REF (For Office Use Only):

Development Plan Document (DPD) Publication Stage Representation Form

Publication Amended Allocations & Development Management Development Plan Document (DPD)

A guidance note has been produced to assist in the completion of this form. Copies have been provided in correspondence and additional copies are available at: Castle House, Libraries in the District and https://www.newark-sherwooddc.gov.uk/aadm-representation/

Newark and Sherwood District Council is seeking your comments on the Publication Amended Allocations & Development Management DPD ('Publication AADMDPD'). Comments received at this stage should be about whether the Plan is legally compliant, sound and whether it has met the duty to cooperate. All representations must be received by the Council by 12 Noon on 9th January 2023.

This form has two parts- Part A- Personal / Agent Details and Part B- Your Representation(s) and further notification requests. (Please fill in a separate sheet (Part B) for each aspect or part of the Local Plan you wish to make representation on). Documents to support your representations (optional) should be referenced.

Privacy Notice

Apart from your comments below, the personal information you have provided will only be used by Newark & Sherwood District Council in accordance with the UK General Data Protection Regulation and the Data Protection Act 2018 and will not be shared with any third party.

The basis under which the Council uses personal data for this purpose is to undertake a public task.

The information that you have provided will be kept in accordance with the Council's retention schedule, which can be found at: https://www.newark-sherwooddc.gov.uk/dataprotection/

Please note the Council cannot accept anonymous responses. All representations received will be made available for public inspection and therefore cannot be treated as confidential. They will also be:

- Published in the public domain;
- Published on the Council's website;
- Shared with other organisations for the purpose of developing/adopting the Publication AADMDPD and forwarded to the Secretary of State for consideration;
- Made available to the Planning Inspector appointed by the Secretary of State to examine the Publication AADMDPD; and
- Used by the Inspector to contact you regarding the Examination of the Plan.

When making representations available on the Council's website the Council will remove all telephone numbers, email addresses and signatures.

By submitting your Response Form/representation, you agree to your personal details being processed in accordance with these Data Protection Terms.

PART A- Personal / Agent Details

In circumstances where individuals/groups share a similar view, it would be helpful to the Inspector to make a single representation, stating how many people the submission is representing and how the representation was authorised.

	1. Personal Details	2. Agents Details
*If an agent is appointed, please complete only the Title, Name and Organisation boxes below but complete the full contact details of the agent in 2.		
Title	Mr	Mr
First Name	Jack	Anthony
Last Name	Hardy	Northcote
Job Title (where relevant)		Executive Director
Organisation (where relevant)	001 Hardy Ltd	TOWN-PLANNING.CO.UK
Address Line 1	The Willows Farm	South View, 16 Hounsfield Way
Line 2	Hawton	Sutton on Trent
Line 3	Newark	Newark
Line 4		Notts
Post Code	NG24 3RR	NG23 6PX
Telephone Number		[redacted]
Email Address		[redacted]

Name or Organisation:	Mr Jack Hardy

PART B- Representation(s)

3. To which part of the DPD does this Representation relate?

Part of the Publication AADMDPD:	Mark if Relevant (X)	Specify number/part/document:
Amended AADMDPD Paragraph Number		Paragraph Number:
Amended AADMDPD Policy Number	X	Policy Number: Policy NUA/AR/1 Archaeology – Farndon and River Devon Ice Age Landscape
Amended AADMDPD Policies Map Amendments		Part of Policy Map:
Integrated Impact Assessment[1]		Paragraph Number:
Statement of Consultation		Paragraph Number:
Supporting Evidence Base		Document Name: Page/Paragraph:

4. Do you consider the DPD to be LEGALLY COMPLIANT?

Yes ☐ No ☒

5 Do you consider the DPD to comply with the Duty-to-Cooperate?

Yes ☒ No ☐

6. Do you consider the DPD to be SOUND?

Yes ☐ No ☒

*The considerations in relation to the Legal Compliance, Duty to Cooperate and the DPD being 'Sound' are explained in the Newark & Sherwood Development Plan Document Representation Guidance Notes and in Paragraph 35 of National Planning Policy Framework 2021 (NPPF).

[1] The Integrated Impact Assessment (IIA) integrates Sustainability Appraisal (SA), Strategic Environmental Assessment (SEA), Equalities Impact Assessment (EqIA) and Health Impact Assessment (HIA). Sustainability Appraisals (SA) are a requirement of the Planning and Compulsory Purchase Act 2004 and Strategic Environmental Assessments (SEA) are required by European Directive EC/2001/42, which was transposed into UK law by the Environmental Assessment Regulations for Plans and Programmes (July 2004). The EqIA is a way of demonstrating the District Council is fulfilling the requirements of the Public Sector Equality Duty contained in section 149 of the Equality Act 2010. HIA is a recognised process for considering the health impacts of plans and undertaking this type of assessment is widely seen as best practice.

7. The DPD is not sound because it is <u>not:</u>

   (1) Positively Prepared ☒
   (2) Justified ☒
   (3) Effective ☒
   (4) Consistent with national policy ☒

8. Please provide precise details of why you believe the DPD is, or is not, legally compliant, sound or in compliance with the duty to cooperate in the box below.

If you wish to provide supplementary information to support your details, please ensure they are clearly referenced.

Archaeology - Farndon and River Devon Ice Age Landscape

This proposed policy is not supported by evidence that has been published for consultation alongside the Options Report; thereby making it very difficult for parties such as the landowners to meaningfully engage on aspects including the suggested geographical area covered and the two tier approach. In particular the rationale for Area B being where the geological conditions are conducive to material surviving at depth is not fully explained or evidenced.

Area B appears to include parts of residential curtilages; extensive areas of agricultural land; land within the strategic allocation south of Newark; and land required for the Newark Southern Relief Road. It has the potential to frustrate development, including that fundamental to the delivery of strategic development and infrastructure. The overall notation covers around 100 hectares of land. We do not support the policy approach.

Agricultural activity means that ground across both Areas A and B have been extensively disturbed by intensive modern agricultural activities, the most interaction with any archaeological resource being sub soiling to depths of 400 – 450mm. Agricultural activity including ploughing has led to many of the finds within Area A; this is accepted to have demonstrated some evidence to underpin the identification of Area A. Similar agricultural activity including ploughing has taken place over many decades in Area B but has not led to finds within Area B. Therefore, the evidence to underpin the identification of Area B lacks justification.

In their evidence document the LPA and Historic England suggest that refusal of siting for agricultural buildings under Part 6 would take place on the basis of this policy. Alternatively Historic England suggests that archaeological investigations could be sought. Unfortunately, the LPA has chosen to ignore our advice regarding the legal parameters of the prior approval process. The position suggested would be unlawful and would render both the LPA and Historic England as a statutory consultee liable to an award of costs in any appeal for unreasonable behaviour as Bolsover found in Appeal APP/R1010/W/20/3265080.

The area covered by the designation is agricultural land that is likely to require new agricultural development either through a planning application or through the permitted development prior notification process. The LPA appears to have indicated that it would apply this policy to all proposals for development including applications for prior notification or prior approval.

As the LPA is aware excavations and engineering operations reasonably necessary for agriculture are permitted development under Class A of Part 6 of Schedule 2 of the GPDO 2015. Some of these can be undertaken without even the need for prior notification to the LPA. The erection of buildings reasonably necessary for agriculture are also permitted development. As confirmed in Appeal Decision

APP/R1010/W/20/3265080 there is no ability to impose conditions on a prior approval even as in that case there was archaeology involved. There is also no ability through the prior approval process to request information such as archaeological investigations. The land is important agricultural land and we are concerned that the LPA will seek to resist agricultural development in this area on the basis of this notation. This would be inappropriate given that agricultural development constitutes permitted development under Part 6 even within scheduled monuments; and the prior approval process is not intended to undermine or revisit the principle of acceptability set out in the GPDO.

The Prior Approval Process
The prior approval process for agricultural buildings has been around since 1992. It is important to understand that planning permission for our agricultural building is already granted by development order by virtue of s59 of TCPA 1990. Under s60 TCPA 1990 planning permission granted by development order can be subject to limitations as set out in the relevant order. Therefore Class A of Part 6 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) as amended.

Planning permission granted by Parliament by virtue of development order then limits the scope of considerations available to LPAs. Importantly LPAs cannot dispute the principle of development nor seek to circumvent the planning permission already granted by development order. By Article 3(2) of the GPDO, planning permission that is granted by Article 3(1) GPDO is subject to any relevant exception, limitation or condition specified in Schedule 2 of the GPDO.

It was held in Murrell v SSCLG [2010] EWCA Civ 1367 that the prior approval procedure is attended by the minimum of formalities. It is not mandatory to use a standard form or provide any information beyond that specified in the Order – in that case, Part 6, paragraph A.2(2)(ii) of the GPDO 1995. Part 6 of the 1995 Order was not materially different to what is now found in Part 6 of the GPDO 2015; therefore, Murrell remains relevant law.

The assessment of the prior approval matters has to be made in a context where the principle of the development is not, itself, an issue. Where the application complies with the statutory requirements and is valid, the statutory period for consideration of the need for prior approval runs from that date. In Murrell, handling mistakes by the LPA and the fact that the applicant submitted a new form and further plans (as requested) did not stop the clock running. On the expiry of the statutory period, permission had been deemed to be granted.

R (oao Marshall) v East Dorset DC & Pitman [2018] EWHC 226 (Admin) established that there are limits to LPA powers to decide whether development would be Permitted Development when determining Part 6 prior approval applications.

In such cases, as held in Marshall, in a Part 6 case neither the LPA or an Inspector on appeal has no power under the relevant prior approval provisions to determine whether or not the proposed development comes within the description of the relevant class, or would comply with the conditions, limitations or restrictions applicable to development permitted.

Planning Practice Guidance (Reference ID: 13-026-20140306) advises: "What is prior approval? Prior approval means that a developer has to seek approval from the local planning authority that specified elements of the development are acceptable before work can proceed. The matters for prior approval vary depending on the type of development and these are set out in full in the relevant Parts in Schedule 2 to the General Permitted Development Order. A local planning authority cannot consider any other matters when determining a prior approval application."

Planning Practice Guidance (Reference ID: 13-028-20140306) goes on to advise: "Is a prior approval application like a planning application? The statutory requirements relating to prior approval are much less prescriptive than those relating to planning applications. This is deliberate, as prior approval is a light-touch process which applies where the principle of the development has already been established." Planning Practice Guidance also states: "It is important that a local planning authority does not impose unnecessarily onerous requirements on developers, and does not seek to replicate the planning application system."

Accordingly, under Murrell the court reminded parties that the prior approval process is a light touch process that is subject to the strict controls in the Order. In effect prior approval is a pre-commencement condition of the grant of planning permission given by the GPDO 2015.

Article 27 of the DMPO 2015 is explicit that the DMPO does not apply to any application for prior approval under Schedule 2 of the GPDO 2015. As such the GPDO contains all of the procedural matters, including the scope of considerations and any need for consultations.

Article 3 of the DMPO 2015 subject to the provisions of this Order grants planning permission for the classes of development described as permitted development in Schedule 2. Any permission granted by Article 3 is subject to any relevant exception, limitation or condition specified in Schedule 2. Therefore, the 'standard' conditions in the relevant Part and Class of Schedule 2 are thereby applied already.

Part 6, paragraph A.2(2)(i) indicates in relation to a building that it is permitted by Class A subject to the following conditions— (i) the developer must, before beginning the development, apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to the siting, design and external appearance of the building.

Part 6, paragraph A.2(2)(ii) is clear that the only information required is: "(ii) the application must be accompanied by a written description of the proposed development and of the materials to be used and a plan indicating the site together with any fee required to be paid;" There is no legal obligation for an applicant to submit any additional information beyond that specified.

The GPDO 2015 in Part 6, paragraph A.2(2) sets out the procedural requirements where the LPA concludes that prior approval is required. The only procedural obligation on the applicant is the obligation to publish a site notice. We explained in our appeal submission how this was complied with. Nowhere does this give the LPA any legal powers to request additional details once they conclude that prior approval is required. Neither does it in anyway change the matters available to the LPA for consideration; which remain 'the siting, design and external appearance of the building.'

The Development Plan

A prior approval appeal should not be determined, expressly or otherwise, on the basis of s38(6) of the Planning and Compulsory Purchase Act 2004, or as though the development plan must be applied; the principle of development is established through the grant of permission by the GPDO.

It was held in R (oao Patel) v SSCLG & Johal & Wandsworth BC [2016] EWHC 3354 (Admin), paragraph 52, that: "there is no statutory obligation to decide…[a prior approval] application on the basis of the approach in s38(6)…s70 of the [TCPA 1990] does not apply to an application for prior approval, and there is no other provision to like effect for applications for prior approval. So there is no means whereby s38(6) can supply the hook for the application of its decision-making duty. It only applies 'If regard is to be had to the development plan…' [and] there is no such statutory requirement in relation to prior approvals"

Consequently, in making a determination on any agricultural prior approval the LPA if it were to cite this

policy of the Local Plan then thew would err in law.

The National Planning Policy Framework
Reference should be made to the Framework only as far as it is relevant to the development and prior approval matters. It was held in East Hertfordshire DC v SSCLG [2017] EWHC 465 (Admin) that the Framework needs to be applied as specified by the Order and in the context of what the particular Class seeks to achieve.

It is also pertinent to consider the approach across the whole portfolio of prior approval matters in the GPDO. Applications for prior approval under Part 3 are subject to a requirement that LPAs shall: 'have regard to the National Planning Policy Framework...so far as relevant to the subject matter of the prior approval, as if the application were a planning application.' Part 6 of the GPDO contains no similar requirement to have regard to the Framework.

Taking into account the judgement in East Hertfordshire there would appear to be no legal basis to have regard to the Framework in a prior approval determination under Part 6 of the GPDO; because Part 6 does not specify that you should do so.

Other Duties
Other statutory duties may apply including in relation to European Protected Habitats; European Protected Species; UK Protected Habitats and Species; Listed Buildings; and Conservation Areas.

The s66(1) duty in the Planning (Listed Buildings and Conservation Areas) Act 1990 does not generally apply to GPDO casework and would not be directly relevant for prior approval applications, because planning permission is granted by Article 3(1) of the GPDO. However, where the prior approval matters include amenity, siting or location, or design and external appearance, the impact of a development on the setting of a listed building will need to be taken into account.

S72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 provides that: in the exercise, with respect to any buildings or other land in a conservation area, of any [functions under the Planning Acts]...special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area. The impact of development on a conservation area must be considered only in prior approval cases where the matters are amenity, siting or location, or design and external appearance.

The statutory duties under s66(1) and s72 may be relevant considerations; albeit in the context only of the prior approval matters. Neither of these statutory duties include archaeology.

Consultation
Different requirements for publicity pertain to different Parts and Classes of the GPDO. For example, in Part 3 prior approval cases, paragraph W.3(8) requires LPAs to display a site notice and consult specified bodies in relation to certain prior approval matters. For Part 6, Class A, paragraph A.2(2)(iv) requires the applicant to display a site notice in the event that they are informed by the LPA that prior approval is required.

However, there is no obligation under Part 6 for the LPA to undertake any publicity or consultation. There is no requirement to consult consultees or neighbours, nor take into account any comments received.

Accordingly, Parliament intended that under Part 6, the LPA would make its determination without any input from consultees. As such the prior approval matters of 'the siting, design and external appearance of the building' must be considered to be within the normal scope of planning judgement of the LPA without any requirement for specialist input.

Archaeological Areas & Archaeology as a Prior Approval Matter

The GPDO in Article 2 defines: "site of archaeological interest means land which— (a) is included in the schedule of monuments compiled by the Secretary of State under section 1 of the Ancient Monuments and Archaeological Areas Act 1979 (schedule of monuments); (b) is within an area of land which is designated as an area of archaeological importance under section 33 of that Act (designation of areas of archaeological importance)(a), or (c) is within a site registered in any record adopted by resolution by a county council and known as the County Sites and Monuments Record."

It is important in our view to recognise that having defined 'site of archaeological interest' in the GPDO; Parliament did not see fit to restrict any of the permitted development rights in Part 6 in a 'site of archaeological interest'.

Parliament has allowed this definition to be a reason for withdrawing mineral permitted development rights under a Direction under Article 5 of the GPDO. However, it is pertinent to understand that this power does not apply to the mineral extraction allowed for under Part 6.

The only permitted development right that doesn't apply because it is in a 'site of archaeological interest' is Class J of Part 17 in the GPDO on mineral extraction. Some permitted development rights are not applicable within a Scheduled Monument, for example Class ZA of Part 20; no such limitation was seen fit by Parliament to be included in Part 6.

Thereby looking at the GPDO as a whole, the only area of permitted development where archaeology is mentioned as a relevant consideration is Part 17 on mineral extraction; and in Part 20, Class ZA as a specific prior approval matter.

It is in our view highly relevant that archaeology is listed specifically as a prior approval matter for consideration in the GPDO in Part 20, Class ZA. This clearly demonstrates that where Parliament intended it to be considered as a prior approval matter then it has been clearly stated as such as a specific matter. It is therefore reasonable to have expected it to have been clearly stated in Part 6 as a specific matter; if Parliament had intended it to be a relevant consideration as a prior approval matter.

Other specific topics such as contamination; noise; transport & highways; light impact; and flooding as examples are listed as individual prior approval topics where this is relevant, for example under Part 3 of the GPDO.

The only area restriction in Class A of Part 6 is in relation to excavations or engineering operations connected with fish farming where it involves article 2(4) land; i.e. National Parks and adjoining land and the Broads.

Definition of 'Siting'

The GPDO does not in Article 2 define what is meant by 'siting'; neither is it defined in s336 TCPA 1990. As a prior approval matter it is always actually specified as 'the siting, design and external appearance of the development' in the following:

- Part 3, Class C (changes of use - retail to restaurants/cafes);
- Part 6, Class A & Class B (agricultural buildings);
- Part 6, Class E (forestry buildings);
- Part 7, Class C (click and collection facilities);
- Part 9, Class D (toll road facilities);
- Part 17, Class B (other developments ancillary to mining operations);
- Part 17, Class C (developments for maintenance or safety);

- Part 17, Class F (coal-mining development on an authorised site);
- Part 17, Class G (coal-mining development by the Coal Authority for maintenance or safety);
- Part 19, Class T (electronic communication apparatus etc for national security purposes).

As a prior approval matter it is actually specified as 'the siting and appearance of the development' in the following:

- Part 16, Class A (electronic communications code operators);

This suggests that in fact siting is not a matter on its own per se but is instead one element within 'siting, design and external appearance'. This implies that the intention is that as an element it part of an overall visual assessment.

Neither the Framework or Planning Practice Guidance sets out any definition of either 'siting' or 'the siting, design and external appearance of the development'.

In the absence of any legislative definition and no advice published by the Government; it can be relevant to look at any practitioner advice. Although practitioner advice does not represent Government policy and is an interpretation of law and practice at a point in time. In particular a degree of caution has to be taken in relation to Development Control Practice as there can be quite a long time-lag between case law or legislative changes and updates to the practice.

There is no practitioner advice in the Planning Inspectorate's Inspector Training Manual. In Development Control Practice section 4.3425, that gives practitioner advice that in Murrell v SSCLG [2010] EWCA Civ 1367 the consideration of 'siting, design and external appearance' is an assessment of visual amenity where the principle of development is not at issue. In section 22.1112 Development Control Practice suggests that in relation to prior notification "the effect of the development upon the landscape in terms of visual amenity, and the desirability of preserving the setting of ancient monuments, listed buildings and sites of nature conservation value."

Practitioner advice supports the position that the correct consideration for the LPA is to consider 'siting, design and external appearance' as a visual assessment.

We have also done a search to see if any LPAs have produced advice on the prior approval process for agricultural buildings. There are various guides available but all of those we can find are dated and pre-date the GPDO 2015 and relevant case law. For example, Bromsgrove Agricultural Buildings Design Guide is dated 1994; and Agricultural Developments in the Peak District National Park is dated 2003. Bolsover has produced no guidance on how to interpret 'siting, design and external appearance' for agricultural buildings.

Although only relevant in Daventry District; that Council has a 'Design and Location of Agricultural Buildings SPG'; unfortunately, it is undated so we cannot be certain when it was published. However, it provides a simple list of the considerations they consider fall within the headings of 'siting' followed by 'design and appearance'.

Whilst that guidance in a different LPA area is in no way determinative; it does give an indication as to how that LPA has sought to interpret 'siting'. Their criteria all relate to an assessment of visual and landscape impact.

In looking at a snapshot of appeals under Part 6 of the GPDO; it would seem clear that Inspectors interpret 'siting, design and external appearance' as a visual assessment on character and appearance. Example appeals include:

- Appeal Ref: APP/L3245/W/20/3248989 (Sutton Farm, Sutton, Market Drayton, Shropshire TF9 2HZ)
- Appeal Ref: APP/F9498/W/17/3173435 (Higher Court Farm, Court Lane, Treborough TA23 0QW)

As planning permission is granted by the GPDO then in terms of siting the LPA can only reasonably seek the building to be sited in the reasonably best possible location.

In a Part 6 agricultural development case the LPA have provided no cogent reasoning or substantive evidence to justify their position that it is appropriate to include archaeology in the definition of siting.

From our work across Newark & Sherwood, we are aware of a prior notification for a farm building under Part 6 of the GPDO that was actually within a Scheduled Monument. That proposal was under reference 10/00957/AGR. In that case the proposed new store building was 28.1m in length by 16.5 in width; with a height of 6.4m. The proposed siting was within the designated Scheduled Monument (Iron Age Settlement 1003494); yet in that case the LPA did not consider archaeology and in fact determined that prior approval was not required notwithstanding the fact it lay in the Scheduled Monument.

It is material that the Coal Authority as a Government body actually exempts Prior notifications of any type from the need for consultation and from the need to consider land instability from historic coal mining. Their Exemptions List is divided into 2 parts: Type of Application and Nature of Development. The relevant extract from their website is reproduced below:

"Part A – Type of application
Types of application:

- Householder Development
- Heritage Consents, including listed building or conservation areas
- Advertisement consent
- Lawful development certificates
- Prior notification, of any type
- Hazardous substances consent
- Tree or hedgerow works, TPO or in conservation area
- EIA scoping opinions
- Variations of conditions – which do not relate to development layouts or conditions imposed to address coal mining legacy"

This illustrates how a Government body has recognised that the prior notification process does not allow the LPA or other decision maker to have regard to sub-surface ground conditions. Whilst this is a slightly different topic it is in our view material.

Activities Allowed by Part 6
The LPA position appears to be that prior approval exists to prevent any and all potential impact. This is an incorrect starting point as in granting permitted development rights, Parliament has already concluded that some matters can occur irrespective of whether some harm is perceived to or actually arises. Prior approval is a light touch system to only address a narrow range of specific planning impacts for the different classes of development.

Whilst care should be exercised in reading across the GPDO, it is relevant for example that under permitted development in Part 1 rights any dwellings whose garden is overlain by the designation could erect an outbuilding incidental to the enjoyment to the dwellinghouse. In such circumstances there is no prior approval.

Another example across the GPDO would be that under Class A of Part 2 the appellant could erect means of enclosure. This could include fence posts that would be sunk into the ground to the same depth as the proposed steel portal frame; or could for example involve metal cattle crush fencing for veterinary purposes. Such cattle crush fencing would require deep concrete foundations to withstand the weight.

Under Class A of Part 6 we could undertake excavation or engineering works that were reasonably necessary for agriculture without even the need for prior approval provided the area is not greater than 0.5Ha. As an example, therefore our client could construct an excavation such as a small reservoir in the same position as the building is proposed under permitted development without any planning permission or prior approval. As there is no limit on the depth of excavation this could impact significantly on any potential archaeology. Another example would be that the land slope could be lowered or levelled for example to provide a flat surface for the storage of sileage bales again under Class A up to 0.5Ha without any controls.

Under Class C of Part 6 it would be possible to undertake the winning and working on land held or occupied with land used for the purposes of agriculture of any minerals reasonably necessary for agricultural purposes within the agricultural unit of which it forms part. This permitted development right has no prior approval requirement and has no limits on scale or depth. The only limitations are that it cannot be within 25 metres of a metalled part of a trunk road or classified road; and that no mineral extracted during the course of the operation is moved to any place outside the land from which it was extracted, except to land which is held or occupied with that land and is used for the purposes of agriculture.

There are over 40 minerals used in agriculture, such as potash and calcium. In addition, mineral extraction of building stone or slates to repair traditional stone walls; build new stone walls or to repair stone farm buildings would be permissible under Class C of Part 6. As such our client could for example undertake mineral extraction on the site of the proposed building for stone to repair the existing stone boundary walls on the farm without any controls.

Had Parliament intended that archaeology should be protected then surely it would have not allowed for developments that could be potentially more harmful to any items in the ground under Class A and Class C of Part 6 without any requirement even for prior approval.

The correct mechanism through which the LPA should seek to protect archaeology if they desire is through the use of an Article 4 Direction under the GPDO.

The LPA would have no powers to impose conditions on a Part 6 prior notification, for the reasoning we have set out. The general provisions under s72 TCPA 1990 to impose conditions cannot apply as the GPDO has already granted planning permission by development order. The GPDO also imposes prior approval as a pre-commencement condition.

The LPA would have no legal ability to request additional information in terms of studies, assessments or investigations as the documentation required for a prior approval is limited to that specified in Part 6, paragraph A.2(2) of the GPDO. Archaeology can only be definitely discounted by undertaking actual excavations, there is no legal mechanism through which the LPA could require such excavations to be undertaken.

Where Parliament has intended information on archaeology to be submitted, for example under Class ZA of Part 20, the GPDO includes a specific requirement to submit “a written statement in respect of heritage and archaeological considerations of the development.”

The consideration should also be made without regard to the development plan or the Framework as detailed earlier. In effect if the LPA considered the siting to be unacceptable then it has only two options available to it either to refuse prior approval; or to seek to negotiate an alternative siting that would be acceptable given that the principle of development cannot be disputed.

In relation to agricultural buildings LPAs should always have full regard to the operational needs of the agricultural enterprise; to the need to avoid imposing any unnecessary or excessively costly requirements; and to the normal considerations of reasonableness. The area covered is so extensive that it would prohibit alternatives for siting having regard to the operational needs.

(Continue on a separate sheet/expand box if necessary)

9. Please set out what change(s) you consider necessary to make the DPD legally compliant or sound, having regard to the test you have identified at 6 above where this relates to soundness. You will need to say why this change will make the DPD legally compliant or sound. It will be helpful if you are able to put forward your suggested revised wording of any policy or text. Please be as precise as possible.

The policy should be amended to clearly exclude agricultural development and make it clear that it doesn't apply to any agricultural permitted development notifications.

(Continue on a separate sheet/expand box if necessary)

Please note your Representation should cover succinctly all the information, evidence and supporting Information necessary to support/justify the Representation and the suggested change, as there will not normally be a subsequent opportunity to make further Representations based on the original Representations at the Publication stage. After this stage, further submissions will be only at the request of the Inspector, based on the matters and issues he/she identifies for Examination.

10. If your Representation is seeking a change, do you consider it necessary to participate at the oral part of the examination?

No, I do not wish to participate at the oral Examination	Yes, I wish to participate at the oral Examination
☐	☒

11. If you wish to participate at the oral part of the Examination, please outline why you consider this to be necessary.

To exercise the legal right to be heard and to be able to fully explain our position.

(Continue on a separate sheet/expand box if necessary)

Please note the Inspector will determine the most appropriate procedure to adopt to hear those who have indicated that they wish to participate at the oral part of the Examination.

12. Please tick the relevant boxes below to receive notifications (via email) on the following events:

DPD submitted to the Secretary of State for Inspection ☒

Examination in Public hearing sessions ☒

Planning Inspector's recommendations for the DPD have been published. ☒

DPD has been formally adopted. ☒

Signature: [redacted] Date: 23 December 2022

Please return this form by 12 Noon on 9th January 2023 to one of the addresses below:

Email: planningpolicy@nsdc.info

Post: Planning Policy & Infrastructure Business Unit
Newark & Sherwood District Council
Castle House
Great North Road
Newark
NG24 1BY

Information is available at:
https://www.newark-sherwooddc.gov.uk/aadm-representation/

Office Use Only

Date of Receipt:

Representation No: