



The Planning Inspectorate

Report to South Derbyshire District Council

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

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Planning and Compulsory Purchase Act 2004

(as amended)

Section 20

Report on the Examination of the South Derbyshire Local Plan Part 2

The Plan was submitted for examination on 24 January 2017

The examination hearings were held between 25 and 27 April 2017

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Abbreviations used in this report

AA	Appropriate Assessment
DCLG	Department for Communities and Local Government
DPD	Development Plan Document
DtC	Duty to Co-operate
HMA	Housing Market Area
HRA	Habitats Regulations Assessment
LDS	Local Development Scheme
LP	Local Plan
MM	Main Modification
NPPF	National Planning Policy Framework
NP	Neighbourhood Plan
OAN	Objectively Assessed Need
PPG	Planning Practice Guidance
SA	Sustainability Appraisal
SCI	Statement of Community Involvement
SDLPP1	South Derbyshire Local Plan Part 1
SDLPP2	South Derbyshire Local Plan Part 2
SHLAA	Strategic Housing Land Availability Assessment
SHMA	Strategic Housing Market Assessment

Non-Technical Summary

This report concludes that the South Derbyshire Local Plan Part 2 (SDLPP2) provides an appropriate basis for the planning of the District, in conjunction with the South Derbyshire Local Plan Part 1 (SDLPP1), provided that a number of main modifications (MMs) are made to it. South Derbyshire District Council has specifically requested me to recommend MMs necessary to enable the Plan to be adopted.

The MMs all concern matters that were discussed at the examination hearings and have been subject to public consultation over a six-week period. In two cases I have amended their detailed wording. I have recommended their inclusion in the Plan after considering the representations made in response to consultation on them.

The Main Modifications can be summarised as follows:

- Amendments to Policy SDT1 and its explanatory text to ensure it is consistent with national policy in respect of the presumption in favour of sustainable development and with the spatial strategy in SDLPP1 in clearly defining the consideration of development within and outside of settlement boundaries;
- Alterations to Policy H23 and the site specific policies H23A-H23N for the non-strategic housing allocations to ensure the SDLPP2 is consistent with national policy and the spatial strategy in the SDLPP1 in providing for the district's housing requirements.
- Amendments to Policies BNE5 and H24-H28 and their explanatory text and to the supporting text to Policy BNE6 to ensure the SDLPP2 is effective and consistent with national policy and the spatial strategy in SDLPP1 in securing sustainable development within the Rural Areas of the district;
- Changes to Policy BNE7 and its supporting text to align the assessment of development affecting trees, woodlands and hedgerows with the relevant regulations and national guidance;
- Alterations to Policy BNE8 and its explanation to ensure the designation of Local Green Spaces and management of development within them is consistent with national policy;
- Amendments to Policy BNE10 to ensure the management of development affecting heritage assets is effective and consistent with national policy;
- Changes to Policies BNE9 and BNE11 and the supporting text to BNE11 to ensure they are effective in guiding decision making on proposals for advertisements and shopfronts;
- Alterations to Policy BNE12 to ensure it is effective and consistent with the SDLPP1 in managing development on the former power station sites at Drakelow and Willington;
- Changes to Policies RTL1 and RTL2 and the supporting text to RTL1 to ensure that the management of development for main town centre uses within Swadlincote Town Centre and the district's retail hierarchy is consistent with national policy and with permitted development rights.
- Amendments to Policy INF12 and its explanation to ensure the allocation of land for secondary school facilities in the southern Derby area is compliant with national policy on the Green Belt;
- Incorporation of a new Policy INF13 to support the comprehensive development of the Infinity Garden Village proposals.

Introduction

1. This report contains my assessment of the South Derbyshire Local Plan Part 2 (SDLPP2) in terms of Section 20(5) of the Planning & Compulsory Purchase Act 2004 (as amended). It considers first whether the Plan's preparation has complied with the duty to co-operate. It then considers whether the Plan is sound and whether it is compliant with the legal requirements. The National Planning Policy Framework (NPPF) (paragraph 182) makes it clear that in order to be sound a Local Plan should be positively prepared, justified, effective and consistent with national policy.
2. The starting point for the examination is the assumption that the local planning authority has submitted what it considers to be a sound plan. The SDLPP2, submitted in January 2017 (C.1), is the basis for my examination. It is the same document as was published for consultation in October 2016.

Main Modifications

3. In accordance with section 20(7C) of the 2004 Act the Council requested that I should recommend any main modifications (MMs) necessary to rectify matters that make the Plan unsound and thus incapable of being adopted. My report deals with the MMs that are needed to make the Plan sound. It explains why the recommended MMs, all of which relate to matters that were discussed at the examination hearings, are necessary. The MMs are referenced in bold in the report in the form **MM1**, **MM2**, **MM3** etc, and are set out in full in the Appendix.
4. Following the examination hearings, the Council prepared a schedule of proposed MMs and carried out sustainability appraisal (SA) of them. The MM schedule was subject to public consultation for six weeks. I have taken account of the responses received in coming to my conclusions in this report. In this light of these, I have made two small amendments to the detailed wording of the main modifications. Neither of the amendments significantly alters the content of the main modifications as published for consultation or undermines the participatory processes and sustainability appraisal that has been undertaken. I have highlighted these amendments in the report.

Policies Map

5. The Council must maintain an adopted policies map which illustrates geographically the application of the policies in the adopted development plan. When submitting a local plan for examination, the Council is required to provide a submission policies map showing the changes to the adopted policies map that would result from the proposals in the submitted local plan. In this case, the submission policies map comprises the set of plans identified as the South Derbyshire Local Plan Part 1 & 2 Proposals Maps (documents C.5-7).
6. The policies map is not defined in statute as a development plan document and so I do not have the power to recommend main modifications to it. However, a number of the published MMs to the Plan's policies require further corresponding changes to be made to the policies map. These further changes to the policies map were published for consultation alongside the MMs (as part of Policy Map Modifications).

7. When the Plan is adopted, in order to comply with the legislation and give effect to the Plan's policies, the Council will need to update the adopted policies map to include all the changes proposed in the SDLPP2 and the further changes published alongside the MMs.

Assessment of Duty to Co-operate

8. Section 20(5)(c) of the 2004 Act requires that I consider whether the Council complied with any duty imposed on it by section 33A in respect of the Plan's preparation. Section 33A requires that in preparing the Plan, the Council must engage constructively, actively and on an on-going basis with bodies prescribed in Regulation 4 of the Town and Country Planning (Local Plans) (England) Regulations 2012, on strategic matters. 'Strategic matters' are defined as sustainable development which would have a significant impact on at least two local planning authority areas or which is a county matter, for example education or transport in a two-tier local authority area.
9. The Council has provided a Duty to Co-operate Compliance Statement (E.25), which indicates that the strategic matters impacting on cross boundary issues have been addressed in the SDLPP1. That is apart from the allocation of land for secondary education facilities which is dealt with in Policy INF12 of the SDLPP2. On this the Council confirms that it has been working jointly with Derbyshire County Council and Derby City Council for the past 4 years on a strategy to address secondary school places to accommodate growth in the southern Derby area.
10. A limited number of representations argued a failure of the duty to co-operate in respect of specific settlement boundaries and non-strategic housing sites. However, I am not persuaded that these raise 'strategic matters' to which the legal duty under section 33A applies. I have therefore dealt with these concerns as part of my assessment of soundness below.
11. A new policy, INF13, was proposed as part of the Schedule of Proposed Main and Minor Modifications submitted with the Plan (C.8). It deals with cross boundary collaboration in the southern Derby area on the development of the Infinity Garden Village proposal and its supporting infrastructure. Accordingly, I have also considered the extent to which the duty has been complied with in respect of this proposal. Although the policy was introduced into the SDLPP2 at a late stage in the plan process, the reasons for this are justified. It is evident that the Council has been working collaboratively on these proposals with the relevant Regulation 4 bodies, including Derby City Council, the County Council and Highways England, during the preparation of the SDLPP2, but was unable to include a policy in the Pre-submission Plan due to the timing of the DCLG announcement on Garden Village bids.
12. Overall, I am satisfied from the evidence provided that on all strategic matters the Council has engaged constructively, actively and on an on-going basis in the preparation of the SDLPP2. The duty to co-operate has therefore been met.

Assessment of Soundness

Background

13. The South Derbyshire Local Plan has been prepared in two parts. Part 1 (SDLPP1), which was adopted in June 2016, sets out the overall vision and spatial strategy for the district up to 2028. It contains strategic policies and site allocations, which define the quantum and distribution of growth and the hierarchy of settlements where development is to take place across South Derbyshire. Part 2 of the Local Plan (SDLPP2) is described in the SA Main Report (E.1) as a daughter document of the SDLPP1. It contains non-strategic allocations and more detailed development management policies. Its key purposes, as set out in the LDS (C.33), are to define settlement boundaries, allocate non-strategic housing sites as part of the housing strategy in the SDLPP1 and provide detailed policies on retail development, conservation and countryside, in conformity with the SDLPP1.

Main Issues

14. Taking account of all the representations, the written evidence and the discussions that took place at the examination hearings I have identified three main issues upon which the soundness of the Plan depends. Under these headings my report deals with the main matters of soundness rather than responding to every point raised by representors.

Issue 1 – Settlement Boundaries

Whether the proposed settlement boundaries in the SDLPP2 have been positively prepared, are justified and will be effective having regard to the spatial strategy in the SDLPP1 and the development requirements of the district; and whether they are consistent with national policy in enabling the delivery of sustainable development.

15. Policy S1 of the SDLPP1 sets out the overall spatial strategy for South Derbyshire of sustainable growth to meet the district's housing, employment, infrastructure and tourism needs, whilst protecting, conserving and enhancing its heritage assets, landscape and rural character. Policy S4 defines the housing strategy, to provide for at least 12,618 additional dwellings to 2028, led by strategic allocations on the edges of Derby and Burton, in Swadlincote and the Key Service Villages of Aston on Trent, Etwall, Hatton, Hilton and Repton, plus 600 dwellings on a series of non-strategic sites to be identified in the SDLPP2. Paragraph 5.17 of the SDLPP1 recognises that other sites will be needed for development over and above allocations throughout the lifetime of the Plan, for example, to meet the windfall element (450 dwellings) of the housing land supply in Table 3 of the SDLPP1. To that end Policy H1 defines a hierarchy of settlements, where development outside of allocations will be directed according to the size and role of each settlement.
16. A key part of the strategy to accommodate non-allocated development across the settlement hierarchy, expressed in the wording of Policy H1, is the role of settlement boundaries to define where development is considered to be appropriate. Alternative strategies to the use of settlement boundaries were considered by the Council as part of the SA, including the use of criteria-based policies. Whilst a criteria-based approach may be viable, it is evident that the

use of settlement boundaries to define where development would be acceptable is fully consistent with the spatial strategy as expressed in Policy H1. Settlement boundaries also offer greater certainty over the location of development. They also provide stronger protection of the surrounding countryside against urban encroachment, which is an important part of the spatial strategy for South Derbyshire expressed in Policy S1.

17. The Council has undertaken a thorough review of the settlement boundaries established in the 1998 Local Plan. Boundaries have been redrawn to define the built limits of settlements, in order to distinguish between the urban area of a settlement and the countryside. This is consistent with the role and purpose of settlement boundaries as part of the spatial strategy described above.
18. A number of representations expressed concern that the proposed boundaries have been drawn too tightly to allow for the delivery of district's future housing requirements. As such it was argued that they will constrain growth and fail to accommodate the rolling 5-year land supply required by paragraph 47 of the NPPF. However, although tightly drawn around the built up areas of settlements, the boundaries have been defined to incorporate existing housing commitments. These include both implemented and unimplemented planning permissions, all of the housing sites allocated in the SDLPP1 and the non-strategic housing sites allocated by Policy H23 in the SDLPP2. The Council also identified a number of areas of 'white land' and infill plots within settlements where further housing development could come forward. In addition, Policy H1 allows for exceptions or cross subsidy sites outside of but adjacent to settlement boundaries. Policies H24-H28 and BNE5 also allow for infill housing, conversions and other forms of housing in rural areas.
19. Therefore, in combination with the suite of policies guiding development outside of settlements, there is a strong likelihood that the boundaries proposed will provide for sufficient opportunities for housing development to meet the SDLPP1 requirements in full over the lifetime of the Plan and ensure the choice and competition in the market for housing sought by paragraph 47 of the NPPF. Accordingly, it is clear that the settlement boundaries proposed in the SDLPP2 are justified and would be effective in delivering the overall spatial strategy of the Plan.
20. A further issue raised in representations concerns the consistency of settlement boundaries with the NPPF, in particular, the presumption in favour of sustainable development. It is suggested, that settlement boundaries prevent otherwise sustainable development on the edge of settlements from coming forward and do not offer the flexibility to meet changing circumstances, for example if the housing land supply falls below 5 years. However, paragraph 14 of the NPPF defines sustainable development, in the context of the presumption, as development that accords with an up to date development plan. It is consistent with the positive approach sought by paragraphs 14 and 182 of the NPPF, for the Plan to define settlement boundaries in such a way as to accommodate sufficient allocated sites and windfall opportunities to meet the district's objectively assessed needs, but exclude sites which are otherwise part of the open land or countryside around the edge of settlements and not required to meet those needs. Such an approach is consistent with sustainable development in ensuring the needs of the district are met without causing unnecessary harm to the rural landscape which forms an important aspect of

the character of South Derbyshire. It is also consistent with paragraph 17 of the NPPF which expects planning to meet the development needs of an area, whilst taking account of the different roles and character of areas, recognising the intrinsic character and beauty of the countryside.

21. Nevertheless, to ensure the effectiveness of the Plan to adapt to rapid change which might lead to a shortfall in housing land supply, main modifications are necessary to Policy BNE5 (**MM36**) and its explanatory text (**MM37**). These modifications include and justify a new criterion (iii) in the policy to allow for development outside of settlement boundaries where it would be unavoidable, such as the Council being unable to demonstrate a 5-year land supply. Such an amendment would add an appropriate degree of additional flexibility to the Plan to adapt to changing circumstances and meet the district's development needs, in a way which would be consistent with sustainable development, without compromising the overall spatial strategy of the Plan.
22. With regard to the individual settlement boundaries, the principles and criteria used to review these in the Settlement Boundary Topic Paper (E.43) are soundly based, logical and justified in defining the built limits of the settlements and the land to be included or excluded. A number of boundaries were challenged in written representations, in discussion at the hearings and in further representations on the main modifications post hearing. I have considered each one of these. Most of the changes sought concern fields and open land on the edge of settlements which relate more to the surrounding countryside than the built form of the settlement or would include development which is physically detached from the settlement. This includes sites promoted at Aston, Church Gresley, Eggington, Etwall, Findern, Hilton, Milton, Lees, Overseal, Repton, Rosliston, Shardlow and Stanton by Bridge. It is entirely logical that these sites should not be included within the relevant settlement boundaries.
23. The Plan is also justified in excluding curtilages which if developed could harm the character of the settlement. This applies to the garden land between Trentside and Cobster Cottages at Swarkstone, the land to the rear of Marcella House at Church Broughton, the garden to Hillybank in Newton Solney and the parcel of land at Blackwell Lane in Melbourne. Likewise, it is logical that the settlement boundary at Newhall on the edge of Swadlincote does not include properties which lie within the Green Belt, where there are no exceptional circumstances to justify altering the Green Belt boundary.
24. It has been proposed in representations that a settlement boundary should be defined for Drakelow village, which is listed as a Rural Village in the settlement hierarchy in Policy H1. Paragraph 2.2 of the explanatory text to Policy SDT1, makes clear that not all settlements within the hierarchy have settlement boundaries, but only those where there is a compact group of dwellings. This is justified where buildings are too dispersed and applying a settlement boundary would result in large areas of white land being included for infill development which may otherwise harm the character of countryside.
25. In the case of Drakelow, it does not comprise a compact group of dwellings, but a ribbon of development extending from the edge of Burton. On its own there is not a strong case for defining a settlement boundary for the village. Planning permission exists for the development of 75 new homes on land to the rear of the dwellings fronting Burton Road and the village sits adjacent to

the strategic housing allocation on the former Drakelow power station site (Policy H6). The suggestion made is that a settlement boundary should be defined for the whole of this area. However, the wider site is likely to develop as an extension to Burton rather than a separate settlement. The SDLPP2 does not define settlement boundaries for the housing growth sites on the edge of Derby. It would be consistent to apply the same principle here. Neither site would be hindered from coming forward by not being included within a settlement boundary, nor would the SDLPP2 be rendered unsound without a boundary to Drakelow. It may be that a future review of the Plan would provide an opportunity to consider the settlement boundary in this location once development has taken place.

26. There are two anomalies in the settlement boundaries to Swadlincote and Hilton, which require correction for the plan to be justified. Part of the H2 housing site allocation in the SDLPP1 on land to the east of Burton Road has been excluded from the settlement boundary on the western side of Swadlincote. In addition, two small parcels of land forming part of the H23C housing allocation on land at Derby Road have been excluded from the settlement boundary on the north side of Hilton. If left unchanged, these anomalies would be inconsistent with Principle 3(a) of the criteria in the Settlement Boundary Topic Paper, which expects that sites allocated for housing will be included within settlement boundaries. Modifications have been proposed by the Council to rectify this (PM6 and PM7 in the schedule of Policy Map Modifications). Since these involve changes to the Policies Map, which is not a development plan document, they are not before me for examination. However, in so far as they would ensure allocated housing sites are incorporated within the settlement boundary in full, I support the need for these modifications.
27. A further settlement boundary change was proposed to include additional land to the east of the H2 housing allocation off Burton Road at Swadlincote, which is subject to a planning application for residential development. However, this is not part of an allocated site or an existing housing commitment. Therefore, it would be inconsistent to include this land within the settlement boundary, applying the criteria in the Settlement Boundary Topic Paper.
28. In conclusion, I am satisfied that the criteria used to define settlement boundaries have been consistently and appropriately applied. Other than the modifications to the settlement boundaries for Swadlincote and Hilton discussed above, I am not persuaded that any further settlement boundary changes are required to make the SDLPP2 sound.
29. Overall, on the basis of what I have read, seen and heard, I conclude that the use of settlement boundaries in the SDLPP2 to define where non-allocated development would be acceptable in principle is justified as part of the spatial strategy of the Plan. I find that the proposed settlement boundaries have been positively prepared, are justified and, subject to the modification to Policy BNE5 and the boundary changes at Swadlincote and Hilton, will be effective in delivering the spatial strategy in the SDLPP1 and the development requirements of the district over the plan period. They are also consistent with national policy in enabling the delivery of sustainable development.

Issue 2 – Non-Strategic Housing Allocations

Whether the proposed non-strategic housing allocations are consistent with the housing strategy in SDLPP1, in terms of being sufficient to meet the Plan's non-strategic housing requirement and justified as the most appropriate distribution and selection of sites; and whether the sites are deliverable and developable and otherwise consistent with national policy.

30. Policy S4 of the SDLPP1 defines the housing strategy of the Local Plan. It makes provision for at least 12,618 additional dwellings, principally through strategic allocations in Part 1, with 600 dwellings to be allocated on non-strategic sites (of less than 100 dwellings) in the SDLPP2. It is clear that the role of the SDLPP2 in terms of the housing strategy is to allocate non-strategic sites for at least 600 dwellings, which are capable of meeting that part of the housing requirement within the plan period.
31. Fourteen sites are proposed in Policy H23, which are estimated to provide for around 701 dwellings at densities consistent with their surrounding settlement character. This would allow a buffer of around 17% over and above the housing requirement for non-strategic allocations in Policy S4. Therefore, in quantitative terms the 14 sites make adequate provision, with sufficient flexibility to accommodate changing circumstances, such as the non-delivery of any of the sites. Little evidence has been presented to suggest that the number and capacity of sites allocated is insufficient to meet the non-strategic housing requirement.
32. It was argued in written representations and at the hearings that further housing sites are required, because the district is failing to deliver sufficient homes to meet its housing requirement in SDLPP1. However, the courts are clear that the NPPF does not require a development plan document dealing with the allocation of sites for an amount of housing provision agreed to be necessary, to address, also, the question of whether further housing provision will need to be made¹. Therefore, addressing housing requirements beyond the need to allocate 600 homes on non-strategic sites expected in Policy S4 is not a matter for this examination.
33. In terms of the distribution of sites and housing across the settlement hierarchy, the SA considered three broad options. The proposed strategy apportions the majority of non-strategic housing growth to Swadlincote and the Key Service Villages, which offer the widest range of services and facilities. Only 2 sites totalling 10% of the overall requirement are allocated in Local Service and Rural villages, which will limit the impact of the SDLPP2 in sustaining smaller rural communities. However, I acknowledge that deliverable opportunities for housing developments of up to 99 dwellings are likely to be limited within the smaller villages of the district. The housing needs of such communities are more likely to be met through smaller scale infill developments within settlement boundaries. On this basis I am satisfied that the proposed distribution of non-strategic sites is consistent with Plan's spatial strategy and with the NPPF's expectation that in rural areas housing should be located where it will maintain the vitality of rural communities.

¹ Oxted Residential v Tandridge DC [2016] EWCA Civ 414

34. Inevitably the process for selection of sites attracted most objections from those promoting alternative development opportunities. However, from the evidence provided in the SA, the Council's response to my initial questions (EX3) and the discussion at the hearings, I am satisfied that the site selection process has been thorough, rigorous and proportionate, with decisions on preferred sites adequately justified. A total of 150 potentially suitable sites were appraised, from which 14 were selected for allocation based on an appropriate range of economic, social and environmental criteria, as well as their location, viability and availability. I recognise that within a pool of 150 sites, there are likely to be some which score similarly against the criteria. However, ultimately the SDLPP2 is only required to allocate sufficient land to deliver 600 dwellings on non-strategic sites. I visited all of the proposed sites and a good number of those not selected by Council. I found the sites proposed for allocation to be well chosen. They are all within or on the edge of sustainable settlements, accessible to local facilities, located where the impact of development on the landscape and countryside would be minimised and could be mitigated, and not constrained by access issues, flood risk or other evident limitations. I am not persuaded that any of the sites which were not selected would perform better than those selected in terms of the relevant criteria. For all of these reasons, therefore, I conclude that the selection of the proposed non-strategic housing sites is justified and appropriate.
35. In terms of deliverability, the Supplement to the Housing Supply Paper (E.65) projects that 13 of the sites will be delivered in full within the next 5 years and one within 6 years. The facts are that 3 of the sites are already under construction; a further 4 have outline permission and are due to come to the market shortly; and of the remaining 7, on all except two, the Council confirmed it has been in discussions with either landowners or developers in the lead up to the submission of planning applications. Each site will provide affordable housing in line with the requirements of Policy H21, either on or off site, other than site 23L at Scropton, which is below the policy threshold. I read or heard little in the way of evidence of site constraints or viability issues to suggest there is anything which might prevent the delivery of any of the sites over the next 5-6 years in line with the Council's trajectory and certainly within the plan period. On this basis, I am satisfied that the sites are deliverable and developable. Therefore, I conclude there is no need for additional or replacement non-strategic housing sites to be allocated to meet the housing requirements of the Plan.
36. Policies 23A-23N include a number of site specific requirements for each site, in terms of design, mitigation and on or off site infrastructure contributions, which are justified. The Council proposed some modifications to these most of which are to correct details, which amount to additional modifications not necessary for the Plan to be sound. Two modifications are proposed for the land at Derby Road, Hilton (Policy H23C). Site specific mitigation may be necessary to safeguard the notified interest features at the Hilton Gravel Pits SSSI (**MM10**), which is necessary for soundness to satisfy the expectations in paragraph 118 of the NPPF to conserve biodiversity. A boundary change is also proposed (PM1 in the Policy Map Modifications) to reduce landownership constraints and ensure site H23C is deliverable; this would not significantly reduce the capacity of the site. Although the Policies Map is not before me for examination, I support the need for this modification.

37. With regard to the land at Milton Road in Repton (Policy 23G), Repton Parish Council suggested that the site boundary be drawn along the public right of way running east-west across the site to reflect the fact that the land to the north of the footpath is to be retained as open space. However, this is a site specific requirement in the policy, which provides greater protection for the land to remain open than if it were shown as 'white land' on the policies map. It would also be inconsistent with other housing allocations where public open space to be provided falls within the site boundaries.
38. Overall, on the basis of what I have read, seen and heard at all stages of the examination process, I conclude that the proposed non-strategic housing allocations are consistent with the housing strategy in SDLPP1, being sufficient to meet the Plan's non-strategic housing requirement and justified as the most appropriate distribution and selection of sites. Subject to the main modification to the site specific criteria for the site at Derby Road, Hilton (H23C), I also find that the sites proposed are deliverable and developable and consistent with national policy.

Issue 3 – Policies

Whether the individual policies are positively prepared, clear, justified, consistent with the SDLPP1 and national policy, and likely to be effective in ensuring sustainable development?

Settlement Boundaries and Development in Rural Areas – Policies SDT1, H24-28, BNE5 and BNE6

39. I have considered together the suite of policies which will guide development in areas outside of settlement boundaries. Although not wholly in Plan order, it is logical to deal with them as a group here given their interdependency.
40. The role of Policy SDT1 and its supporting text is to explain how the settlement boundaries defined in Appendix A to the SDLPP2 and in the Policies Map will function in the management of development in and outside settlements in the district. It operates primarily in conjunction with Policy H1 in the SDLPP1 and Policy BNE5 in the SDLPP2. Policy H1 defines the scale and distribution of housing development permitted to take place across the settlement hierarchy and in the Rural Areas outside of settlements. Policy BNE5 sets out the overarching considerations to be applied to development in areas outside of settlement boundaries. A series of other policies, including H22, E7 and INF10 in the SDLPP1 and Policies H24, H25, H26, H28 and BNE6 in the SDLPP2, provide for different types of residential, agricultural, employment and tourism development within rural areas of the district.
41. As drafted in the Pre-submission version of the SDLPP2, Policies SDT1 and BNE5 are unsound in a number of important respects. Firstly, Policy SDT1 and its supporting text in paragraphs 2.1 and 2.3 establish a presumption in favour of development on land within settlement boundaries. However, this is inconsistent with the presumption in favour of sustainable development as expressed in paragraph 14 of the NPPF, which is not limited to development within settlements. Whilst it may not have been the Council's intention for the 'presumption' in paragraphs 2.1 and 2.3 to be read in this way, the use of the term in the reasoned justification for this overarching policy on development across the district risks misinterpretation as a paragraph 14 'presumption'. Accordingly, for soundness, the presumption in favour of development should

be deleted and replaced by alternative wording which supports development in principle within settlement boundaries.

42. Secondly, Policies SDT1 and BNE5 define areas outside of the settlement boundaries as 'countryside'. The term is repeated in various places in Policies H24, H25, H26 and H28 and their supporting text in guiding proposals for replacement dwellings, residential garden land, rural workers dwellings and residential conversions outside of settlement boundaries or in the countryside. However, this is inconsistent with Policy H1, which gives a policy definition to areas outside of the settlements in the hierarchy as 'Rural Areas'. I have read and heard much evidence on this point and the appropriate terminology to use. Whilst I agree that not all areas outside of settlements could be characterised as countryside or rural, with some sites in urban fringe or industrial uses, what is required is a consistent policy definition rather than a characterisation. On this basis, I have concluded that the term 'Rural Areas' established in Policy H1, as the adopted Part 1 policy, should take precedence. The definition of areas outside of settlement boundaries as 'Rural Areas', in Policies SDLT1 and BNE5 and elsewhere in the SDLPP2 is necessary to ensure consistency between the suite of policies in the Plan managing development in these areas and thereby to ensure an effective Plan.
43. Thirdly, as the overarching policies in the SDLPP2 for managing proposals for development in areas outside of settlement boundaries, Policies SDT1 and BNE5 fail to offer sufficient clarity and consistency in how proposals in these areas will be assessed. Policy SDT1 does not state how development outside of settlement boundaries will be considered. Whilst there is a reference to other policies in paragraph 2.4, it is unclear which policies or considerations would apply. A reference to Policy BNE5 is therefore necessary in Policy SDT1. Policy BNE5 itself provides effective guidance on infilling in rural areas and the assessment of impacts on landscape character, biodiversity and agricultural land. However, the Council acknowledged in its Proposed Modifications (C.8) that the criteria in Policy BNE5 allowing development where it is 'appropriate for its location in the countryside' or 'well related to a settlement' lack the necessary clarity to be effective in controlling development outside of settlement boundaries. I agree with this and confirm that for soundness these should be deleted and replaced by criteria defining the specific circumstances in which development in the Rural Areas should be allowed.
44. I have considered the alternative approaches to the wording of these two policies suggested in representations, including the desire for greater flexibility. I have concluded that modifications **MM1-5** and **MM35-37** will address the fundamental soundness issues with Policies SDT1 and BNE5 discussed above. They will ensure that the two policies are consistent with national policy, in particular with regard to the presumption in favour of sustainable development and development in rural areas and in recognising the intrinsic character and beauty of the countryside. The modifications will also ensure that Policies SDT1 and BNE5 will be consistent with the SDLPP1 strategy, operate with other policies to ensure the effective management of development outside of settlement boundaries and allow sufficient flexibility and opportunities to meet the district's housing requirements over the lifetime of the Plan. Accordingly, these modifications are necessary for the Plan to be sound. I have made a minor consequential change to MM37 by substituting 'justify' for 'constitute' in the last sentence of paragraph 4.3 of the explanation to Policy BNE5.

45. A series of other consequential main modifications are necessary to Policies H24 (Replacement Dwellings in Rural Areas), H25 (Rural Worker's Dwellings) and H26 (Residential Gardens within Rural Areas), their supporting explanations and the explanation to Policy H28 (Residential Conversions) and Policy BNE6 (Agricultural Development) so that they refer to the 'Rural Areas' and are otherwise consistent with Policy BNE5. These are set out in **MM22-26**, **MM32** and **MM38** and are necessary to ensure the above policies are effective when operated together with Policies BNE5 and SDT1.
46. Policy H26 seeks to ensure that changes of use to residential garden land in Rural Areas does not result in 'detrimental domestication'. In order to ensure this term is clearly understood and can be effectively applied in determining such proposals, modification **MM27** provides further explanation, which is necessary to adequately justify the policy.
47. Policy H27 sets out the considerations to be applied to residential extensions and householder development, such as outbuildings, annexes and boundary treatments. Although not exclusively a policy for development in rural areas, I have dealt with it here in Plan order for convenience. As drafted Policy H27 refers to the 'amenities' of adjoining properties, but the understanding of this term is not clear from either the policy or explanatory text, although I am advised it is addressed in a supplementary planning document which is not referred to in the text. The supporting text in paragraph 3.15 also contains a policy requirement for conditions to be imposed on residential annexes to prevent them being severed to form separate dwellings without consent. This should be incorporated in the policy. Modifications **MM28-30** propose amendments to the policy and explanatory text to address these deficiencies, which I conclude are necessary for soundness to ensure the policy is adequately justified and will be effective in development management.
48. Policy H28 deals with residential conversions. It is structured into 3 parts, applying a different policy approach to residential conversions outside of settlement boundaries compared to those in 'isolated locations'. I acknowledge that the policy wording on conversions in isolated locations reflects paragraph 55 of the NPPF. However, the justification for this distinction is not apparent in a district like South Derbyshire, with many dispersed rural settlements where it will be difficult to determine the point at which a location outside a settlement becomes isolated. Conversely, the explanation in paragraph 3.18 also requires conversion proposals 'not to display the characteristics of an isolated new dwelling in the countryside', which is not consistent with paragraph 55 of the NPPF. Therefore, modifications **MM31** and **MM33** to Policy H28 and paragraph 3.18 are necessary to ensure the policy and its explanation are consistent with the NPPF and will be effective in guiding decisions on conversions. Paragraph 3.19 also suggests the potential need to withdraw permitted development rights for residential conversions by condition but without explanation. Modification **MM34** provides an appropriate and necessary justification.

Non-Strategic Housing Allocations – Policies H23 and H23A-N

49. Policy H23 and the site specific Policies H23A-N propose 'up to' a fixed number of dwellings for each of the non-strategic housing allocations. Although this may be based on agreed figures for each site, Policy S4 sets a requirement for 'at least' 12,618 dwellings, for which Policy H23 is intended to allocate 600. Therefore, it is not consistent with the spatial strategy in SDLPP1 for Policy

H23 and the site specific policies to set a ceiling on the capacity of each site. Rather they should allow flexibility, so that the design and planning application process can determine the number of dwellings on each site and potentially boost the overall supply of housing in the district. Accordingly, modifications **MM6-9** and **MM11-21** are necessary for the Plan to be justified and effective. They achieve this by removing the upper limit of dwellings for each site, whilst still including a dwelling number to ensure the overall non-strategic housing requirement is delivered.

Built and Natural Environment - Policies BNE7-12

50. Policy BNE7 seeks to protect trees, woodlands and hedgerows in the district which is justified given their importance to the landscape character of South Derbyshire. However as drafted the policy only safeguards trees or hedgerows which are of 'high value' and allows the felling of protected trees or hedgerows only 'in exceptional circumstances'. This is inconsistent with the wording of the legislation and national guidance governing tree preservation orders and hedgerows². These set out the matters to be taken into account in considering applications for works to protected trees and notices for the removal of important hedgerows. Modifications **MM39** and **MM40** to Policy BNE7 and paragraph 4.8 of its explanation address this by referencing the guidance and regulations and the wording used therein. These modifications are necessary for soundness to ensure Policy BNE7 is effective and consistent with national policy.
51. Policy BNE8 provides for the protection of Local Green Spaces (LGSs), but delegates the designation of specific sites as LGSs to a separate DPD. I have noted the concerns about separating the development management policy for LGSs from site allocations. However, the LDS makes clear that the establishment of LGSs will be undertaken in two stages. Provided the policy for determining applications for development in LGSs in the SDLPP2 is justified, effective and consistent with national policy, designating LGS sites in a subsequent DPD would not render the Plan unsound.
52. However, as drafted in the Pre-submission version of the SDLPP2, the wording of Policy BNE8 is not consistent with national policy. Paragraph 76 of the NPPF states that local policy for managing development within an LGS should be consistent with the policy for Green Belts, which Policy BNE8 does not refer to. In addition, the Council confirmed in its evidence to the hearings that Neighbourhood Plans (NP) for Repton and Melbourne are likely to include designations for LGSs, but this is not referred to in Policy BNE8 as drafted. Modifications **MM41** and **MM42** to Policy BNE8 and paragraph 4.15 of its explanation rectify these omissions. Accordingly, they are necessary for soundness to ensure Policy BNE8 is justified, effective and consistent with national policy.
53. Policy BNE9 seeks to control proposals for advertisements, street furniture, telecommunications cabinets and other apparatus. The policy as drafted is correct in limiting consideration to their effects on amenity and public safety. However, the wording of criteria i) and iii) in the policy duplicate each other in

² Town and Country Planning (Tree Preservation)(England) Regulations 2012, Hedgerows Regulations 1997 and paragraphs 36-003-20140306 to 36-173-20140306 of the PPG

respect of their effects on visual amenity, such that the policy lacks clarity and effectiveness. Paragraph 67 of the NPPF expects control over outdoor advertisements to be efficient, effective and simple in concept and operation. Therefore, the modifications proposed to criteria i), iii) and iv) in **MM43** are necessary to ensure the policy is effective in its operation and thereby consistent with national policy.

54. Policy BNE10 seeks to manage development proposals affecting heritage assets in South Derbyshire, including designated and non-designated assets. It is intended to operate within the context of Policy BNE2 of the SDLPP1 which provides the Plan's strategic policy on heritage assets. However, whereas Policy BNE2 refers to national guidance for the protection, conservation and enhancement of heritage assets, Policy BNE10 fails to distinguish between the different tests to be applied to designated and non-designated heritage assets in paragraphs 132-135 of the NPPF. Therefore, the modifications set out in **MM44** are required to ensure that Policy BNE10 is consistent with the NPPF in this regard and that the heritage assessments to be carried out are proportionate to an asset's significance. The changes will also avoid duplication with the content of Policy BNE2 to ensure an effective local policy framework for the preservation and enhancement of heritage assets. I note that in response to the consultation on the proposed main modifications Historic England had no issues to raise.
55. Policy BNE11 sets out the considerations to be applied to applications for shopfronts. The focus of the policy is on controlling the effect of shopfronts on heritage assets and seeks a traditional approach to their design. This is justified given the number of original high streets in villages across south Derbyshire. However, such an approach will not be relevant in more modern shopping parades and retail outlets, for example the requirement to use traditional materials set out in criterion iii). In addition, the wording of criterion ii) lacks sufficient clarity to be effective and the resistance to external shutters and illuminated signage does not reflect the more reasoned approach to shopfront security provided in the supporting text. The modifications proposed to both policy and explanation in **MM45** and **MM46** are needed to rectify these issues and ensure that Policy BNE11 is effective and justified.
56. Policy BNE12 is intended to provide positive guidance on the opportunities available to reuse surplus land on the former power station sites at Drakelow and Willington. It seeks to do this by reference to an agreed development framework. However, as drafted in the Pre-submission version of SDLPP2 the policy does not clarify the role of the frameworks in guiding development. Neither does it reference Policies E1, H6 and SD6 in the SDLPP1, which allocate land for employment and housing adjacent to the power station land at Drakelow and promote renewable energy and power generation development on both sites. As such Policy BNE12 lacks the necessary clarity to offer effective co-ordination of development proposals at these locations. Paragraph 154 of the NPPF says that only policies that provide a clear indication of how a decision maker should react to a development proposal should be included in the plan. The modifications set out in **MM47** address these shortcomings and are necessary to ensure Policy BNE12 is effective and consistent with national policy.

Retail Hierarchy and Swadlincote Town Centre - Policies RTL1 and RTL2

57. Policy RTL1 defines the hierarchy of centres in South Derbyshire, as required by the second bullet point of paragraph 23 of the NPPF, and the considerations to be applied to proposals for retail and other town centre uses across the hierarchy. Part A of the policy establishes that applications for main town centre uses outside of these centres will be subject to the sequential test set out in paragraph 24 of the NPPF. Although it exempts edge of centre developments from the sequential test, this is justified in the smaller town and village centres typical of South Derbyshire, where it is likely that developments in edge of centre locations would be as beneficial to their vitality and viability as in-centre schemes. In the Pre-submission version of the SDLPP2, only Swadlincote Town Centre and Local Centres are listed in Policy RTL1 and shown on Maps 1, 2 and 3 of the Policies Map. However, modification **MM48** proposes that all other centres in Key and Local Service Villages are also listed in the policy and identified on the Policies Map. This is necessary to ensure the effective application of the sequential test across the hierarchy.
58. Part B of Policy RTL1 seeks to limit changes of use away from A1-A4 uses within the primary frontages of Swadlincote Town Centre, as defined on Map 4 of the Policies Map. The protection of Class A shops, financial and professional services, food and drink uses within primary frontages is consistent with paragraph 23 of the NPPF in supporting the vitality and viability of the centre. However, as drafted part B i) of the policy would be in conflict with the permitted development rights granted under Part 3 to Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 for changes of use between and from Class A uses. Part B of the policy also fails to define the uses acceptable within the remainder of Swadlincote town centre outside of the primary frontages, as expected by the third bullet point of paragraph 23 of the NPPF. The modifications proposed to Part B in **MM48** address these shortcomings. They are, therefore, needed to ensure the policy is consistent with national policy and legislation in respect of the main town centre uses permitted within Swadlincote Town centre.
59. Parts C and D of Policy RTL1 define the development that will be permitted in the Local Centres and other centres in Key and Local Service Villages. As drafted this would be limited to Class A1 retail development. I acknowledge that local and village centres serve local catchments and are therefore likely to have a narrower retail-based focus. However, limiting development in smaller centres to retail uses would be inconsistent with the emphasis in paragraphs 23 and 24 of the NPPF on promoting a diverse offer in existing centres and encouraging main town centre uses to be located within centres. It would also be at odds with the mix of uses evident in local and village centres in South Derbyshire. The changes proposed in **MM48** to Parts C and D of Policy RTL1 to permit Class A1-A5 uses would allow a greater diversity of uses. Therefore, this element of the modification is necessary to ensure the policy is justified, effective and consistent with national policy.
60. Finally, **MM48** proposes a new Part E to require a retail impact assessment for all retail proposals of over 1,000 square metres (sqm) gross in out of centre locations. This is below the default threshold of 2,500 sqm defined in paragraph 25 of the NPPF. However, the evidence of retail permissions over the last 2 years in South Derbyshire compared to the smaller scale of centres

predominant within the district's retail hierarchy, suggests that a threshold of 1,000 sqm is justified here to safeguard the vitality and viability of its centres. Accordingly, I am satisfied that this is necessary to ensure consistency with national policy. Overall, for the above reasons I conclude that the modifications set out in **MM48** and in **MM49** to the supporting text to Policy RTL1 are necessary for the soundness of the plan.

61. Policy RTL2 identifies a number of redevelopment opportunities in Swadlincote Town Centre for a mixture of uses that would support the vitality and viability of the centre. As drafted the policy states that the redevelopment of these sites will accord with development briefs to be prepared. However, paragraph 153 of the NPPF makes clear that supplementary planning documents (SPDs) should not be used where they add unnecessarily to the financial burdens on development. For this reason it would be inconsistent with the NPPF to allow Policy RTL2 to require future applications for these sites to accord with SPDs which will not be subject to independent examination. Rather the development briefs should be used to guide applications for their redevelopment. Accordingly, the modification proposed in **MM50** is necessary to ensure Policy RTL2 will be effective and consistent with national policy.

Provision of Secondary Education Facilities – Policy INF12

62. Two sites were proposed in the Pre-submission version of the SDLPP2 to provide for future secondary school provision to support housing growth on the southern side of Derby, at Thulston Fields and Lowes Farm. I acknowledge the case put forward to justify the need for two sites, in written representations, in evidence to the hearings and in the County Council's response to the consultation on the MMs. However, the land at Thulston Fields lies within the Green Belt, where a new school would constitute 'inappropriate development' under paragraph 89 of the NPPF. Paragraph 87 of the NPPF makes clear that 'inappropriate development' is, by definition, harmful to the Green Belt and should not be approved except in 'very special circumstances'.
63. I note District Council feels that 'very special circumstances' exist. However, this can only be tested by means of a planning application, when all of the evidence would be available to allow for the harm to the Green Belt to be weighed against other considerations, as required by paragraph 88 of the NPPF. If land at Thulston Fields needs to be allocated for a secondary education facility, then the Green Belt boundary would need to be altered. Paragraph 83 of the NPPF makes clear that this should only be done in 'exceptional circumstances'. Both the District and County Council acknowledge such an alteration would need to be considered as part of a wider review of Green Belt boundaries around Thulston Fields and Boulton Moor, which would be better addressed in a future review of the Local Plan. I agree with this conclusion.
64. Accordingly, **MM51** and **MM52** are necessary for the Plan to be sound. They amend the wording of Policy INF12 and its supporting text to remove the allocation of land at Thulston Fields but retain an allocation in the vicinity of Lowes Farm in the southern Derby area. The modifications also include criteria requiring the assessment and mitigation of transport impacts and to ensure the site is served from a principal road access. I note that a 'principal road' is a motorway or A-class road and agree with the suggestion from the County Council as the highway authority that this should be amended to

'distributor road'. A requirement for a school to be accessed directly from an A-class road would be unnecessary and inappropriate. I have amended MM51 accordingly.

65. The exact location of the school site is to be determined as part of a development framework to be brought forward for the Infinity Garden Village site considered below, although MM52 indicates that the site will be on the eastern side of the village. This is geographically illustrated in a change to the Policies Map in PM5 of the Council's proposed Policy Map Modifications. Although the Policies Map is not before me for examination, I support the need for this modification to guide the location of the school.

Southern Derby Area and Infinity Garden Village – Policy INF13

66. I recognise the need for a policy to guide the development of the Infinity Garden Village proposal to ensure the comprehensive delivery of the scheme and the strategic infrastructure necessary to support it. As such, Policy INF13 and its explanation (**MM53**) are required to ensure effective joint working on this important cross-boundary strategic priority, which is one of the tests of soundness in paragraph 182 of the Framework.
67. The wording of the policy and its explanation submitted as part of the Proposed Main Modifications (C.8) alongside the SDLPP2 also sought the delivery of future housing and employment growth beyond that which is allocated in the SDLPP1. However, if further housing or employment land is required in the southern Derby area to meet the growth needs of either South Derbyshire or Derby City, then this would most appropriately be brought forward through an early review of Part 1 of the Plan, based on a review of the OAN and housing and employment requirements for the HMA. This should not be prejudged through a policy designed for the management of development of a strategic site.
68. Accordingly, amended wording for Policy INF13 and its explanation are set out in **MM53**. This removes reference to future housing or employment growth beyond the SDLPP1 requirements, but identifies the development and infrastructure requirements provided for elsewhere in the Plan to be co-ordinated through a joint development framework.
69. It is accompanied by a modification to the Policies Map (modification PM5 and Map 5 in the SDLPP2) which defines the boundary of the Infinity Garden Village proposal and the location of the strategic infrastructure in the southern Derby area, including the proposed secondary school site. Although the Policies Map is not before me for examination, in so far Map 5 would illustrate the geographic application of Policy INF13 and help co-ordinate the effective delivery of development in the southern Derby Area, I support the need for this as a modification.

Conclusion on Issue 3

70. Overall, therefore, I conclude that, subject to the above main modifications, the policies in the SDLPP2 have been positively prepared, are clear, justified and consistent with the SDLPP1 and national policy, and will be effective in ensuring sustainable development in South Derbyshire.

Assessment of Legal Compliance

71. My examination of the compliance of the Plan with the legal requirements is summarised in the table below. I conclude that the Plan meets them all.
72. Particular concerns were raised by Repton Parish Council about consultation on the selection of non-strategic housing allocations and the inclusion of the site at Milton Road. However, there were two stages of public consultation prior to the preparation of the pre-submission version of the SDLPP2. The first, between 15 December 2015 and 12 February 2016, included the Milton Road site as part of the housing options; the second in June to August 2016 identified it as an allocation. In both cases the Council consulted with the Parish Council, publicised the proposals and held a consultation event in the Repton area. I acknowledge that a Neighbourhood Plan for the parish of Repton was in preparation during this time, but the allocation of non-strategic housing sites is a requirement for the SDLPP2 arising from the SDLPP1. The NPPF expects local planning authorities to ensure an up-to-date Local Plan is in place as quickly as possible to provide the necessary policy framework for neighbourhood plans. Although the Parish Council's consultation suggests public opinion within the parish opposes the Milton Road site, I have concluded above that its allocation as a housing site is soundly based. Accordingly, I am satisfied that the Council's consultation on the Plan followed the requirements set out in its Statement of Community Involvement (E.23).
73. Some concerns were also raised about the Sustainability Appraisal (SA), with regard to the conclusions reached in the assessment of housing sites and in relation to the appraisal carried out of the proposed main modifications. However, I have neither read nor heard any evidence to demonstrate that the SA is legally flawed. It is proportionate to the scope of the plan, and has been systematically undertaken and consulted on at each stage of the SDLPP2 process. Reasonable alternatives have been considered in relation to the main strategic options in the plan and all options, including the range of non-strategic housing sites considered, have been assessed in an equal manner against the same sustainability objectives. Although not all of the changes in the proposed modifications were subject to SA, the main modifications were appraised in the modifications version of the SA (July 2017). It is clear from Regulation 5(6) of the Environmental Assessment of Plans and Programmes Regulations 2004 that environmental assessment is not needed for any 'additional modification' to the SDLPP2.

LEGAL REQUIREMENTS	
Local Development Scheme (LDS)	The SDLPP2 has been prepared in accordance with the Council's LDS January 2017 (C.33).
Statement of Community Involvement (SCI) and relevant regulations	The SCI was adopted in March 2006 (E.23). Consultation on the SDLPP2 and the MMs has complied with its requirements.
Sustainability Appraisal (SA)	SA has been carried out for the SDLPP2 and the MMs, which meets the requirements of the Strategic Environmental Assessment Directive and is adequate.
Habitats Regulations Assessment (HRA)	The Habitats Regulations Assessment Screening Report June 2016 (E.19) sets out why an

	Appropriate Assessment is not necessary for the SDLPP2. Natural England agrees with this. The changes proposed as part of the MMs do not alter this conclusion.
National Policy	The SDLPP2 complies with national policy except where indicated and MMs are recommended.
2004 Act (as amended) and 2012 Regulations.	The SDLPP2 complies with the Act and the Regulations.

Overall Conclusion and Recommendation

74. The Plan has a number of deficiencies in respect of soundness for the reasons set out above, which mean that I recommend non-adoption of it as submitted, in accordance with Section 20(7A) of the 2004 Act. These deficiencies have been explored in the main issues set out above.
75. The Council has requested that I recommend MMs to make the Plan sound and capable of adoption. I conclude that with the recommended main modifications set out in the Appendix the SDLPP2 satisfies the requirements of Section 20(5) of the 2004 Act and meets the criteria for soundness in the National Planning Policy Framework.

M Hayden

Inspector

This report is accompanied by an Appendix containing the Main Modifications (MMs).