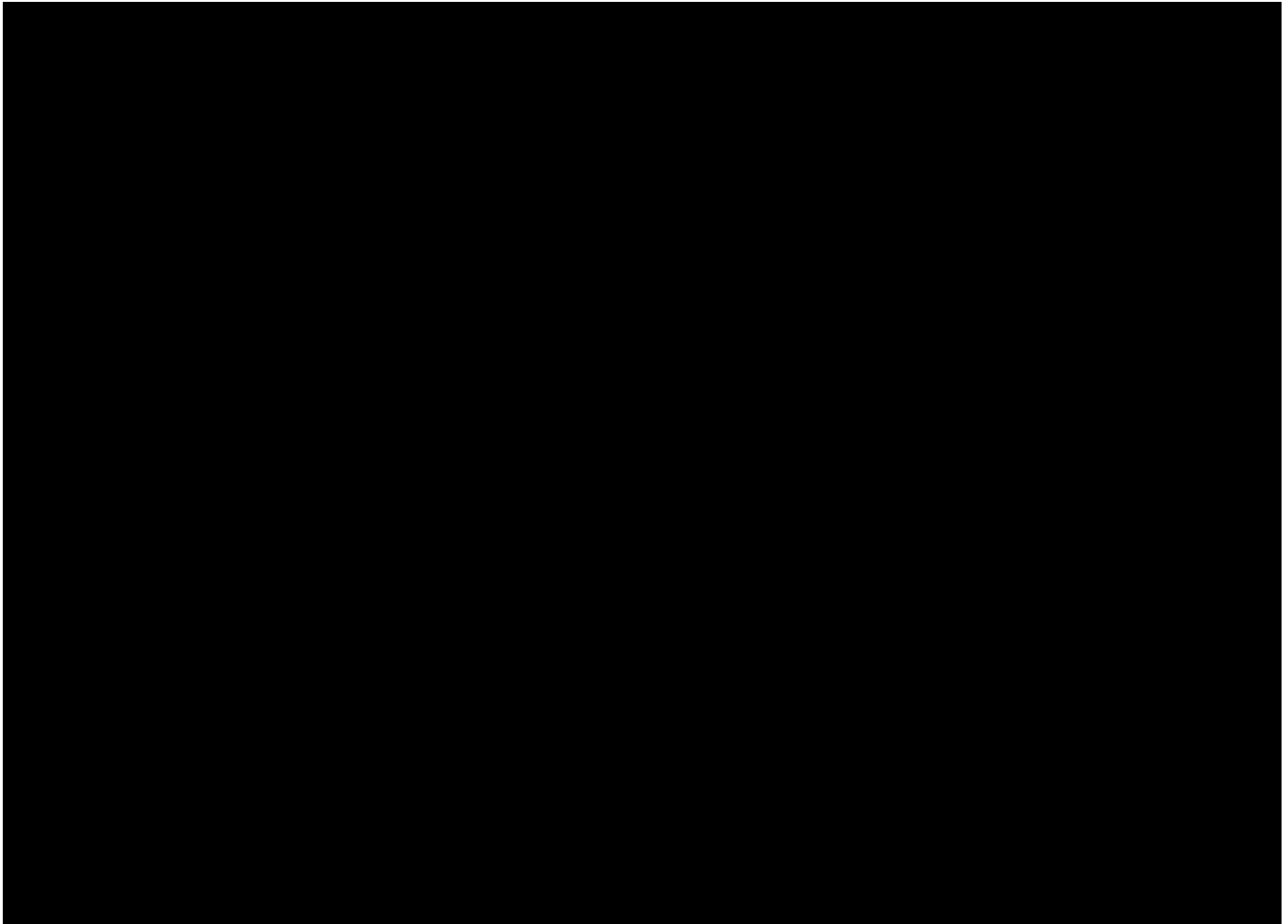
Planning Obligation Multipliers

Paragraphs 32 and 33 of the Department for Education's ("DfE's") best practice guidance document (August 2023) states:

We advise that you base the assumed cost of mainstream school places on the relevant average regional costs published in the DfE school places scorecard. This allows you to differentiate between the average per pupil costs of a new school, permanent expansion or temporary expansion, ensuring developer contributions are fairly and reasonably related in scale and kind to the development. You should adjust the regional average to account for inflation since the latest scorecard base date.

In addition, consider uplifting rates to reflect the costs associated with achieving the sort of sustainability and design standards set out in the department's updated School Output Specification 202112 (or a future update which is relevant to the timing of a project). The department has uplifted Basic Need grant funding by around 10% to support local authorities meet the costs associated with achieving these sorts of standards. This percentage may be a useful basis for an uplift to developer contributions, though current local planning context such as additional climate change, environmental or design policy requirements may justify an alternative uplift.

The DfE's 2022 National Scorecard Costs (these will be updated in June 2024) can be seen in the Table below:

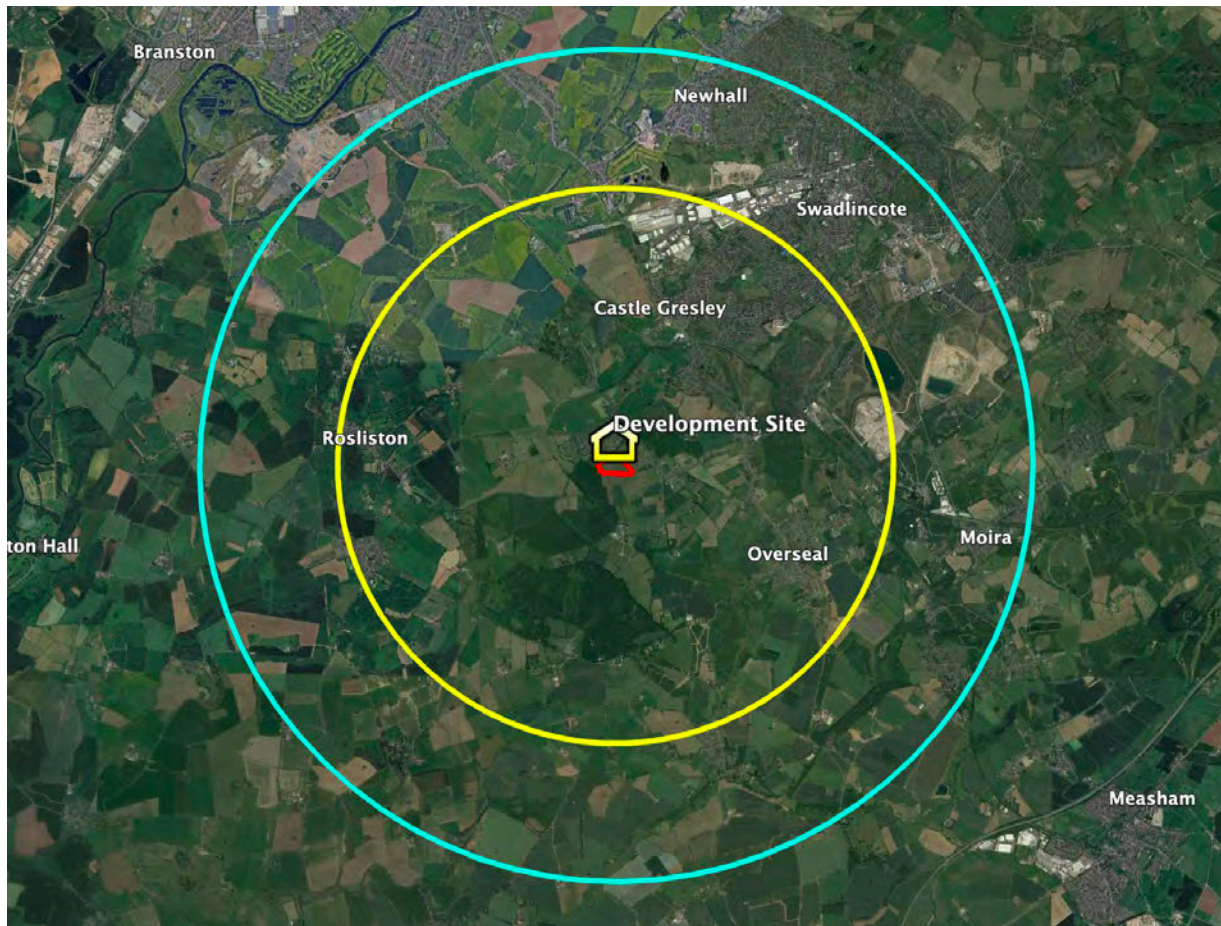


These figures are within acceptable parameters and are not excessive.

Education

In our assessment, we consider all Primary Schools that lie within a two-mile walking distance, and all Secondary Schools that lie within a three-mile walking distance of the development². The two- and three-mile criteria is the distance prescribed in the Education Act beyond which local authorities are required to provide/fund transport where the nearest available school is further away.

² Distances have been calculated based upon coordinates near to the development (52°44'39.9"N 1°35'42.3"W). Once the development is built, some parts of the site may be further/closer than shown.



Map 3: Two and Three Mile Radius around the Development Site

The EA is required to make pupil forecasts to the Department for Education on a year of age basis by 'school planning area' and identify each school in the cluster and its capacity. The forecasts cover the period for which birth data is available. Forecasts covered by Section 106 agreements submitted separately to avoid double funding. For Primary School age pupils, the current published data runs to 2027/28 and for Secondary School aged pupils 2029/30. These are known as the School Capacity ("SCAP") returns. This is how Government allocates its funding for additional school places that are its responsibility to provide.

Schools should be operationally full to meet the financial audit requirement for best value from public assets. This is demonstrative of a properly functioning school system. School funding is predicated on the number of pupils that are on a school's roll, so it is in the best interest of schools to maximise intake within their capacity. Accordingly, many schools take from a wide catchment area and some enrol over capacity.

The statutory rules on enrolment are that whilst schools may have a catchment area and ordered criteria for admissions, the rules only apply if the school is oversubscribed. Otherwise, whoever applies is admitted irrespective of where they live. This is known as 'More Open Enrolment'. It fosters parental choice of school.

The overarching duty to provide sufficient schools and school places rests with central Government. (Education Act 1996 Section 11) The duty excludes those otherwise provided for (private education, home schooling, **those in new housing with a Section 106/CIL in place** (my emphasis)).

The EA's duty in such matters is to secure sufficient schools and school places for their area (Education Act 1996 Section 14). 'For their area':

The duties of a [local] education authority do not require the authority to secure the provision of schools for pupils from outside the area of the authority, even though it may be convenient for a pupil to attend a school in an area other than that in which he lives.

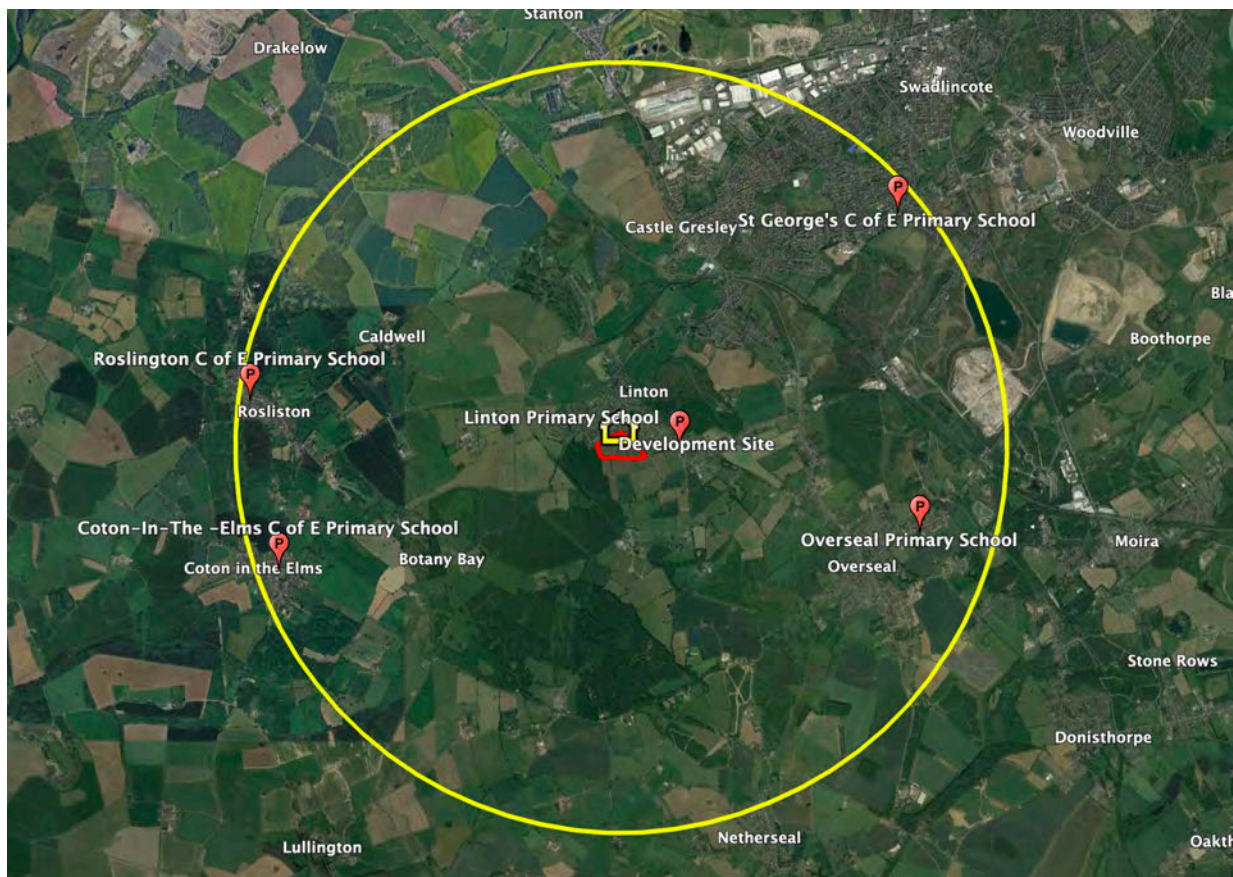
Within the State-funded school sector there are Community Schools funded by the local authority, and there are other providers than the local authority; these are Academies, Free Schools, the Voluntary Sector (e.g. Church Schools) and Foundation Schools. Academies and Free Schools are funded directly by Central Government: Church Schools and Foundation Schools are maintained by the local authority.

The provision of school places, where there is a shortfall, is made via a funding stream from the Department for Education ("DfE") is known as Basic Need. Basic Need funding is allocated as 'a number of pupil places times a unit cost', differentiated by school phase and local building costs. Allocations are made on the basis of projected shortfalls in local School Planning Areas against current pupil numbers and the actual numbers of school places in that Planning Area. Each planning area is treated as a discrete area and shortfalls met through the allocation of resources. A surplus in one school planning area is not offset against another with a shortfall. In this case, providing housing in the Walton-on-Trent/Rosliston/Coton/Linton/Overseal/Netherseal Primary Primary Planning Area (for whatever planning reason) will be reflected in the forecasts for the Walton-on-Trent/Rosliston/Coton/Linton/Overseal/Netherseal Primary Primary Planning Area, and nowhere else.

Primary Education

There are five state funded schools accommodating Primary School aged children within a two-mile radius of the development site. The schools are organised across two Primary Planning Areas, both within the DCC administrative area. Of the schools, only one is within a statutory safe walking distance, meaning only one will be considered appropriate capacity for this development.

The schools in relation to the development site can be seen in the Map below:



Map 4: Schools in relation to the development site

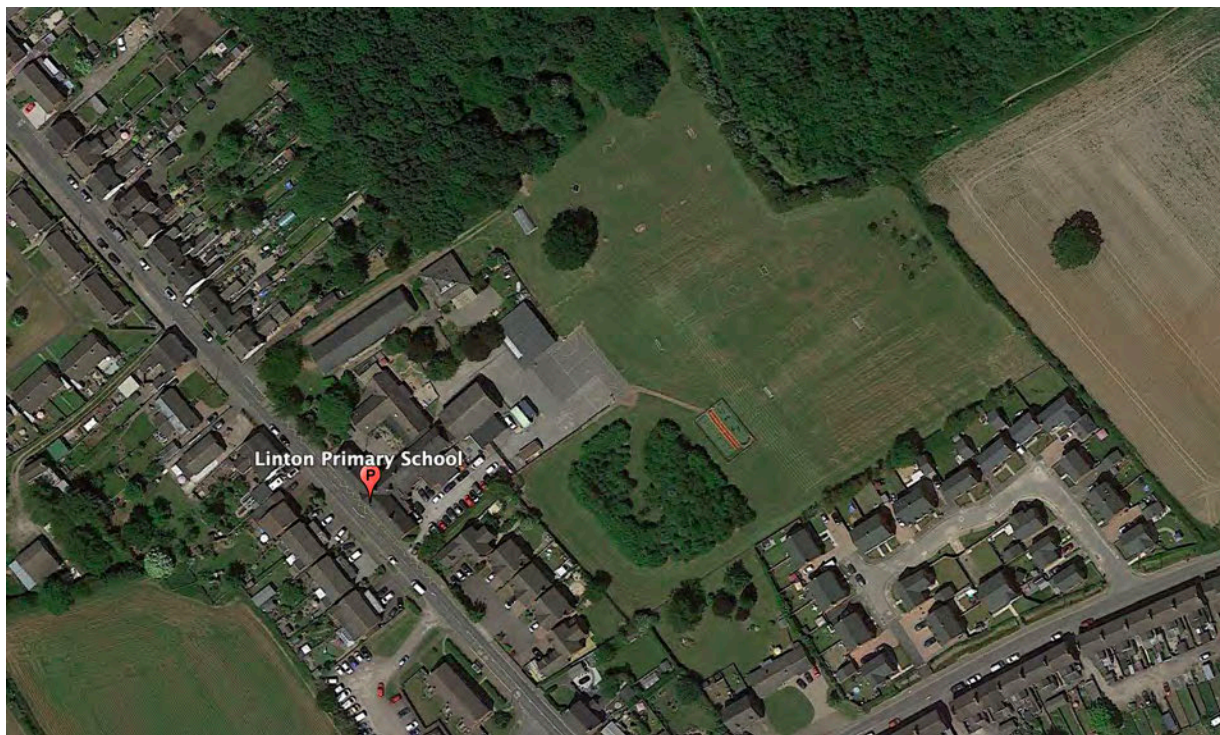
The latest school roll data in the public domain can be seen below in Table 4:

Primary School Name	Postcode	LA Name	Distance (miles)	Capacity	PAN	NoR	Yr R	Yr 1	Yr 2	Yr 3	Yr 4	Yr 5	Yr 6
Linton Primary School	DE12 6QA	Derbyshire	0.4	280	40	271	38	50	34	32	34	47	36
TOTAL				280	40	271	38	50	34	32	34	47	36
Surplus							2	-10	6	8	6	-7	4
Available Surplus %							5%	-25%	15%	20%	15%	-18%	10%

Table 4: School Roll Data (January 2023)
PAN = Planned Admission Number; NoR = Number on Roll

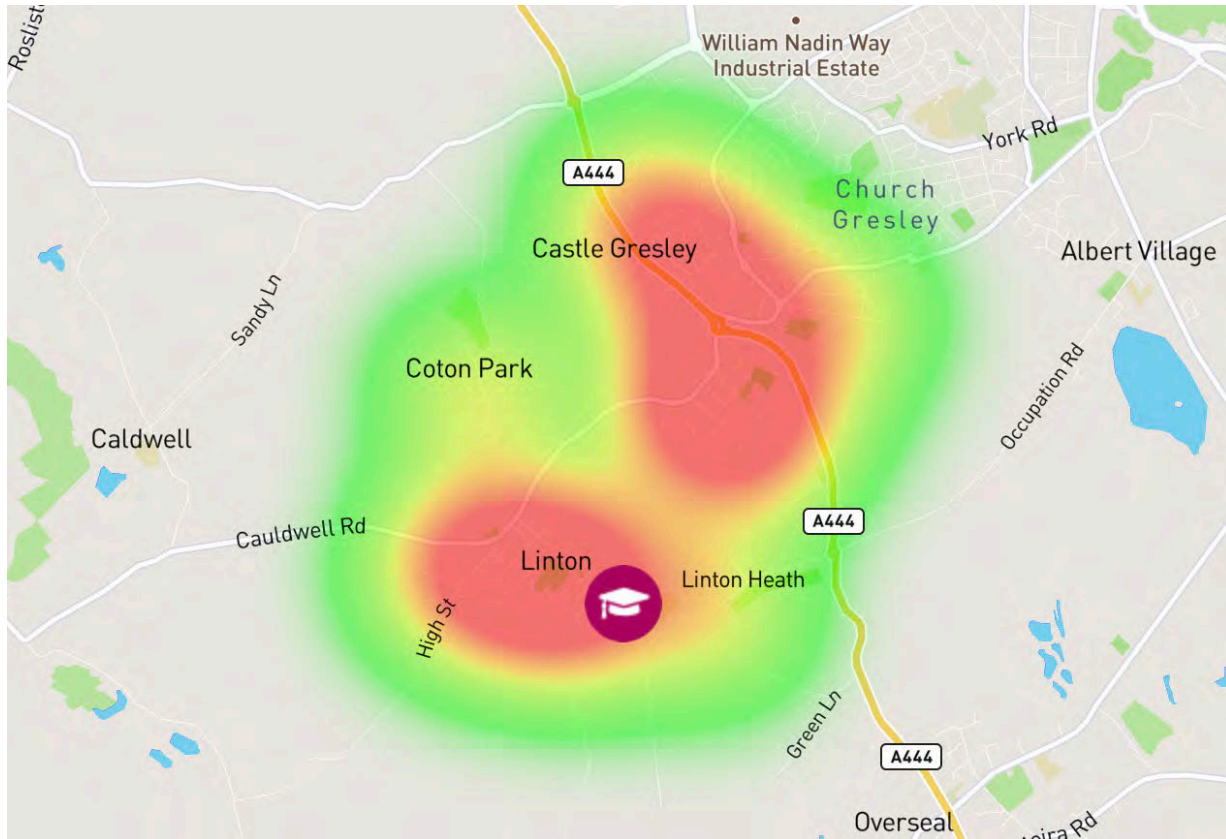
The only school accessible via a safe walking route from the proposed new houses is Linton Primary School. This is a 1.33 Form of Entry (“1.33FE”) Primary School (which means split Year Groups) approximately 0.4 miles walking distance from the proposed new houses that, as of the previous academic year, was operating close to its full capacity with 9 spare places.

The school’s boundary is not shown on the Land Registry. However, it does seem to be on a quite a large site for its size (potentially around 2.5ha) which would allow the school to more than double in size without the need for land acquisition. Certainly, it would be beneficial for the school (from an operational and sustainability perspective) if it expanded to a full 2FE (60 per Year Group) rather than operate with an admission number of 40 per Year Group.



Map 5: Linton Primary School Site Map (via Google Earth)

The school accommodates pupils from Linton, but also large numbers from outside of the settlement, such as southwest Swadlincote, as shown below:



Map 6: Linton Primary School Catchment Area Heat Map

The Castle Gresley area is served by schools in the Woodville/Church Gresley Primary Planning Area. This area has spare capacity, and forecast falling rolls. What this means is that if there is growth in Primary School aged pupils in Linton, they will displace applicants from further afield who are choosing to attend Linton Primary School due to parental preference. This means more capacity for Linton pupils than is immediately obvious.

When looking at the projections, Linton Primary School is location within the Walton-on-Trent/Rosliston/Coton/Linton/Overseal/Netherseal Primary Primary Planning Area along with five additional schools. The Planning Area has a capacity of 973 pupil places:

Primary Planning Area	School Name	Time Period	Primary Capacity	Secondary Capacity
8300032	Overseal Primary School	202122	206	0
8300032	Walton On Trent CofE Primary and Nursery School	202122	140	0
8300032	Rosliston CofE Primary School	202122	98	0
8300032	Linton Primary School	202122	280	0
8300032	Netherseal St Peter's CofE (C) Primary School	202122	70	0
8300032	Coton-in-the-Elms Cof E Primary School	202122	173	0

Table 5: Walton-on-Trent/Rosliston/Coton/Linton/Overseal/Netherseal Primary Planning Area Schools

By 2027/28, the schools are expected to have a combined roll of 859, which is 114 spare places:

LA name	Year	Planning Area Code	Planning Area Name	Planning Area Phase	nc Year Group	Pupil Forecast and 20-21 Actuals
Derbyshire	202324	8300032	Walton-on-Trent/Rosliston/Coton/Linton/Overseal/Netherseal Primary	Primary	Primary total	864
Derbyshire	202425	8300032	Walton-on-Trent/Rosliston/Coton/Linton/Overseal/Netherseal Primary	Primary	Primary total	870
Derbyshire	202526	8300032	Walton-on-Trent/Rosliston/Coton/Linton/Overseal/Netherseal Primary	Primary	Primary total	881
Derbyshire	202627	8300032	Walton-on-Trent/Rosliston/Coton/Linton/Overseal/Netherseal Primary	Primary	Primary total	859
Derbyshire	202728	8300032	Walton-on-Trent/Rosliston/Coton/Linton/Overseal/Netherseal Primary	Primary	Primary total	859

Table 6: DCC SCAP 2023 Projections

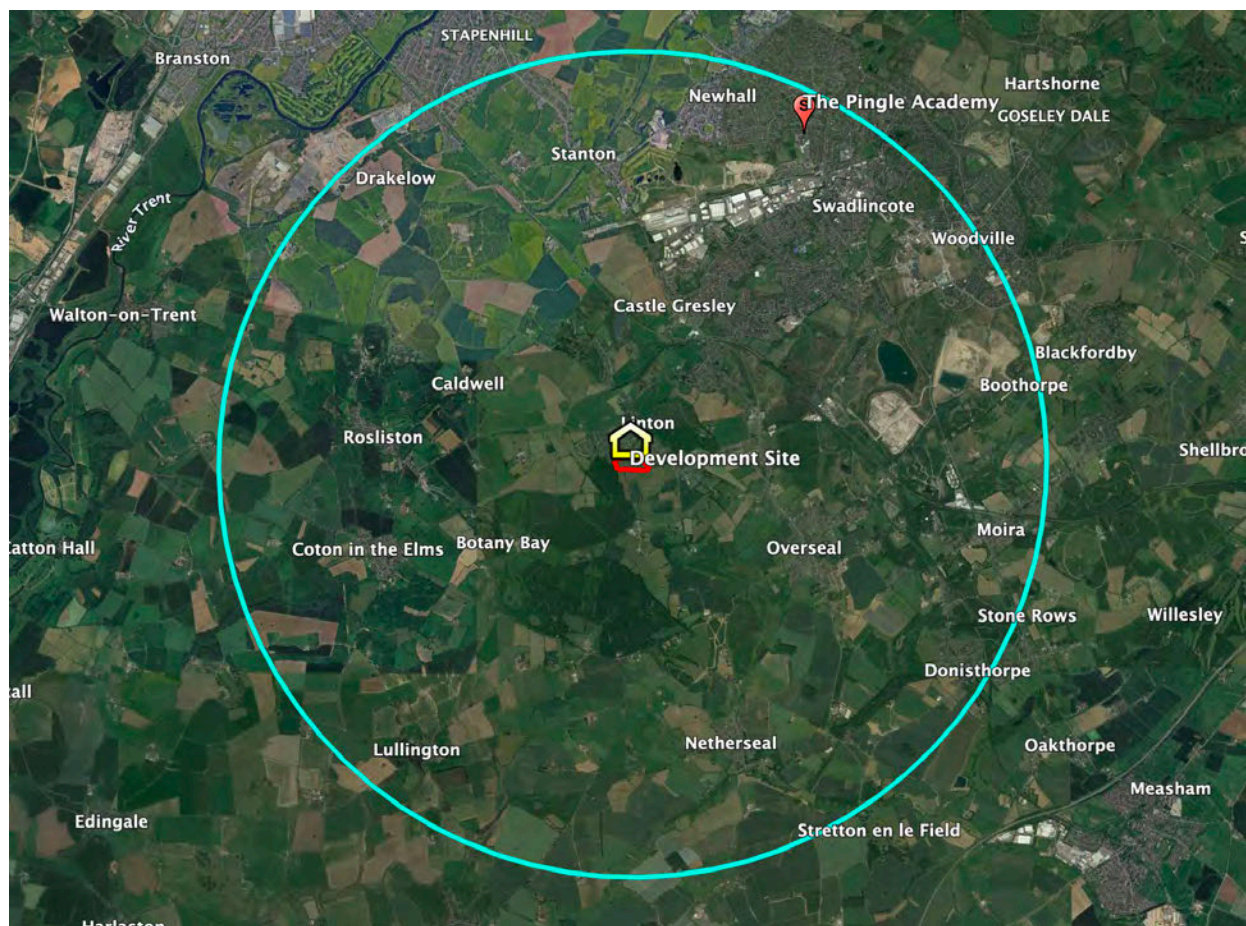
What the above demonstrates is that due to forecast falling rolls across the area, and that the local school to this development accepts a large number of pupils from outside of Linton, that it is very unlikely that an expansion project will be necessary to accommodate the pupils living on this development site. However, if it can be demonstrated that additional provision is required, the local school is well placed to be able to grow in size without the need for land acquisition.

There is evidently no Primary School related reason for this development not to progress.

Secondary Education

There is one state funded school accommodating Secondary School aged children within a three-mile radius of the development site. The school is located within the DCC administrative area, and is organised in a Planning Area with two further Swadlincote schools.

The school in relation to the development site can be seen below in Map 7:



Map 7: Schools in relation to the development site

The latest school roll data in the public domain can be seen below in Table 7:

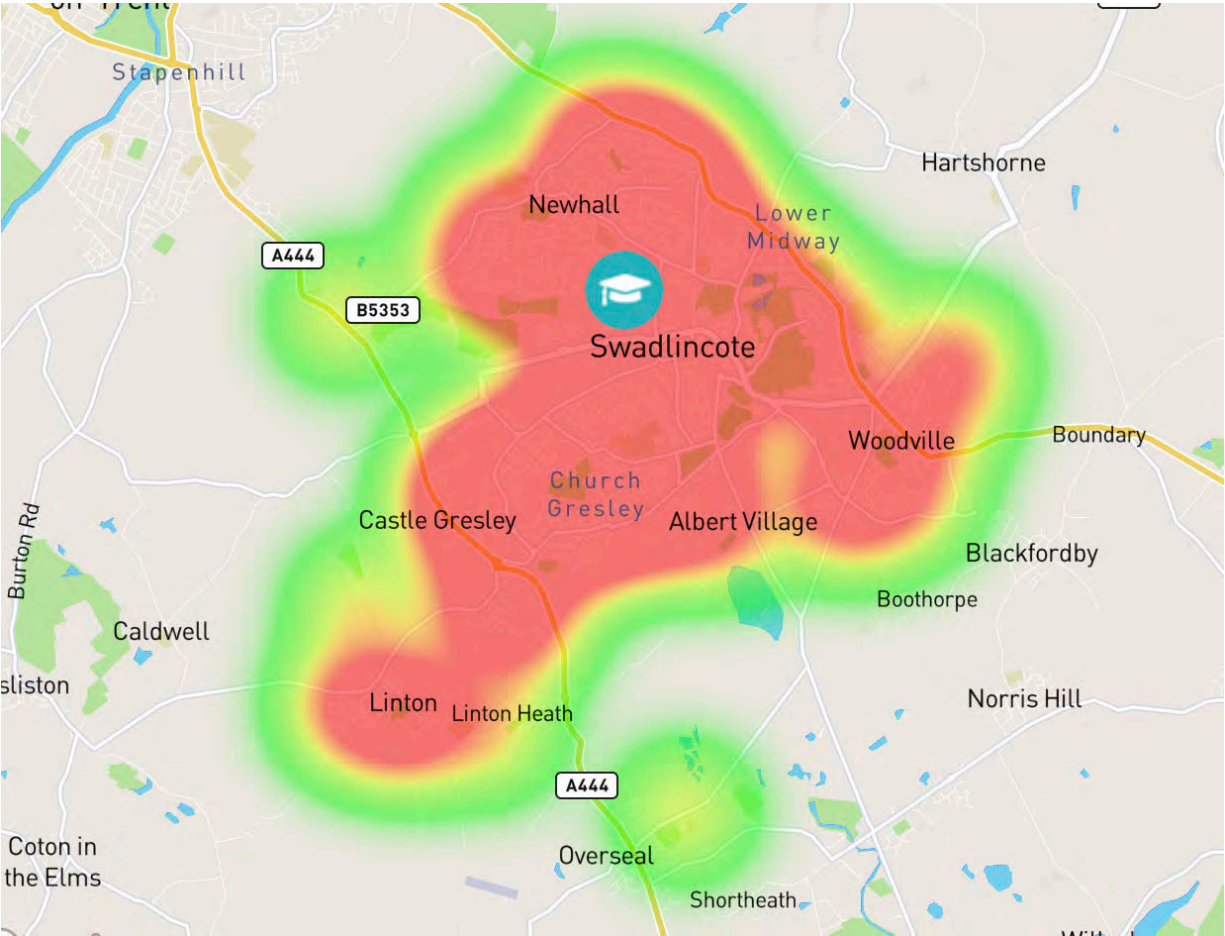
Secondary School Name	Postcode	LA Name	Distance (miles)	Capacity	PAN	NoR 7-11	Yr 7	Yr 8	Yr 9	Yr 10	Yr 11	Post 16
The Pingle Academy	DE11 0QA	Derbyshire	3.5	1,376	240	1,196	232	227	225	275	237	231
TOTAL				1,376	240	1,196	232	227	225	275	237	231
Surplus							8	13	15	-35	3	
Available Surplus %							3%	5%	6%	-15%	1%	

Table 7: School Roll Data (January 2023)

PAN = Planned Admission Number; NoR = Number on Roll

The closest school to the proposed new houses is The Pingle Academy. This is an 8FE Secondary School approximately 3.5 miles from the proposed new houses. The school, as of the previous academic year, had spare capacity in all but one Year Group, and was operating close to its full capacity due to a bulge class in Year 10 (the current Year 11).

The school accommodates pupils from Linton, and then across Swadlincote, as shown in the Map below:



Map 8: The Pingle Academy Catchment Area Heat Map

While the school is close to full, that is not the whole story. There are three Secondary Schools in Swadlincote that have a combined capacity of 3,151 pupil places:

Secondary Planning Area	School Name	Time Period	Primary Capacity	Secondary Capacity
8300115	William Allitt School	202122	0	945
8300115	The Pingle Academy	202122	0	1376
8300115	Granville Academy	202122	0	830

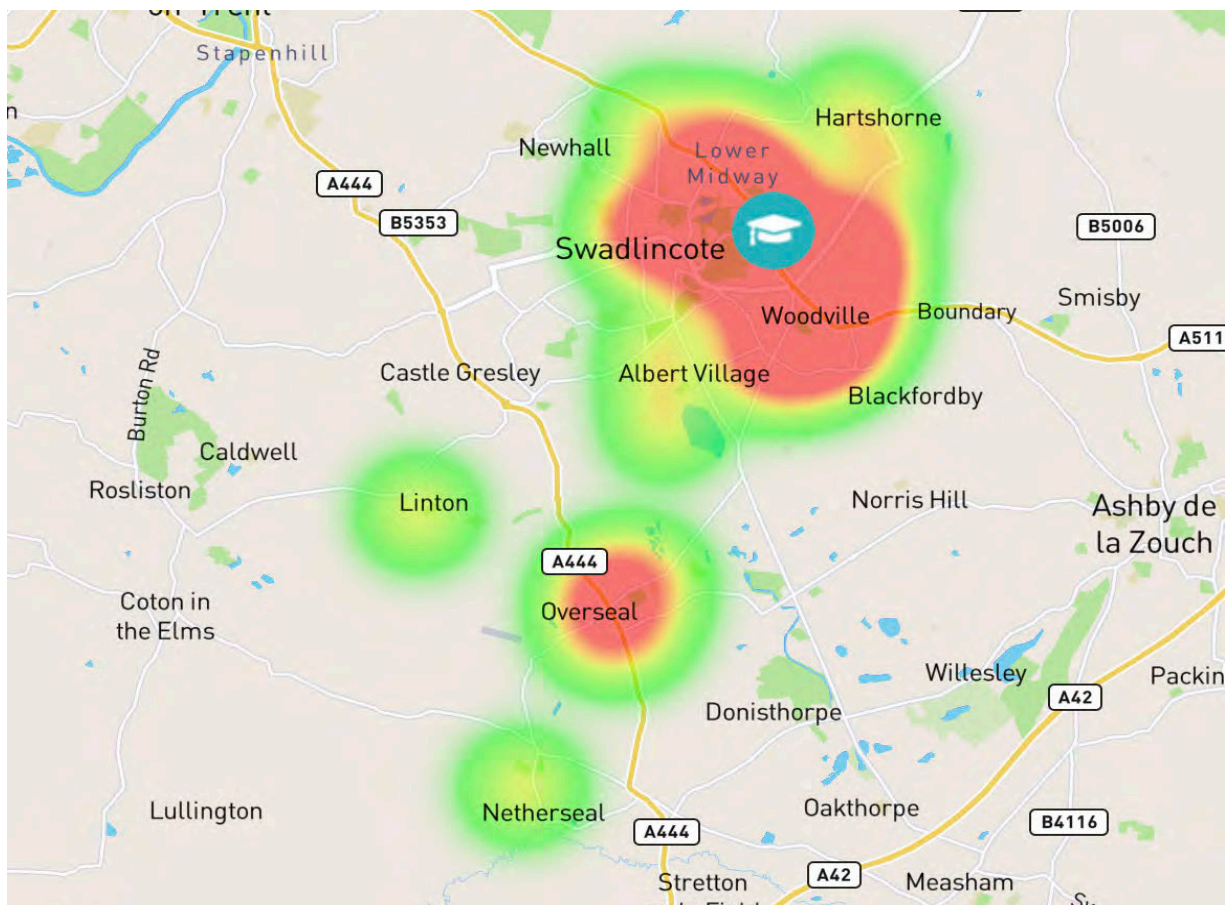
Table 8: Secondary Swadlincote Planning Area Schools

In the 2022/23 academic year, the three schools had a combined roll of 2,845 pupils. However, by the 2029/30 academic year, the roll at the schools is expected to fall to 2,559, which will be 592 spare places:

LA name	Year	Planning Area Code	Planning Area Name	Planning Area Phase	nc Year Group	Pupil Forecast and 20-21 Actuals
Derbyshire	202324	8300115	Secondary Swadlincote	Secondary	Secondary total	2653
Derbyshire	202425	8300115	Secondary Swadlincote	Secondary	Secondary total	2636
Derbyshire	202526	8300115	Secondary Swadlincote	Secondary	Secondary total	2634
Derbyshire	202627	8300115	Secondary Swadlincote	Secondary	Secondary total	2616
Derbyshire	202728	8300115	Secondary Swadlincote	Secondary	Secondary total	2611
Derbyshire	202829	8300115	Secondary Swadlincote	Secondary	Secondary total	2585
Derbyshire	202930	8300115	Secondary Swadlincote	Secondary	Secondary total	2559

Table 9: DCC SCAP Forecasts

This spare capacity far exceeds the child yield of this development. What it also demonstrates is that if Linton Secondary School number grow, pupils can be allocated a school place at The Pingle Academy, and pupils in Swadlincote can be allocated a place at one of the alternative schools in Swadlincote, all of which serve the same area, as shown below with the example of Granville Academy:



Map 9: Granville Academy Catchment Area Heat Map

Essentially, admissions can shuffle to accommodate the demand. What is evident is that by the end of the decade, there is forecast to be sufficient capacity in Secondary Schools to accommodate the yield from almost 3,000 new dwellings. This means that Secondary Education planning obligations will not meet the tests of CIL, and also that there is no Secondary School related reason for this development not to progress.

Special Education Needs and Disabilities

It is very difficult to ascertain whether any children with SEN would come forward from this development. If direct need cannot be identified, then a planning obligation is not required. When calculating the requirement for mainstream Primary and Secondary Education needs of children that are likely to be located in the proposed housing development, there is a plausible link between the numbers of places that are likely to be required, and the local school(s) that will be, in the main, asked to accommodate these children. The link between the development, the requirement, and the location of the schools is direct, and proportionate. Additionally, the arrangements for funding additional mainstream school places includes the mechanism to advise the funding body (ESFA) of the numbers of pupil places covered by S106 contributions that are then discounted from the allocation, to avoid double funding.

In order for a SEN contribution to fulfil the tests of Regulation 122 it would be necessary for the developers to fund the individual places of pupils proven to be located at housing within the new development at a school within the Derbyshire administrative area. The developers, however, are unable to investigate the number of SEN pupils who may be located on this development, as to do so would be a clear invasion of privacy of such families. The contribution cannot be deemed fairly related and proportionate without this. Plus, the EHC Plan for a child with SEN names the 'school' identified by a gamut of experts within the authority and externally (health in particular) plus the parents/guardians. No one can anticipate which institution will be named. Again, it falls at the CIL Reg 122 hurdle.

As outlined above, it is very difficult to establish whether any pupils with SEN will be located on this development. EFM has previously agreed with Warwickshire County Council ("WCC") that the Section 106 agreement freezes any SEN contribution until WCC has named a child resident on the development to which the contribution can be allocated. It seems the only lawful way for the rules to work. This could be an appropriate approach if the Education Authority would agree, as there is no certainty that any pupils with SEN will be on this site.

If DCC can demonstrate that there is a shortfall of available provision, planning obligations may be justifiable.

What should also be mentioned is that the DfE states in their latest PPG on securing education planning obligations (August 2023):

We advise you to seek developer contributions for expansions required to sixth form and special educational needs and disabilities (SEN) provision, commensurate with the need arising from the development.

This demonstrates that the best practice guidance supports the requesting of SEN contributions if they are needed, as does the Planning Inspectorate.

Government statistics suggest that in 2023 4.3% of children in the UK have an EHC plan/Statement of SEN (up from 4% in 2022). 13% of the UK's school age child population has some form of SEN but no EHC plan. Nationally, there is not sufficient SEN provision to accommodate the demand, which is growing.

On the basis of the above, while the justification for Primary and Secondary School planning obligations are very unlikely to meet the tests of CIL Reg 122 (2) (i.e. they are not necessary to make the development acceptable in planning terms), it will be difficult to refute the request for SEN contributions, due to the general lack of capacity, and growing need.

Please let me know if you need anything further, or wish to discuss.

