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Summary Proof Of Evidence: Planning

Evidence of Gary Lees BA (Hons) DipTP MRTPI

In Respect of a S.78 Planning Appeal at Land at Newark Road,
Sutton-in-Ashfield.

On behalf of Hallam Land

Date: 17 December 2024 | Pegasus Ref: EMS.2254

Appeal Ref: APP/W3005/W/24/3350529 | LPA Ref: V/2022/0629

Author: Gary Lees





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1. Introduction

Qualifications and Experience

- 1.1. My name is Gary Robert Lees. I hold a Bachelor of Arts Degree with Honours in Urban and Regional Planning, together with a Diploma in Town Planning, both from Lanchester Polytechnic. I am a member of the Royal Town Planning Institute and a Director of GRL Planning Ltd. GRL Planning Ltd was formed in July 2024 following my retirement as Chairman of Pegasus Group. I am retained as a consultant for Pegasus Group on various projects I worked on whilst at Pegasus Group, including the appeal site.
- 1.2. The evidence I have prepared and provide to this Inquiry on behalf of Hallam Land is true and given in accordance with the code of conduct of the Royal Town Planning Institute. I confirm that the opinions expressed are my true and professional opinions.

Scope of Evidence

- 1.3. My Proof of Evidence relates principally to matters of planning policy and the overall planning balance in respect of the appeal proposal. I also seek to address concerns raised by third parties.
- 1.4. An alternative illustrative masterplan (drg no EMS.2254_120 01 Rev D) is provided at **Appendix 2** of my proof. This plan is provided to show how the development could be provided on site without the need to provide surface water attenuation works over the part of the site that has been subject to licenced landfill of inert construction waste, the objective being to minimise risks, however small those risks are. The previously proposed surface water attenuation basin fronting the western part of Newark Road is removed with a consequential increase in the size of the surface water attenuation area along the western boundary of the site. The frontage area is replaced by public open space and planting.

2. Context

Planning History

- 2.1. The planning history is as agreed in the SoCG [CD 9.1]. This highlights that the appeal site has been identified as a proposed allocation in recent draft local plans.
- 2.2. Approximately 16.9 hectares of the appeal site (**Appendix 4**) formed part of the second iteration of a new draft Local Plan and featured in the Publication version (Regulation 19 consultation) in 2016 (draft housing allocation reference SKA3e – Land at Newark Road). The site was allocated for ~266 dwellings. This plan was unfortunately withdrawn to facilitate the new political administration's aspirations and vision for the district. It was resolved that the Emerging Local Plan Vision had a restrictive focus of concentrating development in and adjoining the urban and settlement areas i.e., urban concentration.¹

The 2017 Application

- 2.3. A previous application for planning permission, similar to the appeal scheme, was submitted on 29th September 2017. That application was registered as valid on 3rd October 2017 and assigned the reference V/2017/0565 ("the 2017 application").
- 2.4. On 26th July 2022, the Council via the case officer advised as follows:

"Officers were of the opinion that because of the time period that had lapsed since the initial submission of the planning application, together with the changes in policies and the amendments to the proposal, the submission of a new planning application would be required²."

- 2.5. As the Council continued to refuse to determine the application, a new application (the subject of this appeal) was duly submitted to resolve the impasse. The 2017 application was 'disposed of' by the Council on 26th June 2024.

Officer Report to Planning Committee

- 2.6. The application was reported to the Planning Committee on 31st July 2024. The Officer Report recommended that the application be approved, subject to conditions and the completion of a Section 106 agreement [CD 3.1].
- 2.7. In considering the planning balance, the Officer Report concluded that the Council does not have a four-year housing supply (noting both 2.84 and 2.54 years supply are referenced in the report) thereby engaging the 'tilted balance' in paragraph 11(d) of the Framework. However, the Officer Report also suggests that this development is unlikely to contribute to the 4-year housing land supply and is likely to come into effect later in the housing trajectory given it is a large site requiring significant infrastructure in advance of development. The

¹ The reasons for withdrawal are made clear in the recorded minutes of the Extraordinary Council meeting held on the 6th of September 2018 [CD 12.6].

² Email from Mr Morley, dated 26th July 2022 [CD 12.21].

appellant refutes that assumption, and further information is provided on delivery expectations in the 'Future Failure' section below.

- 2.8. The Officer Report confirmed that the Highway Authority is satisfied that a suitable access can be provided into the site and the proposal would not lead to unacceptable residual impacts on the highway network subject to conditions and contributions.
- 2.9. There were no statutory consultee objections and the Officer's Report recommended to the Planning Committee that the application be approved, and that planning permission be granted.

Planning Committee

- 2.10. At its meeting of 31st July 2024, it was moved and seconded by the Planning Committee that the application be deferred for the following reasons, as set out in the recorded minutes [CD 3.3]:

"Members sought clarification and reassurance with regard to the proposed drainage and contamination strategies which might give rise to the potential for contamination of the watercourse from previous landfill and or provided conflicting strategies. Further information was required as to the sustainability of the site particularly in relation to bus provision, routes and frequency and the accessibility and security of the station to cyclists and others given distance from facilities. Members were concerned that this would lead to a more severe impact on the highway and junctions in the vicinity and sought more detail. A better understanding was required as to the impact development would have on the best and most versatile land."

- 2.11. It is important to note that these minutes specifically define the areas on which it sought 'clarification' and 'reassurance'. There is no reference, expressly or otherwise, of concerns over the impact on the railway level crossing, or in respect of any landscape and visual concerns despite both these issues emerging as putative reasons for refusal. Secondly, the Planning Committee did not raise any *concerns* on ground contamination or drainage *per se*, and they did not request additional testing. Instead, they sought only 'clarification' and 'reassurance' with regard to the proposed drainage and contamination **strategies** which might give rise to the potential for contamination of the watercourse from previous landfill and or provided conflicting strategies.
- 2.12. The Appellant lodged an appeal on the grounds of non-determination on 21st August 2024.
- 2.13. The non-determination appeal was reported to the Planning Committee at its meeting of 23rd October 2024. The recorded minutes [CD 3.4] confirmed that Members considered the item in private, presumably so as to deliberate on whether or not to contest the appeal. As such, it was not until the Appellant had sight of the Council's Statement of Case ("SoC") on the 30th October 2024, that the resolution, and thus the putative reasons for refusal, was made known. As set out in the Council's SoC, the Planning Committee resolved that, had the appeal not been made, they would have been minded to refuse the planning application for 5 reasons.

3. Housing Delivery Failure

Past Failure

- 3.1. Within the district of Ashfield there has been a chronic failure to deliver housing, the supply position having previously been described by Inspectors as 'lamentable' and 'very serious'³.
- 3.2. Since the publication of the 2020 annual measurement, the Council's housing delivery has consistently failed to meet its annual requirement in each of the 65 years from 2017/18 to 2021/22, with the results set out below in Table 1:

Monitoring Year	Number of Homes Required	Number of Homes Delivered	Oversupply/ Undersupply
2017/18	471	401	-70
2018/19	502	344	-158
2019/20	435	173	-262
2020/21	320	302	-18
2021/22	457	412	-45
2022/23	467	356	-111
Total Undersupply			-664

Table 1 – Housing delivery within the District.

- 3.3. Indeed, over the past 6 years, the total number of homes required stands at 2,652. Against this requirement, 1,988 homes were delivered, an under-delivery of some 664 homes.
- 3.4. As a consequence of its under-delivery the Council, amongst other things, is required by the NPPF paragraph 79(a) to publish an Action Plan. Within the Council's Housing Delivery Action Plan July 2021, the following conclusions are reached:
- The 'saved' policies of the ALPR 2002 identified housing land requirements and housing land allocations for the period 1991–2011. As such, the **housing land requirement set out in local planning policy is acknowledged as being insufficient to meet future anticipated needs** (paragraph 5.2).

³ Appeal Reference: APP/W3005/W/21/3272262 at [48].

- The District has a legacy of redundant coal mining areas and textile industries which have provided numerous brownfield sites in the past. However, these have now been successfully redeveloped, leaving **little scope for future development on brownfield/previously developed sites** (paragraph 5.5).
- There is a **significant under supply of housing land available to meet future need**. This is due to the **outdated status of the current Local Plan** and the fact that the majority of SHELAA sites would be contrary to 'saved' policies within that Plan (paragraph 5.10).
- The presumption against inappropriate development in the Green Belt and the need to demonstrate very special circumstances for larger scale residential development means that there is **limited scope to permit development to address under-delivery** in Ashfield (paragraph 4.3).
- The **settlement boundaries within the ALPR 2002 were defined to allow for sufficient growth to meet future land use needs for the plan period to 2011**. Many of the housing allocations under Policy HG1 have been developed, which substantially limits the opportunity for the existing ALPR to meet future housing needs (paragraph 4.1).

3.5. Development has thus, necessarily, taken place outside the defined settlement limits in the recent past, such that the situation on the ground is materially different.

Future Failure

3.6. Irrespective of the Council's past failures, housing delivery issues will persist into the future, in the absence of an up-to-date development plan as shown within the Council's Housing Land Monitoring Report 2024 [CD 12.1].

3.7. In accordance with the most recent NPPF, Ashfield's new Standard Method figure is 533 dwellings per annum, is subject to a 5 year requirement plus a 5% buffer giving a total 5-year requirement figure of 2,809 dwellings – or 562 dwellings per annum.

3.8. Against this requirement, the Council claim a total supply of 2,060 dwellings. I have highlighted alternative, lower housing land supply figures quoted in the planning application committee report, so the Council appears unsure what the actual supply position is. I have considered the purported supply as set out in the 2024 Housing Land Monitoring Report and query the deliverability credentials of a number of sites.

3.9. The purported supply includes some 244 dwellings on large sites without planning permission. Annex 2 of the NPPF is clear that, to be considered deliverable, sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years.

3.10. Of these 244 dwellings, the Council has relied on the inclusion of 'Land adjacent No. 208 Mansfield Road' and 'Quantum Clothing North Street'. Together, these two sites account for 107 dwellings over the 5-year period. Neither site benefits from an extant permission and neither site is allocated under the current development plan.

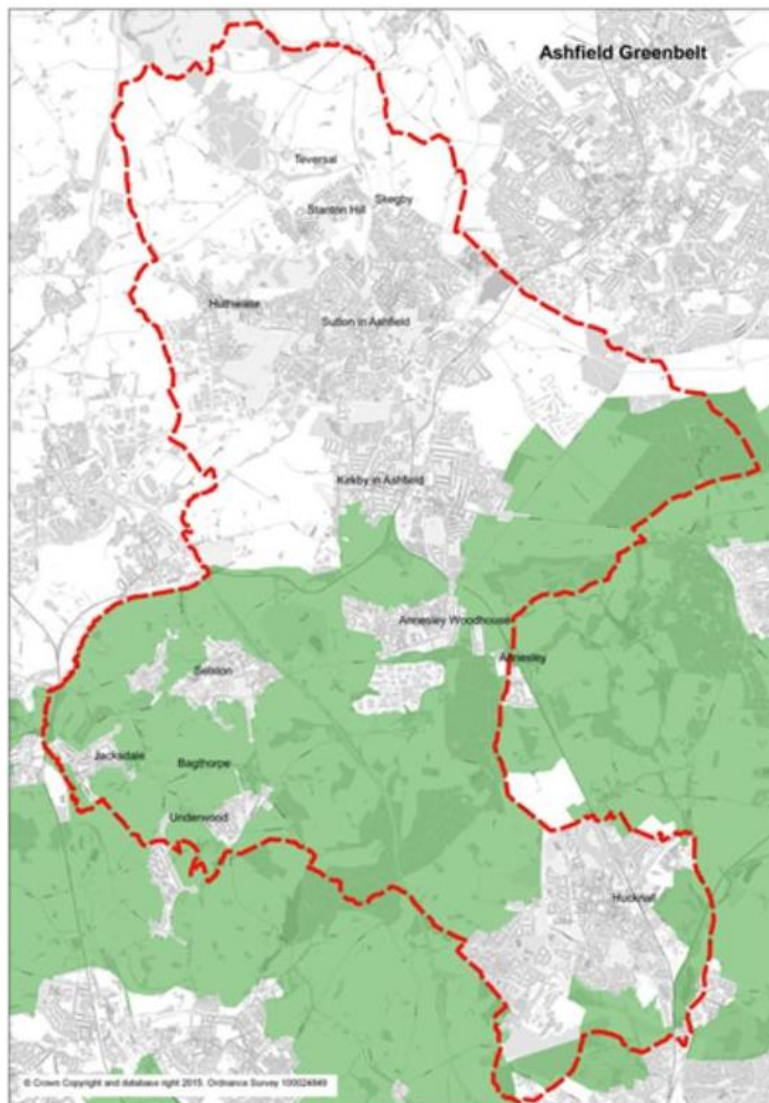
- 3.11. In addition, the 23 units in respect of 'The Pattern House' (V/2018/0212), the reserved matters (V/2022/0878) have revised the quantum of development to 16 dwellings. This results in a net loss of 7 dwellings.
- 3.12. The 69 dwellings at 'Land at Clare Road' (V/2020/0791) does not have the benefit of an extant planning permission.
- 3.13. By virtue of the above and without further investigation of other supply sites, the Council's total amount of housing available and deliverable for the next 5-year period should be reduced to 1,877 dwellings. The new 5-year housing land supply requirement figure is now 2,809 dwellings (as set out at paragraph 4.15 above). As such, I am of the view that the council can at best only demonstrate **3.34** years' supply of deliverable housing land – or an undersupply of 932 dwellings.
- 3.14. The bottom line is that the Council is significantly adrift of having an adequate supply of deliverable housing land, with the appeal site being able to make a material, positive contribution to housing delivery in the short term. This would contribute to and help alleviate the chronic and acute housing shortage that has existing in Ashfield District for some time and likely to continue into the future.
- 3.15. The Appeal Site is under contract, subject to planning, to a regional house builder, Harron Homes. Should outline planning permission be granted for the Appeal proposals in Q1 2025, then it is expected that development would commence on site in 2026, with a forecast of 30 market dwellings completed in 2027 and 36 per annum for the subsequent 4 years. With 10% affordable housing provision in addition to this, that would thus make a material contribution to the housing land supply shortfall over the next 5 years.
- 3.16. Whilst a draft local plan has been submitted for examination, there are significant objections raising fundamental soundness concerns to be addressed, as set out below. Little confidence can therefore be placed on the submission draft local plan being the remedy to the future housing failure concerns.

4. Main Issues

- 4.1. This section addresses the Main Issues identified by the Inspector alongside the putative reasons for refusal, including my views on the issue and the extent to which impact concerns can be addressed, compliance with relevant development plan and NPPF policies and the weight to be attached in the planning balance.

Sustainability of Location

- 4.2. The NPPF at paragraph 109 sets out the transport issues to be considered with development proposals, including:
- ensuring patterns of movement, streets, parking and other transport considerations are integral to the design of schemes, and contribute to making high quality place.
 - identifying and pursuing opportunities to promote walking, cycling and public transport use.
- 4.3. The NPPF at paragraph 110 identifies that Significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes. Paragraph 115 then seeks to ensure that sustainable transport modes are prioritised taking account of the vision for the site.
- 4.4. Saved ALPR 2002 Policies TR2 TR3 and TR6 also seek to promote walking, cycling and public transport use.
- 4.5. The appeal site adjoins the largest settlement in the District and is one of three main towns (or Main Urban Areas MUAs) where ALPR 2002 Policy ST2 and draft Strategic Policy S1 both seek to direct development to. Indeed, the third objective to draft Policy S1 is *“Locating growth in sustainable and accessible locations through prioritising sites for development **within and adjoining the Main Urban Area**”*.
- 4.6. Locations adjoining the MUA are thus acknowledged by the Council to be an accepted and sustainable location for residential development. Background Paper 1 to the Regulation 19 Pre-Submission Draft Local Plan [CD 12.10] sets out the Council’s approach to their spatial strategy by stating (at the foot of page 17) that *“Housing development in the District will be brought forward through sites mainly **concentrated in and adjacent to the larger and more accessible towns** of Hucknall, Sutton-in-Ashfield and Kirkby-in-Ashfield”*.
- 4.7. As noted above, the emerging plan is failing to meet the required housing needs over the plan period, even with the inclusion of significant Green Belt releases. It is acknowledged that Ashfield is a quite constrained District, as the Council has explained it’s Background Paper 5, Analysis of Constraints for the District of Ashfield, to draft local plan examination [CD 11.2].
- 4.8. All land adjoining Hucknall and to the south of Kirkby is constrained by Green Belt, as identified on the plan below:



- 4.9. Accordingly, of all options to accommodate growth adjoining the Main Urban Areas, only land to the west and north-east of Kirkby and around Sutton is unconstrained by Green Belt.
- 4.10. Paragraph 2.9 of this paper identifies that:
- 2.9 Where countryside has been allocated for future development within the emerging Local Plan **the strategy has been to concentrate this close to urban areas which have good access to existing services and infrastructure. This would create the most sustainable developments whilst preserving the intrinsic beauty and character of the countryside** and its wider benefits in accordance with paragraph of 174b of the NPPF*
- 4.11. The appeal site is one of the very few locations left that adjoin the MUA, acknowledged by the Council in adopted and emerging policy to be the most sustainable location outside of the MUA to locate development, and is not subject to a key constraint.

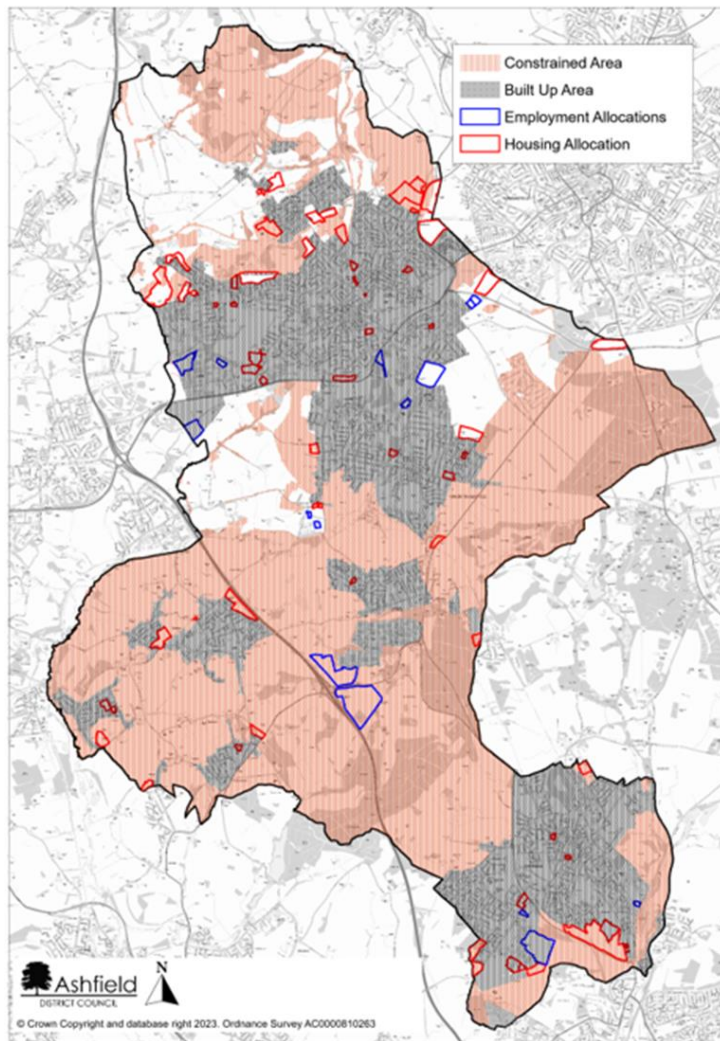


Figure 7: Combined constraints, site allocations and built up areas

- 4.12. ALPR 2002 has specific policies to improve cycle access (Policy TR2) and pedestrian access (Policy TR3), but no specific policy to improve bus accessibility. However, Policy TR6 provides for developer contributions to improve accessibility, including improvements to public transport infrastructure.
- 4.13. With regard to pedestrian movements, the evidence of Mr Cummins confirms that there will be numerous employment, education, health, retail, and leisure facilities within walking distance of the development and that the development will be very well located for pedestrian movement, at the top of the hierarchy for sustainable transport.
- 4.14. For cycling, Mr Cummins notes that there will be very many destinations within cycling distance of the development. They include the employment, education, health, retail, and leisure facilities in Sutton and Kirkby, the two largest settlements in the District, and the town centre of Mansfield, the largest settlement in the neighbouring Borough. The development will be very well located for cycle movement.
- 4.15. Sutton Parkway train station is within walking distance of the development and there will be a continuous footway network linking both. There is secure cycle parking at the station and

the development will deliver additional secure and sheltered cycle parking. The development will be very well located for train travel.

- 4.16. On bus accessibility, the appellant will contribute the funds requested by NCC to allow buses to reroute closer to the site. There are options as agreed with NCC for how that may be achieved, which depend on the strategic framework and funding at the time. The development will be accessible by bus.
- 4.17. I agree with Mr Cummins that the location is sustainable and that the development proposals have been formulated alongside agreeing further improvements to ensure the residents would be able to take up the opportunities to travel by sustainable modes of transport.
- 4.18. Having regard to the relevant development plan and the NPPF policies, I consider the scheme proposals accord with ALPR 2002 Policies TR2, TR3 and TR6 and the NPPF at paragraphs 109, 110 and 115.

The Level Crossing

- 4.19. The evidence of Mr Cummins has demonstrated that the appeal proposals will not materially affect the operation of the level crossing and that measures are in place to ensure its safe future operation.
- 4.20. Paragraph 1165 of the NPPF states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would, following mitigation, be severe. The evidence of Mr Cummins has demonstrated that there will be no unacceptable impact on highway safety and that the impact on the road network will not be severe.
- 4.21. In respect of ALPR 2002 Policy ST1, this does not accord with the NPPF and paragraph 116 in particular. I therefore attach very little weight to that policy conflict.

The Effect on the Character and Appearance of the Surrounding Area

- 4.22. As set out in the Development Plan section of my proof above, the ALPR 2002 Policies ST1 and EV2 are both completely inflexible and thus at odds with the NPPF in how to approach the consideration of landscape and visual impacts. NPPF paragraph 187(b) requires a recognition of the intrinsic character and beauty of the countryside. This requires a consideration of the site and its local landscape character; the submitted Landscape and Visual impact Assessment (LVIA) [CD 1.38] 'recognises' the intrinsic character of the local landscape context and responds appropriately through design to avoid or minimise impacts on those key characteristics.
- 4.23. The appeal site is not designated, nor within an area designated in respect of landscape and visual matters.
- 4.24. The evidence of Mr Atkin identifies the relationship of the appeal site in its context, noting that the site is located immediately adjacent to the existing settlement edge of Sutton-in-Ashfield and influenced by the existing residential and nearby commercial and industrial land uses which characterise this edge of the town.

- 4.25. Mr Atkin has confirmed that the conclusions of the submitted LVIA hold true in that the proposed development will result in some limited impact at a localised level. The scale and form of proposed development is likely to result in impacts which are limited to the site area and its immediate context only. Such proposals are seen in the context of the existing settlement edge. Furthermore, the proposals for green infrastructure and landscaping will deliver some enhancements in terms of the physical landscape resources.
- 4.26. Overall, Mr Atkin considers that the appeal site (and proposed development) has a limited visual envelope, which restricts the appreciated local landscape context to the appeal site.
- 4.27. The appeal proposals represent a positive response to the landscape and visual constraints via a high-quality design solution in terms of how it incorporates mitigation to avoid, and reduce potential impacts, whilst creating a framework of green infrastructure that respects characteristics and sets parameters for a high-quality development.
- 4.28. In light of this detailed assessment and professional evidence, I agree with Mr Atkin's conclusions that the proposals will result in only limited impacts at a local level, with the proposals for green infrastructure and landscaping delivering some enhancements to the physical landscape resource in the longer term.
- 4.29. Due to the binary nature of ALPR 2002 Policy ST1, even the limited adverse impact on the proposed development, as summarised above and in the evidence of Mr Atkin, results in a conflict with Policy ST1. However, as also explained above, Policy ST1 is out of date for several reasons, such that continued application of the policy is at odds with the NPPF. I thus prescribe very little weight to this policy conflict in the planning balance.

Effect on Best and Most Versatile Agricultural Land

- 4.30. There is no disagreement that the appeal proposal will result in the loss of 19.2 Hectares of ALC Grade 3a agricultural land, but this has to be considered in light of the relative loss and the **recognition** of the economic and other benefits as required by paragraph 187(b) of the NPPF.
- 4.31. The evidence of Mr Kernon identifies that the economic benefits of BMV land on this site are modest. In particular the economic benefit of the appeal land with only moderate yields being achievable is only a marginal improvement on the economic benefit of non BMV land.
- 4.32. Having considered the two farming enterprises that presently use the appeal site, Mr Kernon is also able to conclude that the proposed development will not have any adverse effects on either farm business, nor will it result in any other agricultural land in the wider area being affected or becoming unfarmable. Other land can continue to be managed as it is now.
- 4.33. Evidence from the emerging local plan is that agricultural land quality was not a significant factor in determining which sites to allocate, Background Paper 5 [CD 11.2] highlighting that the Council did not consider ALC 3a as a constraint on allocating land for development – it only considered ALC grade 2 (see Section 7). Notwithstanding the identification of this as a constraint, the draft local plan includes several proposed allocations on land that they have identified as being Grade 2 BMV land. It can reasonably be concluded therefore that poorer quality agricultural land in sustainable locations is unlikely to be available.

- 4.34. The use of land potentially of BMV quality will be inevitable should development take place to the north, east or south of Sutton. The evidence indicates that the land quality of the Appeal Site is likely to be some of the poorest available.
- 4.35. The Council's SoC notes that the decision taker must recognise the economic and other benefits of BMV land. The Council does not set out any evidence on this matter, nor does it ascribe any weight to the benefits, or ascribe any weight to the harm.
- 4.36. In recognising the very limited economic agricultural benefits of this site, Mr Kernon is able to conclude that its loss as a consequence of this appeal results in only limited harm. I agree; it is a factor to be weighed in the balance as required by the NPPF, but it does not in itself cause a conflict with it.

Suitability of the Appeal Site for the Development Proposed Having Regard to Ground Conditions and Risks Arising from Contamination

- 4.37. Notwithstanding the agricultural use of the appeal site, the northern portion covering circa 4.54 hectares has been the subject of historic extraction and landfill that has raised concerns over the suitability of the site for residential use. So, whilst the site is not brownfield, it has a history of sand excavation and licenced landfilling of inert construction and demolition waste.
- 4.38. In that context, it is important to recognize the government's positive policy approach towards development on such sites; the NPPF at paragraph 125 stating that "*planning policies and decisions should...*
- c) give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs, and **support appropriate opportunities to remediate despoiled, degraded, derelict, contaminated or unstable land**" (my emphasis).*
- 4.39. Paragraph 187 of the NPPF goes to state: "*planning policies and decisions should contribute to and enhance the natural and local environment by...*
- e) preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability. Development should, wherever possible, help to improve local environmental conditions such as air and water quality, taking into account relevant information such as river basin management plans; and*
- f) remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate."*
- 4.40. In this policy context the evidence of Mr Kitson-Boyce sets out the site investigation work that has been undertaken on the site and I summarise his conclusions as follows:
- No Asbestos Containing Materials (ACM), domestic waste or putrescible materials were identified within the Made Ground. No visual evidence of significant contamination was identified in any of the ground investigations.

Sporadic elevated concentrations of contaminations were identified, when compared to adopted values, but these were all noted to be at a depth that would present a low risk to human health. Nevertheless, a clean cover system will be installed to mitigate the risk.

No significant concentrations of contaminants have been encountered that indicate a risk to groundwater. Moreover, the proposed development will provide betterment in this regard due to a 33% reduction in rainwater infiltration. It is therefore considered that the low risk to groundwater will only be reduced as a result of the development. No further mitigation is deemed necessary.

There is not considered to be any mechanism by which rainwater can migrate through made ground material and re-emerge to impact surface water.

The proposed mitigation measures will be set out in a remediation strategy and can be controlled through condition, as suggested by both the ADC Contaminated Land Officer and the Environment Agency.

- 4.41. I would also highlight that the alternative illustrative layout (**Appendix 2**) is provided so as to avoid completely any potential requirement to excavate into the inert landfill material to form surface water attenuation basins. Indeed, I set out an additional proposed condition on behalf of the appellant in Section 9 below to ensure that future reserved matters applications do not provide any surface water attenuation basins on previously landfilled areas of the site.
- 4.42. In summary, following proposed mitigation to be secured via condition there will be no residual unacceptable risks in accordance with the NPPF. Also, in accordance with the NPPF, the proposed development and mitigation measures can help secure betterment in respect of risks to groundwater.

Nature and Extent of Economic, Social and Environmental Benefits

- 4.43. I set out my consideration of these benefits in the Planning Balance section of my evidence below. The economic benefits of the appeal proposals are quantified in the Economic Infographic at **Appendix 3** to my proof. These are summarised as follows:
- 4.44. There are thus considerable economic benefits arising from the development proposals.

5. Matters Raised by Third Parties

- 5.1. Over several periods of consultation, representations have been received from local residents. Four additional representations have been received as part of the appeal.
- 5.2. I have read and considered the submissions made by local residents and understand the concerns that they hold. I am though confident that all valid issues raised have been appropriately addressed through the robust and comprehensive planning application submission, the careful consideration of various technical issues by statutory consultees and in the evidence presented to this inquiry on behalf of the appellant. There are no residual issues raised in my view that constitute a planning reason for refusal.

6. S.106 Obligations and Conditions

- 6.1. A draft Section 106 agreement will be submitted to the inquiry.
- 6.2. The agreement will reflect the obligations as set out in Section 10 of the agreed Statement of Common Ground [CD 9.1].
- 6.3. The S106 will confirm that, if the Inspector decided to allow the appeal, then the obligations identified would be necessary to make the development acceptable in planning terms.
- 6.4. I am yet to have sight of the Council's CIL compliance statement, (due on 28th November 2024), but based on the information presently available I am of the view that the obligations within the draft agreement meet the tests in Regulation 122(2) of the CIL Regulations 2010, but with two exceptions:
- The request for Secondary school contributions; and
 - The request for Off-site POS contributions.

Secondary Education

- 6.5. In respect of the request for contributions to expand secondary schools, there is no development plan policy or supplementary planning document that prescribes the requirement for contributions. NCC has a Developer Contributions Strategy (April 2024) and whilst it is approved by the Council, it is not adopted as a Supplementary Planning Document.
- 6.6. I refer to the statement prepared by Mr Hunter, an Education Consultant at EFM – a specialist consultancy providing advice on education matters – enclosed as **Appendix 1** to my evidence. This confirms what is already accepted by Nottinghamshire County Council as Education Authority that forecast surplus of secondary school places within the Sutton-Kirkby Planning Area and the impact of this proposal alone would not result in a deficit of provision.
- 6.7. Mr Hunter goes on to evidence why there is also a surplus of secondary school places when account is taken of the cumulative impact of existing commitments.
- 6.8. Even when account is taken of the impact of secondary school places arising from other planning applications presently in the system (which I contend the appellant is not required to satisfy to accord with CIL Reg 122(2)) there is also spare capacity with the appeal proposals included.
- 6.9. It is only when NCC factor in the increase in pupils that would arise from the draft local plan sites that a deficit in places arises.
- 6.10. The NCC Developer Contributions Strategy provides guidance on Education contributions in Section 4 and states at paragraph 4.7: *"When assessing the impact of new development on school places, the County Council will take into consideration the cumulative impact of development, including any outstanding applications that remain to be determined at the point the application is received. Where one application does not justify obligations owing to projected spare capacity in the planning area, but a further application would result in*

capacity being exceeded, the County Council will seek to ensure that obligations are requested and shared between all eligible applications”.

- 6.11. This approach in itself is not considered to accord with CIL Reg 122(2) as taking account of all outstanding planning applications in the system would over estimate the impact of development – planning applications will be refused, withdrawn and not implemented and thus requests made on this basis would unlikely be necessary and would not be fairly and reasonably related in scale and kind to the development.
- 6.12. But the NCC consultation response to the appeal application then factors in sites in a local plan that is in draft and is presently undergoing examination with significant soundness concerns being raised. The NCC Education request is therefore at odds with its own Developer Contributions Strategy and is most certainly contrary to CIL Reg 122(2) on all counts.
- 6.13. The request is also somewhat surprising when regard is had to the Infrastructure Delivery Plan Update of October 2024, submitted in support of the submission draft local plan as SEC36.1 [CD 12.26 to this inquiry]. This report sets out the anticipated infrastructure requirements arising from the local plan growth and includes an assessment of education requirements at Section 7, notably from paragraph 7.13. This states with regards to the Kirkby/Sutton Secondary Planning Area – *“There is forecast to be sufficient places to meet future needs”*.
- 6.14. The report does identify a shortfall in places in the Hucknall Secondary Planning Area, identifying that all allocations within Hucknall will be required to make contributions. The appeal site is not within the Hucknall area.
- 6.15. As a consequence of the above, I am firmly of the view that the request for secondary school contributions fails the CIL Reg 122(2) test as it is not necessary to make the development acceptable in planning terms and is also not fairly and reasonably related in scale and kind to the development.

Public Open Space

- 6.16. I set out the policy aspect of the requested £900,000 off site POS contribution, concluding that the delivery of 7 hectares of various forms of POS on site, secured by condition and S106 agreement, meets Policy HSG6 requirements and does not trigger the requirement for off-site contributions.
- 6.17. In the absence of a CIL compliance statement and despite numerous requests for further information, the LPA case officer has simply asked for a contribution of £3000 per dwelling, which equates to £900,000 for 300 dwellings. No explanation is provided on how this sum has been arrived at, how it relates to the appeal scheme or on what the money will be spent. There is also no policy basis for the requested contribution, either in an adopted plan or as Supplementary Planning Guidance. No information has been provided to demonstrate that there is a need to improve existing facilities as a consequence of the development proposals.
- 6.18. The Inspector determining the Limes Avenue, Huthwaite appeal [CD 7.28] found at paragraph 40: *“However, the Council has provided no information to justify the level of contribution sought. No methodology of cost has been provided, nor have details of existing demand or necessary improvements been advanced, and locations where the contribution would be spent are only given in general terms, with no specific improvements identified. As such, I*

am not satisfied that a contribution of £2,000 per dwelling is necessary to make the development acceptable in planning terms."

- 6.19. In the absence of any further information or justification I have to conclude, as did the Lime Avenue appeal Inspector [CD 7.28], that the request fails the CIL Reg 122(2) test as it is not necessary.

Cycle Improvements

- 6.20. Whilst I did have concerns over the ambiguous request for contributions (not quantified) to improve cycle parking at Sutton Parkway Train Station, the appellant has agreed to make a £10,000 contribution for a specific improvement in the form of additional secure cycle parking for 8 cyclists arising from the development.
- 6.21. This suggested contribution is based on the evidence in the Transport Assessment which identified a journey to work percentage for cycling of 2.8%, which equates to a peak hour demand for 8 cycle trips and a train modal share of 1.0%, which equates to 3 peak hour trips. Not all cycle trips would be to the train station and some residents might drive or walk to the train station, so it is considered reasonable to identify a need for 8 additional secure cycle parking spaces.
- 6.22. There are a range of different ways of providing cycle parking – see for example Bike Enclosures & Compounds ([bikedocksolutions.com](https://www.bikedocksolutions.com)). However, a basic shelter for 8 cycles is £3,439 + VAT. <https://www.bikedocksolutions.com/secure-cycle-compound>. On the basis that any cycle parking would need to be in line with government on Cycle Infrastructure Design (LTN 1/20) and there may be maintenance costs associated with it, we suggest a contribution of £10,000, would be reasonable. On this basis I am comfortable that the contribution would by CIL Regulation 122(2) complaint.

Planning Conditions

- 6.23. Section 10 of the Statement of Common Ground [CD 9.1] details draft conditions which are agreed between the Appellant and the Council to be necessary, relevant, enforceable, precise and reasonable in all other respects, should the Inspector be minded to allow this appeal.
- 6.24. In addition, two further conditions are proposed by the appellant as mentioned above in my evidence.
- 6.25. First is a condition to secure a significant level of POS on site to exceed to ALPR 2002 Policy HSG6 requirement by three times.
- 6.26. Second is a policy to prevent the construction of surface water attenuation basins in those parts of the site that have been subject to landfill.

7. Planning Balance and Conclusion

- 7.1. The development plan relevant to the appeal are the saved policies of the ALPR 2002 and the most important policies are agreed as ST1, ST4 and EV2. These policies are out of date on several grounds.
- 7.2. It is common ground that the presumption in favour of sustainable development in paragraph 11 (d) from the NPPF, the tilted balance, is engaged. In the absence of any applicable Footnote 7 policies, the decision-taker must proceed to limb (ii) of NPPF paragraph 11(d) and determine the application accordingly. Planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination. Footnote 9 notes that this further detail in paragraph 11 relates to those in paragraphs 66 and 84 of chapter 5; 91 of chapter 7; 110 and 115 of chapter 9; 129 of chapter 11; and 135 and 139 of chapter 12. I seek to have regard to these policies in undertaking the planning balance below.
- 7.3. In order to assess the benefits of the development, and any harm that would arise, it is useful to conduct this exercise in the context of the Government's approach to achieving sustainable development and the three overarching objectives of the planning system, set out in paragraph 8 of the NPPF.

Benefits of the Development

- 7.4. The Framework is clear that sustainable development comprises three pillars: social, economic and environmental.

Economic Objective

- 7.5. The appellant has quantified a number of economic benefits that will flow from the proposals, as set out from paragraph 7.51 above and on the Infographic at **Appendix 3**, and to which I give **moderate positive weight**.

Social Objective

Market Housing

- 7.6. As set out in this proof, the Council has been unable to demonstrate a five-year supply of housing on numerous occasions in the recent past, and there remains a persistent cumulative shortfall in the provision of housing to date against the requirements. In contributing to meeting the social objective of ensuring a sufficient number and range of homes can be provided and in the context of persistent under-delivery and the government's objectives of significantly boosting the supply of housing, I attach **significant positive weight** to the benefit of delivering 300 dwellings on the appeal site.

Affordable Housing

- 7.7. The evidence of Mr Stacey demonstrates that there is a significant and increasing affordable housing need in Ashfield – 399 affordable homes per year over the 18-year period between

2023/24 and 2040/41. In contrast delivery between 2012/12 and 2022/23 was just 588 gross dwellings were affordable tenures, equivalent to just 59 per annum. Accounting for Right to Buy losses, the net supply reduces to just 152 affordable dwellings in total or only 15 per annum.

- 7.8. On 31 March 2024 there were 4,404 households on the Council's Housing Register.
- 7.9. The 2020 HNA identifies an objectively assessed need for 319 net affordable homes per annum between 2020/21 and 2037/38. Over the 18 -year period this equates to a total need for 5,742 net affordable homes.
- 7.10. Since the start of the 2020/21 monitoring period, the Council have overseen the delivery of 78 affordable homes (net of Right to Buy) against a need of 957 net new affordable homes, which has resulted in a shortfall of -882 affordable homes.
- 7.11. When the shortfall is factored into the 2020 HNA identified need of 319 affordable homes per annum for the period 2020 and 2038, the number of affordable homes the Council will need to complete increases by 55% to 495 net affordable homes per annum over the period.
- 7.12. The Council needs to deliver 2,475 net affordable homes over the next five years to address backlog needs and for the needs thereafter to return to 319 per annum to 2037/38. Whilst this level of delivery is clearly unrealistic, it shows the sheer scale of the problem facing those households in need of assistance with their housing.
- 7.13. The proposed quantum and mix of affordable housing is considered to meet the identified local needs in accordance with NPPF paragraph 66 and will be agreed in the final details approved at RM stage.
- 7.14. In light of Mr Stacey's key findings and the acute need for affordable housing within Ashfield District, I agree with his conclusion that **substantial positive weight** should be attributed to the delivery of 30 affordable homes through the appeal scheme.

Environmental Objective

- 7.15. The proposal would generate a host of environmental benefits, notably through delivering housing in a sustainable location. In the context of national planning policy, and notably in respect of paragraphs 110 and 115, the site's location adjacent to the main urban area (where both the historic and emerging spatial strategy seek to direct significant growth), is clearly one that offers a genuine choice of transport modes. where proposals have been formulated to encourage non car mode trips. Sustainable transport modes have been prioritized from the outset in the design evolution of the scheme, and safe and suitable access to the site can be achieved for all users. The sustainable location of the site and accordance with the NPPF weighs in favour of the scheme and should attract **moderate positive weight**.
- 7.16. The proposed development seeks to make the most efficient use of this greenfield site whilst providing environmental benefits. The site is capable of being developed with suitable ecological mitigation and enhancement, resulting in significant net gains for biodiversity. The Biodiversity Statement at **Appendix 6** includes a BNG Metric headline results, identifying the potential for just over a 11% net gain in habitats and a just over a 19% net gain in hedgerows.
- 7.17. The proposed development will therefore provide considerable benefits to biodiversity. In the present case, as a matter of fact, the statutory requirement for Biodiversity Net Gain does

not apply. As such, and having regard to paragraph 187 of the Framework, the requirement for a 'net gain' is not quantified – the requirement is only that there is a 'positive' gain. Accordingly, any measure of BNG should be attributed positive weight. I attach **moderate positive weight** to this BNG.

- 7.18. The proposed development also delivers new areas of open space for informal recreation, as highlighted in the illustrative layout plan [CD 1.11] and as proposed to be secured via condition, at least 30% of the total site area will be landscaped for public recreational access; the policy requirement is for 10% of the site area to be laid out as public open space. These additional recreational areas and walking paths constitute a benefit serving the wider community and should attract **moderate positive weight**.
- 7.19. With regard to paragraphs 129, 135 and 139 of the NPPF, the DAS, the scheme design has had due regard to the context and the National Design Guides 10 characteristics in setting a framework to achieve high quality design (as agreed in the SoCG at paragraph 8.61). the density reflects the site's context of suburban detached and semi-detached housing alongside the achievement of BNG and significant areas of POS to reflect local character and ensure healthy lifestyles are promoted. Setting a framework to achieve high quality design is considered a **minor benefit** in the planning balance.
- 7.20. In respect of any potential risks arising from contamination, the evidence has demonstrated that the site can be successfully developed with appropriate future mitigation to be secured via planning conditions. The evidence identifies a potential betterment in respect of impacts on groundwater quality and is thus considered a **minor benefit** in the planning balance.

Disbenefits of the Development

- 7.21. As set out in the Landscape and Visual Impact Evidence of Mr Atkin, minor to moderate impacts will occur that are very localised, concluding that this level of impact does not constitute significant harm and that the predicted degree of landscape and visual impact is acceptable in landscape and visual terms. There are also some long term benefits flowing from the green infrastructure and landscaping proposals that will deliver some enhancements in terms of the physical landscape resources. I find on the basis of evidence that there is some limited, localised adverse effects arising from the landscape and visual impacts of the appeal to which I attach **limited negative weight**.
- 7.22. The appeal proposals are contrary to saved policies of the ALPR 2002 policies ST1, ST4 and EV2. These policies are not only procedurally out of date as a consequence of a 4 year housing land supply shortfall⁴, they are also out of date due to their age and events that have happened on the ground since their adoption, in particular the fact that settlement limits were drawn to accommodate housing needs up to 2011, where those housing needs were lower than present needs. My evidence has shown that is necessary for housing development to take place on land that is subject to these policy designations in the out-of-date ALPR 2002. This need is also an urgent one. To continue to frustrate the delivery of much needed housing and affordable housing by the strict application of these policies is to undermine the Government's housing delivery objectives and the NPPF. I thus attach **very limited negative weight** to conflict with these out-of-date policies.

⁴ NPPF paragraph 11d

- 7.23. The development would also result in the loss of some Best and Most Versatile agricultural land; 19.2 hectares of the site has been classified as ALC Grade 3a. However, as identified within this Proof of Evidence, there are limited economic impacts arising from this loss and there are unlikely alternative sites of lower agricultural quality to meet the housing needs of the District. I thus attach **limited negative weight** to this impact.

Overall Conclusion

- 7.24. The appeal proposal adjoins the settlement boundary of Sutton-in-Ashfield, an accepted sustainable location for new housing growth and a location where existing and emerging spatial policy seeks to focus growth.
- 7.25. We are in an acknowledged housing crisis where needs are far outstripping supply, nationally and in Ashfield. In addition to helping to meet those acute and urgent needs, the appeal proposals deliver additional significant economic, social and environmental benefits of the scheme, with limited, localised adverse impacts.
- 7.26. In the circumstances of this appeal, paragraph 11 (d) of the NPPF is engaged. I believe that the appeal proposal represents sustainable development in accordance with the NPPF as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, where the limited adverse impacts identified fall substantially short of significantly and demonstrably outweighing the benefits of the scheme when assessed against the policies of the NPPF and the development plan.
- 7.27. The most important policies of the development are out of date and are to be afforded limited weight.
- 7.28. It is respectfully requested that the appeal is allowed subject to conditions and the completion of the Section 106 Agreement.

Town & Country Planning Act 1990 (as amended)
Planning and Compulsory Purchase Act 2004

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