

Ashfield District Local Plan Examination. Matter 3 Hearing Statement Amendment.

On behalf of Hallam Land.

Date: 31 October 2025 | Pegasus Ref: P25-0863 (EMS.2254)

Local Plan Respondent ID: 240

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2. Matter 3 – The Spatial Strategy and Distribution of Development

Issue – Whether the Spatial Strategy and the distribution of development are justified, and can be accommodated without releasing land from the Green Belt? If not, do exceptional circumstances exist that would justify altering the Green Belt boundary?

Relevant policies– S1, S4, S7, EV1

Question 3.1 – Is the spatial distribution of development across the borough justified and what factors influenced the Spatial Strategy, for example physical and environmental constraints and the capacity to accommodate development?

- 2.1. As set out in detail in our Matter 1 Statement and explored in the Stage 1 Hearing Sessions, there is no clear justification provided in the submitted Local Plan (SD.01), Background Paper (BP.01) or Sustainability Appraisal (SD.03) for the spatial strategy.
- 2.2. The proposed strategy of dispersal aims to avoid large sites of more than 500 units rather than disperse a significant scale of development to lower tier settlements. It has not been identified with reference to the physical and environmental constraints or other factors considered in the Sustainability Appraisal (SA). It appears to have been the result of a decision to remove the proposed new settlements identified in the Regulation 18 Draft Local Plan, with what was left being described as a dispersed strategy. Whilst this decision is documented, the justification for a dispersed approach is not provided and the implications were not appraised.
- 2.3. The decision was taken on the basis of the level of objection and government announcements at the time, not with reference to the physical and environmental constraints or other factors considered in the Sustainability Appraisal. The key decisions are summarised below:
 - Cabinet decision on 27th September 2022, following recommendation of the Local Plan Development Committee on 23rd September – Approved selection of Option C as a way forward for progressing the Council's emerging Local Plan which was to take forward a revised Local Plan reflecting the recent national pronouncements on the Green Belt and housing numbers (from the then Prime Minister Liz Truss in relation to Stalinist housing targets and protecting the Green Belt) whilst continuing to emphasise the locational advantages of Ashfield for employment and the skills growth associated with the Plan.
 - Report to Local Plan Development Committee on 15th November 2022 and Cabinet decision on 13th December 2023 – Report set out that removing the new settlements would provide only a 10-year housing supply. The report sets out that this should provide sufficient housing numbers whilst the methods and approach to housing requirements and to the Local Plan process are being revised by Government.

- 2.4. There are no physical or environmental constraints that have prevented the Council identifying a spatial strategy that meets the housing needs of the District. The Green Belt, as a policy constraint, covers less than half of the District and does not cover large areas of land that are adjacent to main settlements such as Sutton-in-Ashfield.
- 2.5. The spatial strategy needs to be revisited, to ensure the findings of the Sustainability Appraisal are used to inform the decision about an appropriate strategy for growth and a strategy is selected that is capable of delivering a sufficient supply of homes to meet the housing needs identified for the District. This should be very much cognisant that whilst housing need and delivering sustainable development can amount to exceptional circumstances for a Green Belt alteration, where housing needs are able to be met on suitable non-Green Belt land in sustainable locations adjacent to the main urban settlements, the existence of exceptional circumstances can no longer be soundly based on meeting these factors. No case is made out by the SA or Background Paper evidence that non Green Belt options are locationally unsustainable so as to provide exceptional circumstances that warrant Green Belt release.
- 2.6. The proposed strategy does not meet the 'Justified' soundness test as it is not an appropriate strategy that has been identified taking into account the reasonable alternatives. It does not meet the 'Positively Prepared' soundness test as the preferred strategy will fail to deliver sufficient housing land supply to meet the District's needs over the plan period.

New Question 3.1.1 – What effect would the proposed additional sites have on the distribution of new housing development across the plan area?

- 2.7. The Council's response to the Inspectors in June 2025 (ACD.12) points to the Housing Land Supply Position Statement (October 2024) (ADC.04) which included Table A which showed the distribution of new housing development against the settlement hierarchy and identified the following overall distribution:
- Main Urban Areas: 86%
 - Named Settlements: 13%
 - The Remainder of the District: 1%
- 2.8. This was, however, prepared before the new sites were identified for allocation. No update to this is offered in the Council's response.
- 2.9. The new allocations are concentrated in the Main Urban Areas of Sutton and Kirby, but there are two sites at Skegby, which is not a Main Urban Area or Named Settlement. These two sites total 196 homes, which when compared with the 85 dwellings identified in Table A of the Housing Land Supply Position Statement (October 2024) (ADC.04) is a significant departure from the proposed strategy for the Remainder of the District and Skegby Village in particular.

New Question 3.1.2 – Is the Spatial Strategy effective having regard to the scale and location of the proposed additional sites?

- 2.10. No, the spatial strategy is not effective having regard to the scale and location of the proposed additional sites.

- 2.11. An analysis of the sites set out in our Hearing Statement 2 Amendment under new question 2.7.1 highlights the following:
- **328 homes** proposed are **new commitments** with planning permission including our client's 300 unit site allowed on appeal against the Council's case that the site should be refused (Land at Newark Road (SHLAA reference SAO24) now proposed for allocation (HISal);
 - **224 homes** proposed have a **resolution to grant** permission, these include five sites, four of which were approved at the Plans Committee Meeting held just before the meeting to approve the Additional Sites consultation including a site in the Green Belt and a site recommended for refusal by officers following objection from the Highways Authority on the grounds of unsafe access, unsustainable location, increased traffic risks, and inadequate mitigation measures;
 - **170 homes** proposed on five **brownfield sites previously discounted**. There are significant deliverability concerns will all these sites, concerns that informed the Council's decision not to include sites in the Pre-Submission Local Plan; and
 - **106 homes** on a **single new greenfield site previously discounted** due to access constraints and not included in the Submission Local Plan. The consultation document noted that this site is subject to a satisfactory position being reached with a third party and the County Council's Highways Department.
- 2.12. The nature of proposed additional sites demonstrates that the Council has done, at best the absolute minimum to attempt to address the concerns. The Council has simply updated its monitoring data, added sites with a resolutions to grant (including two brownfield sites) and only proposed six new sites for allocation, five of which are brownfield sites previously discounted and one of which is a greenfield site with deliverability question marks over it.
- 2.13. The six new sites identified that were not commitments or sites with a resolution to grant account for **276 homes** of the new proposed homes, and there is **no evidence provided that these sites can be delivered** in the plan period and effectively provide homes needed in the plan period. All these sites without planning permission were assessed when the plan was originally prepared and were discounted due to uncertainty about their deliverability or developability.
- 2.14. In the context of the '*small over provision of 136 dwellings*' identified in the Additional Housing Sites consultation document (HSC.01) at paragraph 4.5, removing these uncertain sites would reduce the supply by 276, placing the Council back into a **deficit of 140 homes**. This demonstrates well how a small number of sites failing to deliver could undermine the ability of the Local Plan to meet housing needs over the plan period.
- 2.15. The Council notes that a number of the additional sites are part of the Council's Towns Fund project work in Kirkby in Ashfield and Sutton in Ashfield and that they are in receipt of Town Fund monies and are proceeding with projects, but no information is provided on what these projects involve or how they will support housing delivery.
- 2.16. Not only are there serious questions of deliverability of six of the new sites identified, the Council has failed to identify an appropriate level of contingency to reflect the nature of these sites, with at best only just enough sites to almost exactly meet the housing needs, if they were all deliverable (which is disputed). The Additional Housing Sites consultation

document (HSC.01) at paragraph 4.5 sets out that a 2% buffer is provided, this is totally inadequate given the reliance of brownfield sites and the potential for unforeseen delivery issues.

- 2.17. The Council needs to include an element of flexibility in its provision of sites to account for unexpected issues particularly in the context of the new sites identified, many of which are difficult brownfield sites that were previously discounted.
- 2.18. As proposed, the spatial strategy is not effective having regard to the proposed additional site, the strategy fails to provide sufficient flexibility in the supply of sites to ensure housing needs are met.

Question 3.2 – What alternative options for the spatial strategy were considered?

- 2.19. The SA considered a range of spatial strategies. Ten options were identified originally, but only eight of these were appraised, including two sub options for two of the strategies, broadly:
- Option 3 – Dispersed development
 - Option 4 – One large sustainable urban extension:
 - 4a. Sub-option 1 considers Sutton Parkway as SUE.
 - 4b. Sub-option 2 considers Mowlands as SUE.
 - Option 5 – One new settlement (outside Green Belt), one large SUE:
 - Sub-option 1 considers Sutton Parkway as SUE
 - Sub-option 2 considers Mowlands as SUE.
 - Option 6 – Two SUEs adjacent Kirkby/Sutton with smaller sites.
 - Option 7 – One new settlement in Hucknall's Green Belt and smaller sites.
 - Option 8 – Two new settlements and smaller sites in/adjacent Sutton and Kirkby.
 - Option 9 – Three new settlements including one in Green Belt.
 - Option 10 – Two new settlements, more limited development at existing settlements.
- 2.20. Option 10 was originally identified as a preferred option as part of the Regulation 18 Draft Plan stage. Ashfield District Council's Cabinet decisions on 27th September 2022 and 13th December 2023, however, led to a decision to remove the proposed new settlements identified in the Regulation 18 Draft Local Plan. The decision was taken on the basis of the level of objection and government announcements at the time, not with reference to the physical and environmental constraints or other factors considered in the Sustainability Appraisal.
- 2.21. Once the decision to not have a new settlement was taken, this should have led to a consideration of Options 4, 5 and 6 in addition to Option 3. This was, however, a politically motivated decision to avoid large scale development, which led to all the options for new settlements or urban extensions to be discounted and a dispersed strategy identified that was entirely unjustified or unevidenced, underpinned by an arbitrary threshold for sites of less than 500 dwellings rather than the dispersal of significant scales of growth to lower tier settlements.

- 2.22. These other options scored well in the SA and provide good alternative options which would meet the housing requirement whilst directing growth to the most sustainable locations, the Main Urban Areas.
- 2.23. A reassessment of Option 4, 5 and 6 also needs to be accompanied by a reassessment of the existence of exceptional circumstances to justify the amount and location of Green Belt release, particularly in the context of suitable non-Green Belt sites, including our client's site, the Sutton Sustainable Urban Extension (site reference SA001). Part of this site was allowed at appeal earlier this year and is the subject of a live Reserved Matters application but there remains land for up to 500 homes as shown in **Appendix A**.
- 2.24. One of the real opportunities presented by these options for growth is the co-location of homes and jobs, with new infrastructure to support both existing and new residents with improved cycle and walking routes linking homes, jobs, services and the Sutton Parkway Station.
- 2.25. These options are located in highly sustainable locations. Sutton-in-Ashfield is a sustainable location with a range of services and facilities available and existing infrastructure that development would benefit from. The Accessibility of Settlements Study identified that Sutton has the highest Settlement Accessibility Score in the whole District (Table 10, Background Paper 1, BP.01). Comparatively, Selston scores lower, despite 9 sites being allocated within the Selston Parish Area. A number of these sites require release from Green Belt.
- 2.26. The proposed employment allocation in Strategic Policy S6 at Land to the East of Lowmoor Road, Kirkby-in-Ashfield (EM2 K4) comprising 11.11 hectares of employment land which is west of my client's land and the allowed appeal site to the east (now proposed as draft allocation H1Sal) of our client's remaining land, have the potential to form part of a wider comprehensively planned sustainable urban extension to Kirkby and Sutton with a link road, primary school and local centre, as shown in **Appendix B**.
- 2.27. There is no clear justification to pass over this sites in favour of Green Belt release when, at different scales, they meet all the aims of the preferred strategy of avoiding over development of the Named Settlements and isolated development and avoid significant impacts on heritage, landscape or wildlife. These non-Green Belt sites are deliverable, with the potential to deliver homes in the next five years, supporting the regeneration of the District's main towns whilst meeting needs.

Question 3.3 – Why was the submitted approach to disperse development chosen and is it an appropriate strategy having regard to reasonable alternatives?

Local Plan Evidence at Submission

- 2.28. The Plan sets out what the new strategy seeks to achieve but not why it was the chosen spatial option. Background Paper 1 (BP.01) simply states that '*Option 3 in the SA has now been taken forward as it represents the best option to deliver sustainable development and meet the Vision for the District*' (para 4.3).
- 2.29. As we set out in detail in our Matter 1 Statement, the new dispersed strategy appears to have been arrived at as a by-product of the decision to remove the new settlements. It avoids development sites that have the most local opposition, and this appears to have been a significant influence on the decision-making process rather than the social, economic and

environmental opportunities and constraints. Our Matter 1 Statement provides evidence of this, both in terms of the decision to remove the new settlements and the previous decisions not to allocate sustainable urban extensions at the Main Urban Areas.

Response to Post Hearing Letter

- 2.30. The Council's response to the Post Hearing Letter (ADC. 12) sets out a post rationalisation of the proposed strategy for dispersed growth.
- 2.31. The Council suggest the approach is proportionate for the District of Ashfield because of the constraints which limit the quantum of development that can be reasonably achieved including large areas of designated Green Belt, as well as undesignated countryside. **Whilst part of the District is significantly constrained by Green Belt, the two main towns are not constrained and have suitable sustainable urban extension options outside the Green Belt, unaffected by any other designation.**
- 2.32. These sustainable urban extension options were not chosen because they exceed the arbitrary threshold set by the Council of 500 units, which the Council argues in their response, takes advantage of the District's location and enhances connectivity, supports the existing settlements and ensures development takes place at an appropriate scale and ensures existing communities remain sustainable. This justification for avoiding development of more than 500 homes is difficult to understand in the context of the plan directing a total of 3,846 homes to the town of Sutton (track change version of Policy H1, Appendix 1 of the Additional Housing Sites consultation HSC.01). The 'dispersed strategy' doesn't spatially disperse development to lower tier settlements, it simply avoids developments of more than 500 homes.
- 2.33. This means development continues to focused in the urban areas but by limiting the scale of development the scale of infrastructure than can be delivered is also limited. Three sites of 300 homes will have the same impact on local services and infrastructure as one site of 900 homes, but without the critical mass on any of the three sites they are less likely to deliver a new school or key piece of road infrastructure as a larger site can.
- 2.34. This rationale does not justify failing to provide enough flexibility to ensure housing needs are met or failing to minimise Green Belt release when there are suitable, unconstrained sites adjacent to the Main Urban Areas which could complement development of a smaller scale dispersed through the District.
- 2.35. The Council points to the District's learned experience that delivery of sites of less than 500 dwellings come forward in a timely manner and deliver more quickly than larger developments. There is however no evidence set out in the response (ADC 12) and no assessment of the potential for sites such as our client's to deliver in the plan period.
- 2.36. Our client's site to the south east of Sutton-in Ashfield (SA001) was discounted for being more than 500 units. Part of this site now benefits from Outline consent for 300 homes (now proposed allocation HISal) demonstrating how larger sites can come forward in phases, overcoming the concerns about the lead in times. This now leaves land for up to 500 homes available which in fact meets the Councils own arbitrary cut off anyway (**Appendix A**). There is a live Reserved Matters application being considered for the first 300 which is capable of delivering in the first five years of the plan period and has been designed with the future potential development to the west in mind. If the remaining land had been allocated, a planning application would also be with the authority for this site and could be within a year

if allocated now. There is no reason this site could not be contributing a significant number of homes within the plan period.

- 2.37. The Lichfield Start to Finish Report (2024) shows that sites of 500–999 (such as our client’s site) can have **quicker lead in times than medium sized** sites and then deliver more per year than medium sized sites:

Figure 3.2 Overall lead-in times for sites of 100 dwellings or more including time taken for outline consent by site size

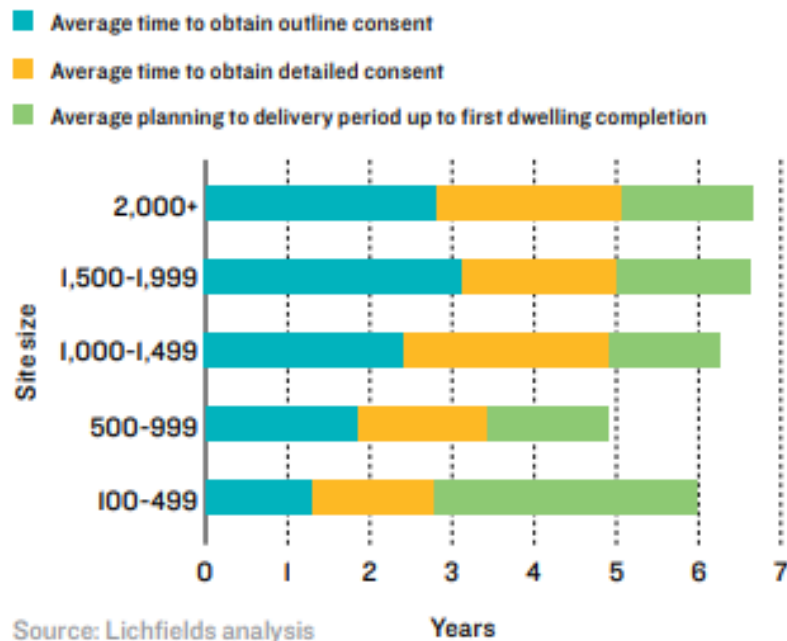
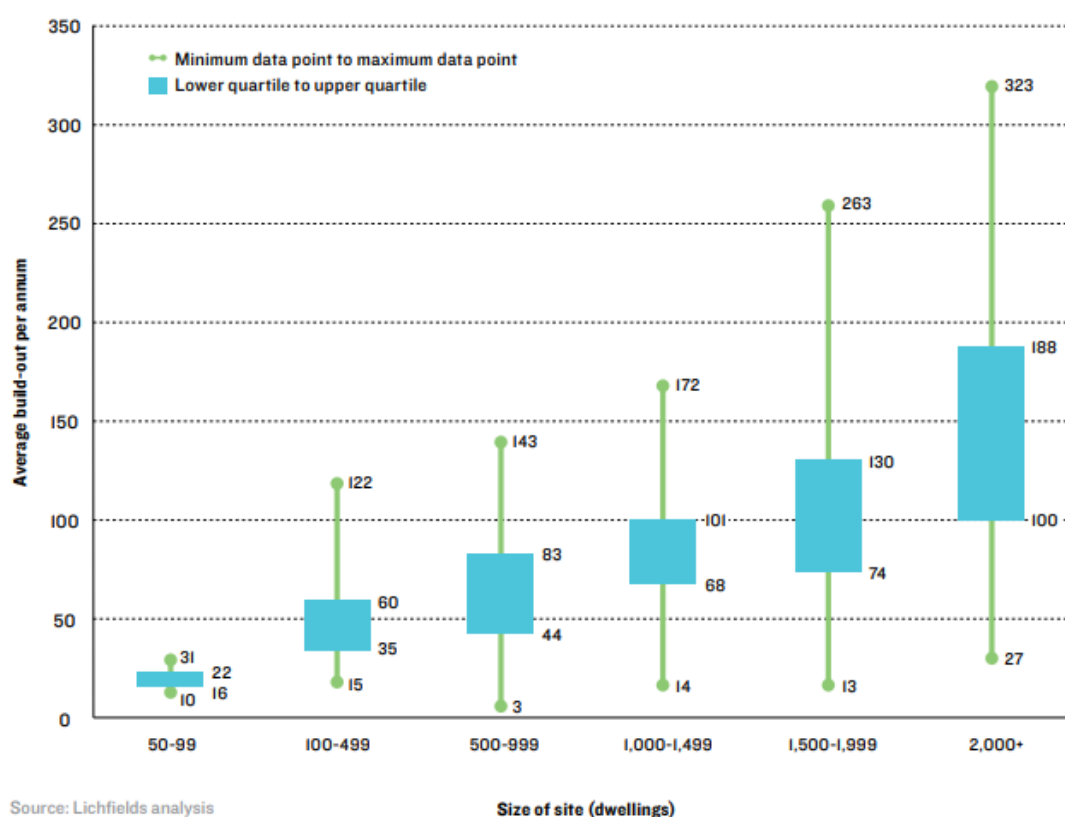


Figure 4.1: Average build-out rate by size of site (dwellings)



- 2.38. The lack of any sound planning justification for the selection of the preferred strategy or the rejection of strategy options 4, 5 and 6 calls into question the soundness of the Local Plan. The strategy has not been capable of identifying sufficient sites to meet the housing needs and seeks to allocate sites from the Green Belt when suitable non-Green Belt sites are available and therefore fails the tests of soundness set out in the Framework.
- 2.39. The Council's response (ADC 12) to the Post Hearing Letter sets out the options considered and emphasises the Green Belt release required for Option 4, 5 and 6 failing to acknowledge that the options for an urban extension to the Main Urban Area would not require any Green Belt land and the preferred option also includes Green Belt release.
- 2.40. The strategy needs to be 'Justified', a test of whether it is an appropriate strategy, taking into account the reasonable alternatives, and based on proportionate evidence. The strategy needs to be 'Positively Prepared' and meet the needs identified. It is neither.

Question 3.4 – Are the Plan's Strategic Policies sufficiently clear about the scale of development envisaged in each settlement/ area?

- 2.41. No. Policy S1 provides for the spatial strategy and sets out the settlement hierarchy, which, in the main, mirrors the approach of the current development plan. However, as regards each tier of the hierarchy, the policy neither provides for a 'floor' nor a 'ceiling'.
- 2.42. It is recognised that the Main Urban Areas are to accommodate the 'largest scale of growth' which, in principle, is supported. However, it is noted that the drafting of this policy is

imprecise and does not quantify the extent of development which is anticipated over the plan period.

- 2.43. It is unclear why the Council has not allocated additional, deliverable and sustainable sites on the outskirts of the Main Urban Areas to accord with the proposed settlement hierarchy, and to truly concentrate development within (and in proximity to) the largest settlements in the District. Instead, the Council has opted for the release of Green Belt sites which would skew the anticipated quantum of development in the lower tiers of the settlement hierarchy.

Question 3.5 – Does the submitted Plan’s approach strike an appropriate balance between the identification of land for new homes and employment?

- 2.44. This has not been tested through the Housing Needs Assessments as would be expected. It is important to consider the economic and property market dynamics as part of establishing the housing need requirements, to understand the relationship between the homes and jobs planned in an area. This point is explored further in our Matter 2 Hearing Statement, where it is shown there is considerable imbalance.
- 2.45. The dispersed spatial strategy also fails to ensure new homes are provided close to existing jobs in the Main Urban Areas.

Question 3.6 – Is the settlement hierarchy set out in Policy S1 Justified?

- 2.46. Strategic Policy S1 sets out a logical settlement hierarchy, which is supported. The hierarchy reflects the evidence on existing infrastructure and access to services and facilities. It correctly identifies Sutton-in-Ashfield as one of the Main Urban Areas, with a range of facilities, services and employment opportunities serving the local community and beyond.
- 2.47. However, whilst the policy subtext is clear that the spatial strategy promotes sustainability by directing development within and adjacent to the built-up areas of the District, this is not set out in the draft policy wording. Having regard to this omission within the policy text, there is a risk that the policy will fail to deliver the vision of the plan or support sustainable development.
- 2.48. The policy wording should be amended to clarify that ‘a) Main Urban Areas to accommodate the largest scale of growth **within and adjoining the following built-up areas**’.
- 2.49. There is a disconnect between the proposed settlement hierarchy and proposed spatial strategy that is not clearly addressed by the Council and calls into question the conclusion set out in the Background Paper (BP.01, paragraph 4.3), that the dispersed growth option represents the best option to deliver sustainable development and meet the Vision for the District.

Question 3.7 – What evidence is there to justify the identification of each settlement within the respective tiers of the hierarchy?

- 2.50. The Accessible Settlements Study for Greater Nottingham (2010) appears to have been used to assess the level of accessibility of existing settlements in terms of their residents’ access to jobs, shopping, education and other services by walking, cycling and public transport.

- 2.51. The settlement hierarchy's identification of Sutton as a Main Urban Area at the top of the hierarchy is supported and reflects the evidence on the scale and choice of services and facilities available.

Question 3.8 – What reliance does the Plan's overall strategy have on the proposed Maid Marian line? Is there a reasonable prospect of it coming forward during the plan period? How will the Plan respond to it?

- 2.52. The Plan and supporting evidence set out plans for significant infrastructure improvements related to new infrastructure associated with the Maid Marian Railway Line and the opportunity to reopen the freight-only line and convert it to a passenger train, connecting four existing stations in Ashfield and Mansfield to Derby/Leicester/Nottingham and beyond.
- 2.53. There is no indication in the supporting evidence for the Local Plan that the Plan responds to these infrastructure improvements and implications they may have for the District, particularly in terms of housing requirements.

Green Belt

Question 3.9 – What proportion of new housing and employment proposed in the Plan would be on land currently designated as Green Belt?

- 2.54. No comment. But we reserve the right to comment on the Council's answer at the examination.

Question 3.10 – What other reasonable options for meeting the identified housing requirement were considered prior to the proposed release of land from the Green Belt?

- 2.55. This is for the Council to answer but we would like to reserve the right to comment when they have done so as there appears to have been no consideration of whether the option of an alternative spatial strategy could have reduced or removed the need for Green Belt release.

Question 3.11 – Not all of Ashfield District is within the Green Belt. Could the need for new housing and employment be met by locating such uses outside Green Belt? If not, why is this the case?

- 2.56. There are non-Green Belt sites, in sustainable locations adjoining the Main Urban Areas which have not been selected for development and could have made a significant contribution to meeting the housing needs before Green Belt sites were considered.
- 2.57. The decision to pursue a dispersed strategy and not consider any site just because it is over 500 dwellings led to our client's site south east of Sutton-in-Ashfield (SA001) being discounted despite being in a sustainable location and, as set out in paragraph 74 of the National Planning Policy Framework, providing a large supply of homes that's often best achieved through planning for larger scale development. These points are supported first by the grant of permission on appeal for 300 units and second by the Lichfield's work referred to above.
- 2.58. The proposed strategy also led to sites being proposed for allocation that are located in less sustainable locations, contrary to conclusion set out in the Background Paper (BP.01, paragraph 4.3), that the dispersed growth option represents the best option to deliver sustainable development and meet the Vision for the District.

- 2.59. The sustainable urban extension option at Sutton-in-Ashfield, site reference SA001, forms part of the rejected Options 4,5 and 6 discussed above.
- 2.60. This area south east of Sutton-in-Ashfield has been included in various forms in both of the two previous withdrawn iterations of the Local Plan. It was a draft allocation in the Preferred Options Local Plan in 2010. A further Preferred Approach consultation in September 2012 however removed the two urban extensions. Once the plan reached Examination, the Local Plan Inspector set out significant concerns regarding the selection of the remaining sites and asked the Council to consider withdrawing the plan, which the Council did.
- 2.61. The site formed part of the second iteration of the Plan and featured in the Publication version of Local Plan in 2016 (draft allocation reference SKA3e – Land at Newark Road). This plan was unfortunately withdrawn to facilitate the new political administration's economic growth aspirations and vision for the District, and to take account of changes in the National Planning Policy Framework.
- 2.62. The Council has consistently found the land south east of Sutton-in-Ashfield to be a suitable and sustainable option for growth, but despite this, it has not been considered through this latest iteration of the Plan, even when the ambition for new settlements fell away.
- 2.63. There were also non-Green Belt parcels within this larger urban extension area that were rejected. Site SA024, South of Newark Road is assessed as part of the pool of sites identified from the Strategic Housing Land Availability Assessment as fitting with the preferred strategy. The site was only discounted on the basis of unresolved highways issues and uncertainty of delivering development, but this is factually incorrect and has been proven so at appeal. The Council's view of delivery was simply an echo of its own repeated failure to determine planning applications on the site. This site has since the Stage 1 Hearing Session been allowed following an appeal against non-determination and is now included as a draft allocation.

Question 3.12 – How has the assessment of sites within the Green Belt informed the Council's approach to site selection?

- 2.64. This is for the Council to answer but we would like to reserve our position to comment given the relationship this has to the other matters we have raised on the demonstration of expectational circumstances and concerns about the site selection process.

Question 3.13 – Before concluding that exceptional circumstances exist to justify changes to Green Belt boundaries, paragraph 141 of the Framework states that strategic policy-making authorities should be able to demonstrate that it has examined fully all other reasonable options for meeting its identified need for housing. This will be assessed through the examination and will consider whether the strategy:

- **Makes as much use as possible of suitable brownfield sites and underutilised land;**
- **Optimises the density of development, and**
- **Has been informed by discussions with neighbouring authorities about whether they can accommodate some of the identified need.**

How has the preparation of the Plan sought to make as much use as possible of suitable brownfield sites and optimise the density of development?

- 2.65. It is essential that we consider how the Plan has sought to make as much use as possible of non-Greenbelt land in addition to previously developed land and appropriate densities. The NPPF requires **"all other reasonable options" to be examined before exceptional circumstances can be concluded**. This clearly includes non-Green Belt, greenfield sites as well as brownfield sites. This is for the Council to answer but we would like to reserve our position to comment.

Question 3.14 – How would the proposed release of land maintain the openness and permanence of the Green Belt?

- 2.66. This is for the Council to answer but we would like to reserve our position to comment.

Question 3.15 – How has the Green Belt assessment considered the potential for mitigation?

- 2.67. The consideration in respect of mitigation is neither suitable nor appropriate given the extent of land to be released. In this regard, the conclusions of the Council's Background Paper 4 – Green Belt Harm Assessment (BP.04) are noted.
- 2.68. In particular, paragraph 6.2 notes that, whilst the ideal would be to minimise harm to the Green Belt, it may be that the most sustainable locations for development will result in high harm to the Green Belt. Furthermore, paragraph 6.3 recognises that many potential enhancement opportunities relate to land which is in private ownership and therefore careful consideration will need to be given to how and if these opportunities can be delivered.

Question 3.16 – Do the Plan's strategic policies set out the scale and need for the release of land from the Green Belt as required by paragraph 140 of the Framework?

- 2.69. No comment.

Question 3.17 – Having regard to the shortfall of housing provision over the plan period, what evidence is there that the Green Belt boundary will not need to be altered at the end of the plan period as set out at paragraph 143(e) of the Framework?

- 2.70. By virtue of the fact that the Council failed to allocate sufficient housing allocations over the plan period in the Pre-Submission Draft Local Plan and, having been asked to address this, has now attempted to identify almost exactly the right number of homes to meet need without a sufficient buffer to provide flexibility, there can be no certainty as to whether the Green Belt boundaries will be subject to further alteration as set out at paragraph 143(e) of the Framework.
- 2.71. The Council's proposed allocations fail to include any material contingency for unexpected delivery issues and therefore relies on every allocated site fully delivering within the plan period. Given the nature of half of the new allocations which have known delivery issues and Council's poor delivery performance, this is a significant issue and fails to provide the necessary evidence that the Green Belt boundary will not need to be altered at the end of the plan period.
- 2.72. To provide such certainty, the Council should be seeking to ensure sufficient land is identified to provide a buffer for flexibility through the allocation of further additional sites, which are not constrained by Green Belt.

- 2.73. One such site is our client's site south east of Sutton-in-Ashfield. Part of the site has planning permission, following an allowed appeal earlier this year and is now identified as draft allocation H1Sa1. The remaining land is shown in **Appendix A** and how the site would integrate with the allocations either side shown in **Appendix B**. The site was not selected as a draft allocation despite the site fitting well with the preferred strategy, being located outside the Green Belt, adjoining a Main Urban Area of a top tier settlement in the Plans hierarchy and having no outstanding technical constraints.

Question 3.18 – At a strategic level, do exceptional circumstances exist to alter the Green Belt boundary, having particular regard to paragraphs 140 – 143 of the Framework? If not, how could housing and employment needs be met in other ways?

- 2.74. Please refer to our response to 3.11 and the opportunities to meet housing need through urban extensions to the Main Urban Areas outside the Green Belt.
- 2.75. The Council appears to claim that at the strategic level exceptional circumstances exist that justify the alteration of the Green Belt boundary. These are claimed to be meeting the needs for housing and delivering sustainable development. This is however negated by the ability to meet that need on non-Green Belt land adjacent to the most sustainable settlements, as identified by the Council, on sites that have been discounted solely for being more than 500 homes. **The arbitrary 500 unit limit has been used to claim exceptional circumstances but is entirely self-serving. It cannot legitimately amount to an exceptional circumstance.**
- 2.76. The additional site allocations do not overcome this issue. See our Matter 2 response.

New Question 3.19 – Is the Spatial Strategy effective if any further proposed sites would be required to be released from the Green Belt?

- 2.77. No, the spatial strategy is not effective. There are two related Green Belt issues. The first is the extent of Green Belt release **now**, and the exceptional circumstances to justify that, in the context of suitable and well located non-Green Belt land that could allow for a supply during the plan period. The second is about making sure that at the **end of the plan period**, whatever the Green Belt release accepted now, there is no need to release more Green Belt land, because there is enough land to meet longer term needs identified now. **Both points lead to making sure the allocation of suitable non-Green Belt land is maximised.**
- 2.78. The release of another site from the Green Belt as part of the identification of Additional Housing Site Allocations (HSC.01) further perpetuates the Council's previous approach which was challenged through the Stage 1 Hearing Sessions and resulted in the Council being asked to do further work.
- 2.79. The additional site identified for release from the Green Belt, proposed allocation H1Km Abbey Road in Kirkby, demonstrates the Council's continued disregard for national policy and the concerns raised in the Post Hearing Letter about the justification for Green Belt release, exceptional circumstances and the availability of suitable and sustainable alternative non-Green belt sites that fit well with the settlement hierarchy.
- 2.80. The site is included following the Council resolving on 5th February 2025 to grant planning permission for this site for 38 homes subject to signing a Section 106 agreement.

- 2.81. In contrast the Council refused to determine our client's site for 300 homes adjacent to the Main Urban Area of Sutton-in-Ashfield outside the Green Belt and forced our client to appeal against non-determination (APP/W3005/W/24/3250529). This site was discounted from allocation in the Pre-Submission Local Plan (reference SA024) and has since been included as additional allocation H1Sal following the appeal being allowed and costs being awarded against the Council. The Inspector set out in the costs award decision (**Appendix C**):

'I therefore find that the LPA has unreasonably prevented or delayed a development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations in the terms expressed at PPG paragraph 16-049-20140306. It has also behaved unreasonably in the handling of the application in the terms at PPG paragraph 16-048-20140306 for non-determination appeals in not reaching a decision within the relevant time limit, where there were no substantive reasons to justify delaying the determination'. (para 34)

- 2.82. These two contrasting decisions demonstrate firstly the Council's failure to plan appropriately for future housing needs leading to applications on sites that clearly should be allocated, and secondly the Council's inconsistent and politically driven approach which leads to sites in the Green Belt being approved whilst sites outside the Green Belt with no technical issues had to be taken to appeal.

- 2.83. The decision has been taken on the Green Belt site at Abbey Road in Kirkby and so this site will contribute to the Council meeting its housing needs over the plan period, assuming it is delivered. This does not however mean the Council needs to allocate this site and remove it from the Green Belt. Currently this site has been granted permission for development under very special circumstances. That does not mean it should be removed from the Green Belt in a plan making exercise. If it is allocated for development, then this will remove it from the Green Belt for reasons different to those associated with its grant of permission.

New Question 3.20 – Is the release of Green Belt land necessary to address the shortfall in housing across the plan period?

- 2.84. No, the release of Green Belt land is not necessary to address the shortfall in housing across the plan period. There continues to be sites, like our client's, which are outside the Green Belt, have no physical or technical constraints and are located adjacent to the Main Urban Area which have not been allocated solely because they are larger than the 500 unit threshold set as part of the Council's dispersed strategy.

- 2.85. The NPPF (2023) requires the following:

*'Before concluding that exceptional circumstances exist to justify changes to Green Belt boundaries, the strategic policy-making authority should be able to **demonstrate** that it has **examined fully all other reasonable options** for meeting its identified need for development'. (para 146 – emphasis added)*

- 2.86. The drafting of this paragraph provides a clear sequence of events; the Council must first explore alternative options of non-Green Belt sites before it proceeds to consider whether exceptional circumstances exist, and be able to demonstrate that it has done so. In Ashfield's case, the Council has decided not to allocate suitable and sustainable non-Green Belt sites – a reasonable alternative option. These sites can make a material contribution to addressing the District's housing need. It follows therefore, that the Council cannot rely on its unmet

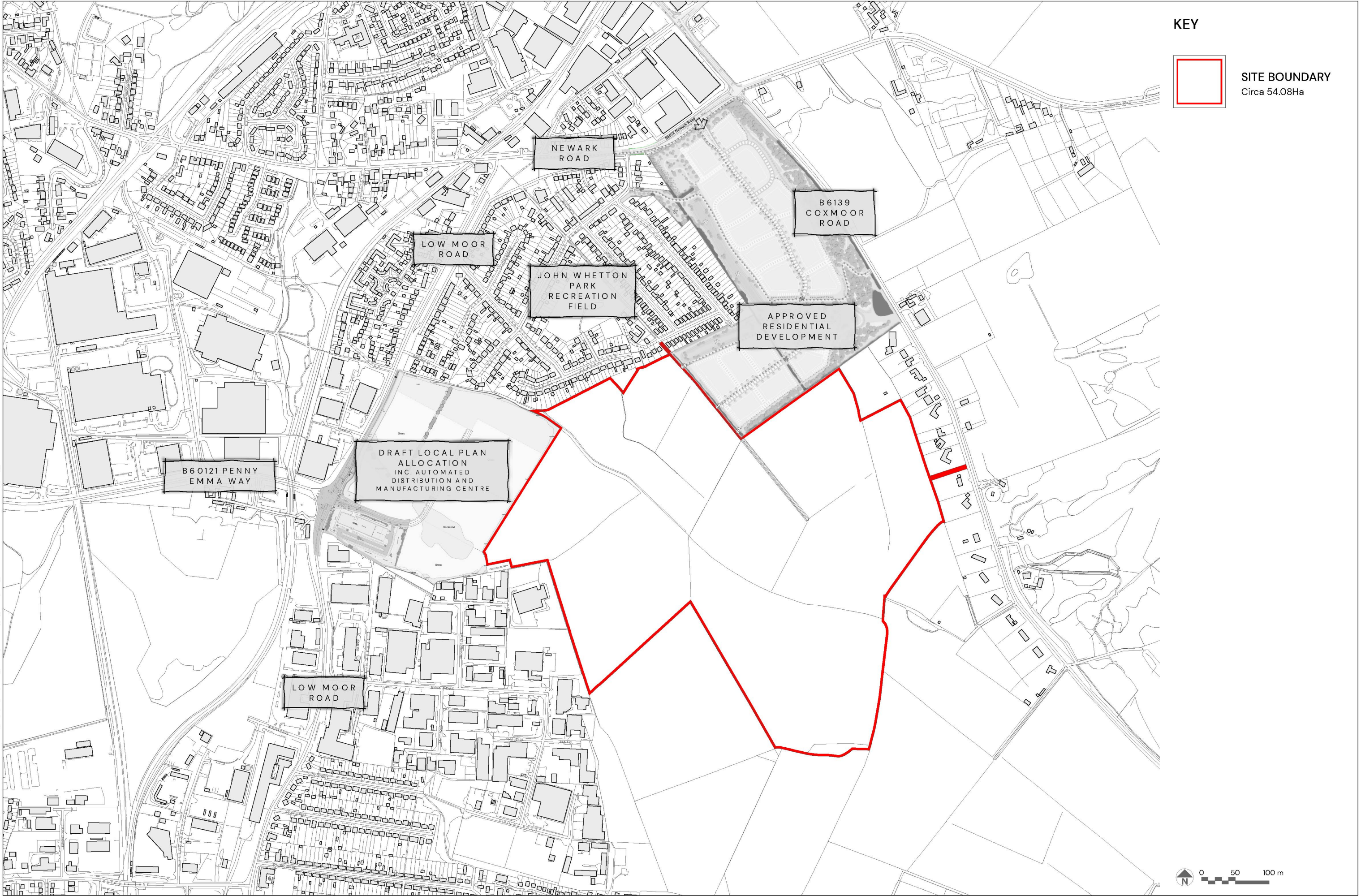
need to amount to the exceptional circumstances needed to justify the release of Green Belt when such need, at least in part, is capable of being suitably met elsewhere.

- 2.87. The Council has failed to exhaust all options. The Green Belt, as a policy constraint, covers less than half of the District and does not cover large areas of land that are adjacent to main settlements such as Sutton-in-Ashfield.
- 2.88. Whilst housing need and delivering sustainable development can amount to exceptional circumstances for a Green Belt alteration, where housing needs are able to be met on suitable non-Green Belt land in sustainable locations adjacent to the main urban settlements, the existence of exceptional circumstances can no longer be soundly based on meeting these factors. No case is made by the SA or Background Paper that non-Green Belt options are locationally so unsustainable, so as to provide exceptional circumstances to warrant Green Belt release.
- 2.89. Our client's site Land south east of Sutton-in-Ashfield described in the introduction to this statement, is part of a site identified as a sustainable urban extension option (site reference SA001). Part of this site has since been granted planning permission at appeal (APP/W3005/W/24/3350529) leaving the land shown in **Appendix A** available. This land is capable of delivering 500 homes on non-Green Belt land adjacent to the Main Urban Area, and, combined with the appeal site, which will deliver 300 homes, would provide an opportunity to deliver a site for primary school and mixed use local centre including community uses as shown in **Appendix B**.
- 2.90. In the context of this site being available, achievable and suitable, adjacent to the Main Urban Area for up to 500 homes and combined with the neighbouring site providing an opportunity to deliver a link road, school and local centre, it is impossible to say that the spatial strategy is effective.
- 2.91. There remains no justification for the extent of release of Green Belt land when non-Green Belt sites have been discounted solely for being larger than the arbitrary 500-unit threshold.
- 2.92. The Inspector, for the appeal related to draft allocation H1Sa1, found that the appeal proposal would readily integrate within the Main Urban Area of Sutton-in-Ashfield, one of the largest settlements in the district, with good services, frequent buses, a train station, and a good network of footway and cycle paths.
- 2.93. The Inspectors Report notes that the location of the appeal proposal would not be at odds with the need to secure sustainable patterns of development and the appeal site aligns with Sutton-in-Ashfield as a Main Urban Area at the top of the settlement hierarchy. Importantly, the Inspector found that the evidence to the Emerging Local Plan identifies the appeal site being one of the relatively few unconstrained locations in the district for development. In totality, the asserted reasons for not allocating the site in the Local Plan did not withhold scrutiny in the appeal.
- 2.94. Following the conclusions of the appeal Inspector, the Council ought to have included the wider landholding as a proposed allocation, as similarly there is no good reason for its omission. The wider site is similarly unconstrained, being located outside of the Green Belt, being located adjacent to the Main Urban Area of Sutton-in-Ashfield and occupying a sustainable location.

- 2.95. Given that Site SA024 has now been proposed for allocation, the Council ought to have turned its mind to the allocation of the remainder of SA001, for taken in isolation (as a site separate to SA024), the anticipated yield is less than 500 dwellings to accommodate landscape, and other, physical constraints and deliver the associated infrastructure.
- 2.96. However, even in the alternative, where the Council felt compelled to consider the cumulative yield (i.e., SA024 together with the remainder of SA001), the Council should still have considered component parts of the larger site. For instance, with the appeal scheme comprising 300 dwellings, the Council may have allocated additional land within SA001 for an additional 200 units, thereby adhering to even its own the arbitrary 500-dwelling cap. Instead, the Council has read in a set of rigid rules which preclude a more flexible and pragmatic approach.
- 2.97. It has not been demonstrated that there is a need to release Green Belt land to address the shortfall in housing across the plan period, at least not to the extent that it has. The additional Green Belt site identified would not be needed to meet the housing needs of the District if an appropriate strategy had been identified which is capable of meeting needs, providing a sufficient buffer in provision and prioritised non-Green Belt sites.

Appendix A: Land South East of Sutton-in-Ashfield

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Appendix B: Land South East of Sutton-in-Ashfield Concept Masterplan

- KEY
- SITE BOUNDARY
Circa 54.08Ha
 - OPEN SPACE
 - RESIDENTIAL DEVELOPMENT
Up to 500 dwellings
@ 33dph
 - SITE FOR A PRIMARY SCHOOL
 - MIXED USE LOCAL CENTRE SITE
Potential to include community uses and
residential development
 - POTENTIAL SITE ACCESS
 - PRIMARY STREET
 - STREETS
Illustrative access points into development parcels
 - PEDESTRIAN / CYCLE CROSSING POINTS
 - PEDESTRIAN / CYCLE CONNECTIONS
Connections into the site at the site boundary
 - PEDESTRIAN & CYCLE ROUTES
 - PUBLIC RIGHTS OF WAY
To be upgraded as part of wider connectivity
strategy.
 - RETAINED TREES & HEDGEROWS
 - ILLUSTRATIVE LANDSCAPE STRATEGY
 - DRAINAGE BASINS
 - EXISTING / PROPOSED OFFSITE PLAY
SPACE
 - NEAP
 - LAP
 - NATURAL PLAY OPPORTUNITIES

0 50 100 m

Appendix C: Costs Decision

APP/W3005/W/24/3250529 – Land at junction of Newark Road and Coxmoor Road, Sutton in Ashfield.

Costs Decision

Site visits made on 13, 15 and 16 January 2025

by David Spencer BA(Hons) DipTP MRTPI

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

Decision date: 11/02/2025

Costs application in relation to Appeal Ref: APP/W3005/W/24/3250529 Land at junction of Newark Road and Coxmoor Road, Sutton in Ashfield.

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Hallam Land for a full award of costs against Ashfield District Council.
 - The appeal was against a failure to give notice within the prescribed period of a decision on an application for outline planning permission (with all matters reserved except access) for a residential development of up to 300 dwellings with associated infrastructure and landscaping.
-

Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

1. The application for costs seeks a full award on primarily substantive grounds although there is some overlap with procedural matters. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process¹.
2. The appellants application for costs was submitted and rebutted in accordance with a process and timetable jointly put forward by legal representatives for both main parties at the Inquiry event. Both parties adhered to the timetable. There can be no retrospective criticism of the timing of the appellants costs application, the intention for which was disclosed at the start of the Inquiry event.
3. The PPG advises that the aim of the costs regime is threefold². It is to encourage all those involved in the appeal process to behave in a reasonable way; encourage local planning authorities (LPAs) to properly exercise their development management responsibilities (to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case); and to discourage unnecessary appeals. It is the first and second strands of this aim which are in focus here. In addition to the PPG, the Written Ministerial Statement (WMS) of 19 December 2023 cautions that decisions not in accordance with the recommendation of a professional or specialist officer should be rare and infrequent. The WMS goes on to say that where the Inspectorate cannot find reasonable grounds for the Committee having

¹ PPG paragraph 16-030-20140306

² PPG paragraph 16-028-20140306

overturned the officer's recommendation it should consider awarding costs to the appellant.

4. As the LPA point out a successful award of costs requires demonstrating that any alleged unreasonable behaviour has resulted in unnecessary or wasted expense³. In terms of procedural matters that may give rise to an award of costs, the PPG provides a non-exhaustive list at paragraph 16-047. This includes withdrawal of any reason for refusal.
5. The subsequent paragraph 16-048 of the PPG is relevant in this case and addresses when the handling of planning applications prior to an appeal might lead to an award of costs. The parts of the paragraph of particular relevance to this appeal are as follows. "In any appeal against non-determination, the local planning authority should explain their reasons for not reaching a decision within the relevant time limit, and why permission would not have been granted had the application been determined within the relevant period. If an appeal in such cases is allowed, the local planning authority may be at risk of an award of costs, if the Inspector concludes that there were no substantive reasons to justify delaying the determination....".
6. Turning to the substantive matters identified at PPG paragraph 16-049, the costs application asserts the LPA behaved unreasonably by failing to determine the planning application and by unreasonably defending the appeal (up and until the point of withdrawal). Consequently, it is submitted that in doing so, the LPA had prevented or delayed development which should clearly be permitted. I consider allied to this is also the substantive matter of whether the planning grounds were capable of being dealt with by conditions, where it is concluded that suitable conditions would enable the proposed development to go ahead.
7. The application for the appeal proposal was submitted to the LPA in August 2022, following a protracted, unresolved process with an earlier 2017 application. After some two years of assessing the 2022 planning application, including multiple consultations with statutory bodies and technical consultees, the application was reported to the District Council's Planning Committee in July 2024 with a recommendation for approval subject to the imposition of conditions and securing planning obligations. The officer report recommending approval was well-constructed, comprehensive and recorded that there were no objections to the proposal from statutory consultees (subject to the imposition of conditions). This included, amongst others, the Council's Contaminated Land Officer, the Local Highway Authority, the Local Lead Flood Authority, Network Rail, the Environment Agency and Severn Trent Water.
8. At the time the application was reported to the July 2024 Committee meeting the appeal proposal was informed and accompanied by, amongst other technical documents, a Transport Assessment, separate Pedestrian and Cycle Access and Movement Strategies, detailed plans for off-site highway improvements, a Travel Plan, a Phase 1 Geo-Environmental Desk Study, a Landscape and Visual Impact Assessment, and a Soils and Agricultural Quality Report.
9. There has been no ambiguity, at either the planning application stage or at the appeal stage, that because of a lack of five year supply of deliverable housing

³ PPG paragraph 16-032-20140306

land the tilted balance at paragraph 11(d) of the National Planning Policy Framework (NPPF) should be engaged. This requires decision-making to grant planning permission unless the harm of doing so would significantly and demonstrably outweigh the benefits. This still requires the weighing up of the benefits and harms in a transparent way. This was clearly set out in the officer's report in a lengthy section under 'The Planning Balance'.

10. As the minutes of the July 2024 meeting record, the Members of the committee deferred making a decision on that occasion. They did so for various reasons including: (i) clarification and reassurances with regard to the proposed drainage and contamination strategies which might give rise to the potential contamination of the watercourse from previous landfill; (ii) further information on the sustainability of the site particularly in relation to bus provision and accessibility and security of the station to cyclists and others given distance from facilities; (iii) concern that (ii) would lead to a more severe impact on highways and junctions in the vicinity and sought more detail; and (iv) a better understanding was required as to the impact development would have on the best and most versatile land (BMV). The appellant appealed against non-determination approximately 3 weeks later on 21 August 2024.
11. Matters are then amplified when the application is returned to the Committee at its meeting in October 2024, shortly before the LPA had to submit its Statement of Case for the appeal. At this point the appeal was live and so the LPA is correct that it was no longer the decision maker. However, the submission from the LPA that the putative decision from this meeting was made to provide assistance to the Inspector is troublesome. There were 3 clear options for decision-making at the conclusion of the updated officer report for that meeting. These were: (1) To revert to accepting the previous officer recommendation of a conditional consent subject to a Section 106 agreement. (2) Minded to grant consent subject to different conditions or altered heads of terms in a S106. Or (3) minded to refuse and the reasons would be the basis on which the Council's case at the Public Inquiry maybe based. The report is clear that the options were presented to Members to "steer the public inquiry and reduce time and costs for all parties."
12. The discussion of the appeal proposal was held in private such that there are no published minutes of what was discussed. As such it is difficult to know how the tilted balance was applied, and how Members considered the additional submissions made by the appellant in response to the matters for deferral at the July 2024 committee. The Council's Statement of Case reveals that Members would have been minded to refuse the planning application for five reasons had it been in a position to do so. Putative reasons 1-3 would ordinarily be understood as harms arising from the principle of what is proposed relating to sustainability of location, loss of BMV and adverse impact on character and appearance. Reason 4 has morphed from the basis for the deferral in July to a wider harm of insufficient information to demonstrate that the development would be suitable to provide a residential use taking account of ground conditions and risks arising from contamination. Reason 5 has also evolved since the deferral in July to a position of "insufficient information has been provided to fully assess the impact on the local highway network. In particular there is insufficient information on the impact of the development having regard to its proximity to the existing level crossing and the implications when the crossing gates are closed during peak times." As such putative

Reason 5 says that it has not been demonstrated that a severe impact on the highway would not arise.

13. For the purposes of this costs decision, I turn first to whether the appeal was necessary and then to consider whether once the appeal was submitted whether the LPA behaved appropriately in the context of an appeal for non-determination. In particular, why permission would not have been granted had the application been determined within the relevant period. A key aspect running through the costs material before me is the handling of matters in respect of contamination on that part of the appeal site which was a former landfill site.
14. The July 2024 Committee Meeting was the first opportunity for the LPA to properly exercise their development management responsibilities having received a lengthy and considered officer report recommending approval. It is not clear from the perfunctory minutes of this meeting what particular clarification and reassurances the Committee were seeking in relation to drainage and contamination. There is some illumination when tracking back through the long chain of emails between the appellant and the case officer immediately after the meeting (contained in CD2.24). This provides an officer view of what information might address Members concerns prior to the published minutes being available. The officer interpretation is not supported by the technical evidence or the position of statutory consultees during the application process. Indeed, at the end of the long sequence of emails in CD2.24, the Council's Contaminated Land Officer reiterates on 29 September 2024 that a "... a full contaminated condition should be appended to any permit issued for this development as stated in my email dated 21/01/2024". The Contaminated Land Officer does not request or suggest a Phase 2 investigative report at this point.
15. Furthermore, it is not clear from the Committee meeting minutes, what additional details were required on transport matters, despite the Local Highways Authority advising they had no objections subject to conditions and planning obligations. Nor is it clear what was deficient with regards to the evidence on BMV land to require a "better understanding". Members are entitled to defer a decision and request additional information, but there must be cogent reasons for doing so. The Committee meeting minutes, at 3 relatively short paragraphs, does not provide this.
16. It is understandable that Councillors and Committees want to be assured that developments are going to be safe and avoid unacceptable harms. It is also recognised that Councillors represent local communities and have a democratic mandate. However, the planning system must operate in the wider public interest, balancing competing objectives and ensuring that there would be no unacceptable risk to human health and the environment. The planning system, including the NPPF, reflects this and requires applicants to provide sufficient evidence to demonstrate that the proposal, on balance, would be acceptable, particularly on technical matters such as contamination and highways. It is also important that decision makers understand what they are determining (here an outline application with all matters reserved except access) and what would be a reasonable and proportionate level of evidence. What was apparent in the accompanying appeal is that ordinary thresholds of being put at unacceptable risk had shifted towards almost a demonstration of zero risk.

17. The evidence provided by applicants to accompany the planning application was prepared by qualified persons, as required. It was assessed by persons who were professionally qualified and/or experienced in the particular field and relevant knowledge of the appeal location. Those assessing the appellant's evidence are either officers of the Council or public bodies. Often, there is a good degree of risk aversion with these consultees, exemplified, as in this appeal, by the extensive degree of engagement, refinement and clarification in the multiple responses received during the course of the application. Consequently, if those technical consultees raised no objections and were satisfied that planning matters could be appropriately dealt with by condition or planning obligation, that should have been given very substantial weight. It is not good enough to arbitrarily seek additional (largely unspecified) evidence and so further delay decision making, creating significant and unwarranted uncertainty.
18. Whilst I accept Members are not beholden to accepting the advice of their officers and technical consultees, there must be legitimate and clear reasons for doing so, including when deferring from making a timely decision. Those reasons could be drawn from factors such as competing technical evidence (i.e. a technical report commissioned by an objector) or where a planning officer, taking the bigger picture, has nonetheless recommended approval contrary to the advice of a technical consultee. None of that was in play here. The officer recommendation to grant planning permission, when correctly applying the tilted balance, followed a clear and logic audit trail through the various issues and evidence.
19. As set out above, the Member concern regarding drainage and contamination strategies which might give rise to the potential contamination of the watercourse from previous landfill has come under particular focus. As set out above, there is very little that spells out what Members were seeking and why that would be necessary in light of the clear advice from the Contaminated Land Officer, the Environment Agency and the Local Lead Flood Authority. There is no record that Members had identified a need for a more detailed Phase 2 investigative report or why they were not satisfied that recommended conditions would be ineffective or unenforceable.
20. Overall, I find the Members prevarication in deferring a decision at the July Committee meeting was unreasonable. There was no real basis for doing so and the issues which members were concerned were all entirely capable of resolution through the imposition of conditions and planning obligations. In my view the actions at the July Committee were a key first step in delaying or preventing a development which should be clearly permitted.
21. Turning to whether the appellant was justified at this stage to appeal against non-determination on 21 August 2024, the LPAs costs rebuttal says that at that stage the appeal was entirely speculative as the LPA had only deferred from making a decision at that point. Moreover, the LPA says that the ultimate position it adopted, in withdrawing all of its reasons for refusal, demonstrates that had the appellant provided additional evidence to assuage Members concerns, there would have been a positive outcome. I do not share the LPAs rosy outlook on this point. As set out above, the reasons deferral were poorly articulated and, on balance, unreasonable. When taking the long planning

history of this site into consideration, including “political”⁴ resistance to its inclusion within draft Local Plans, I consider the appellant was legitimate after 2 years of hard work to get the proposal to a point of officer recommendation for approval to fear that prevarication at this meeting was the precursor to the LPA ultimately not reaching a positive outlook. In any event, when presented with options at the Committee meeting in October 2024, Members nonetheless resolved that they would have refused the application, including on grounds at variance to those recorded as the reasons for deferral. In my view, the appellant was not unreasonable in promptly pursuing an appeal against non-determination.

22. I now turn to whether, once in appeal, the LPA behaved reasonably in terms of the reasons for refusal and the timing of the withdrawal of all five putative planning reasons. Much of this hinges on contaminated land. As the Council’s letter of 17 December 2024 discloses, by reference to an unsubmitted proof of evidence from the Council’s independent planning witness (Mr Whitehouse), it is asserted that additional evidence on the contaminated land matter ultimately enabled the Council to withdraw all its putative reasons for refusal, through a revisited titled balance undertaken by Mr Whitehouse.
23. As the appellant identifies, whilst this may provide an explanation in relation to the fourth reason for refusal, it nonetheless remains that following skeleton arguments in the Council’s statement of case, there has been no substantiation of its putative reasons for refusal on matters of sustainability of location, BMV land, character and appearance and highway safety including the additional issue of the proximity of the level crossing. The appellant had to prepare its evidence to the Inquiry in this context. Whilst the LPA submits that the reasons for refusal were to “provide assistance to the Inspector”, they were nonetheless reasons why the LPA, if the appeal had not been lodged, would have refused to grant planning permission. In withdrawing all reasons for refusal on 17 December 2024, the day of the deadline for proofs of evidence, the appellant has had no opportunity to cut its cloth accordingly, in a way which could potentially have reduced time and cost in terms of the remit and depth of its evidence for the Inquiry. As the updated officer report to the October 2024 committee advised. “The decision may go beyond the questions asked”⁵ however members are reminded that any reasons for their decision should be defensible at the Public Inquiry.” Reasons 1-3 and 5 have not been defended.
24. The LPA submit that the appellant has not incurred any unnecessary or wasted expense because these putative reasons for refusal were also reflected in third party objections to the appeal proposal, which the appellant would have had to address in any event. As set out above, I consider had the LPA not unreasonably deferred a decision contrary to the officer recommendation, the appeal would have not been necessary in the first instance. Local objections to the appeal proposal were properly summarised and recorded in the officer report to the July committee meeting. There has been relatively limited public interest in the appeal and very little new evidence in response to the appeal notification from third parties (and none from technical consultees) that the appellant has needed to address. There have been appeal statements from Councillors Relf and Zadrozny but these largely capture and speak to local

⁴ As evidenced in the original wording of the 2021 Regulation 18 Sustainability Appraisal report, at Appendix 5 to Gary Lees Proof of Evidence.

⁵ Interpreted to mean the 4 points raised at the Committee meeting on 30 July 2024.

concerns that have been long established. In preparing their evidence, the appellant would have been appropriately focused on the LPAs statement of case and the reasonable expectation that the LPA would defend its putative reasons.

25. As such, I find the last-minute pivoting to withdraw those reasons for refusal not related to contaminated land to have been unreasonable, particularly in relation to significant matters such as highway safety and sustainability of location, which may have required the Council to obtain technical evidence and a related witness. As set out above, from the original deferral, the Council's position on what evidence was lacking on BMV land has been entirely opaque.
26. On the issue of contaminated land, as set out above, the appellant provided, in support of an outline application, a Phase 1 Geo-Environmental Desk Study which contained further evidence on ground gas contamination and hydrology. Additionally, a separate Flood Risk and Drainage Strategy Report was submitted. The Council's contaminated land officer, the Environment Agency and the Local Lead Flood Authority all concluded that the technical evidence was appropriate for the outline proposal subject to the imposition of conditions. They did not require more detailed investigative survey work. In terms of Member considerations, as set out above, concerns on this issue evolved between the initial deferral and the putative reason for refusal.
27. The Council's Statement of Case (paragraphs 6.17-6.19) puts some flesh on the bones of the putative reason for refusal on ground condition/contamination in terms of returning to the issue of risk to water and drainage contamination and whether this can be satisfactorily mitigated where further ground testing is required to be carried out to inform the mitigation. There is a reference to the lack of "uniform testing across the site" to inform proposed mitigation measures and inaccuracies in the appellant's evidence, namely its assumption there are no on-site water courses.
28. As considered in the accompanying appeal decision, the test at NPPF paragraph 187d is "unacceptable risk" (not zero risk). There is little to demonstrate that the Members, in initially deferring the application and then pursuing a putative reason for refusal applied PPG paragraph 33-008 in terms of the proportionate level evidence needed for an outline application. Other than local concern and anxiety, there is little else to explain why Members deviated from the advice from the technical consultees that development of this low-risk site could be appropriately managed through the imposition of conditions.
29. Nonetheless, during the appeal process (on 13 November 2024), the appellant submitted two reports prepared by Eastwood Consulting Engineers (ECE). These documents are not the appellants (insofar that they are not documents the appellant commissioned and potentially withheld). They were prepared for a regional housebuilder to inform a subsequent detailed reserved matters application, not unreasonably working to the conditions recommended to be imposed on any outline consent as recommended by the Contaminated Land Officer. The main report is effectively a Phase 2 investigative report. Whilst the appellant has referred to it in further demonstrating the low degree of risk in their evidence to the Inquiry, it was not confirmed during the application process that this level of information would be necessary or proportionate at this outline stage. It could be secured by condition as part of a suitably precautionary approach when looking at the details and prior to construction. I

also share the assessment of the appellant that if the LPAs main concern was attenuation basins on the landfill part of the site that could have been addressed by way of a condition, either at the July 2024 meeting or under Option 2 at the October 2024 meeting.

30. The LPA submits that the ECE reports were the determinative factor in revisiting its position for the appeal. That does not square with the preceding evidence from the technical consultees during the application process. The Council's Contaminated Land Officer on 29 November 2024 in responding to the ECE reports says, for the first time, that they were on the cusp of requesting a Phase 2 report anyway. However, there is nothing over the preceding 2 plus years to indicate this, including as late as the email of 29 September 2024 to the case officer (CD2.24) after members had made their initial deferral. In any event, the response of 29 November 2024 still seeks the imposition of recognised, precautionary contamination conditions. Whilst the timing ECE material has muddied the waters, and having regard to the position Mr Whitehouse may have taken, it does not justify the Council's approach to assert there was insufficient information, that uncertainty around the risk was too great and as a consequence the issue could not be appropriately dealt with by condition. This was not a situation where Members had competing technical evidence. The body of evidence by July 2024 pointed in one direction, and that was of a low risk, requiring recognised remediation approaches and the imposition of standard, precautionary conditions. The two ECE reports have not changed this situation.
31. Overall, I consider the Council's behaviour in advancing a statement of case on 5 reasons for refusal, perpetuating that position until the deadline day for proofs of evidence and then ultimately withdrawing all reasons for refusal on the grounds of the two ECE reports, and the Contaminated Land officer comments of 29 November 2024 was unreasonable. Accordingly, the appellant has incurred unnecessary expense in the appeal process.
32. Whilst I have sought to be comprehensive and fair in the accompanying appeal decision, recognising that the appeal proposal is of concern to local residents, the bottom line is that there was nothing of substance at the appeal stage to demonstrate that the various technical assessments of the appellants on matters of transport, contaminated land, agricultural land quality, flood and drainage and landscape and visual impacts undertaken by accredited companies were inaccurate or insufficient. The overall planning balance was firmly tilted to the grant of planning permission despite the conflict with the aged 2002 Local Plan Review.
33. The LPAs letter of 17 December 2024) also refers to the December 2024 NPPF as an explanation for withdrawing all of its reasons for refusal but sheds little light on why this would be the case. The statement of common ground in November agreed there was no five year housing land supply and the tilted balance was engaged on this reason alone. The new NPPF does not change this. On the main issues for the appeal, it is difficult to see how the December NPPF has materially changed matters. Overall, I find the LPAs use of the December 2024 NPPF as a reason for its very late change in position obfuscatory in seeking to defend the invidious position resulting from Members unreasonable avoidance and resistance to approve a development that should have been permitted, including through the imposition of suitable conditions.

Conclusion

34. I therefore find that the LPA has unreasonably prevented or delayed a development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations in the terms expressed at PPG paragraph 16-049-20140306. It has also behaved unreasonably in the handling of the application in the terms at PPG paragraph 16-048-20140306 for non-determination appeals in not reaching a decision within the relevant time limit, where there were no substantive reasons to justify delaying the determination.
35. As such I find that unreasonable behaviour on the part of the Council resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated. Accordingly, I conclude that a full award of costs is justified.

Costs Order

36. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Ashfield District Council shall pay to Hallam Land the costs of the appeal proceedings described in the heading of this decision, and such costs shall be assessed in the Senior Courts Costs Office if not agreed.
37. Hallam Land is now invited to submit to the Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

David Spencer

INSPECTOR.

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

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