

## Statement of Case.

### Land at Newark Road, Sutton-in-Ashfield.

Appeal against non-determination of an outline planning application for up to 300 dwellings with all matters reserved except access, reference V/2022/0629.

On behalf of Hallam Land.

Date: 21 August 2024 | Pegasus Ref: EMS.2254

Author: Clare Clarke

---



# Contents.

1. Introduction.....	4
Appeal Site .....	4
Planning Application.....	4
2. Local Planning Authority Engagement.....	6
3. Appeal Procedure .....	7
4. Development Plan and Material Considerations.....	8
Development Plan.....	8
Material Considerations.....	9
The National Planning Policy Framework ("the Framework") .....	9
Pre-Submission Draft Ashfield Local Plan 2023 – 2040 .....	9
Other Material Considerations.....	12
5. Development Plan Compliance.....	14
6. Presumption in Favour of Sustainable Development & Tilted Balance .....	15
Out of Date Development Plan Policies.....	15
Conclusion .....	18
7. Ashfield District Council's Appeal History .....	20
8. Representations from Consultees and Interested Parties .....	22
Local Highway Authority Engagement.....	22
Other Consultees .....	23
Interested Parties .....	24
9. The Appellant's Case .....	26
Principle of Development .....	26
Sustainability.....	26
Ecology.....	28
Archaeology and Heritage.....	29
Pollution .....	29
Noise .....	29
Air Quality .....	30
Other.....	30
Land Contamination.....	30
Landscape Impacts .....	31
Best and Most Versatile Agricultural Land.....	32
Arboriculture.....	32
Flood Risk and Drainage .....	32
Highways Matters.....	33
Housing Land Supply .....	34
Affordable Housing.....	34
Planning Obligations.....	35



Public Open Space Contribution.....	36
Secondary Education Contribution.....	37
Planning Balance.....	38
Social Benefits .....	38
Economic Benefits.....	39
Environmental Benefits .....	39
Disbenefits .....	39
Overall Conclusion.....	40
10. Conclusion.....	41



# Appendices contents.

Appendix A – Other Supporting Documents List

Appendix B – Letter from Inspector Jeremy Youle to Ashfield District Council (March 2014)

Appendix C – Minutes to the Extraordinary Council Meeting (September 2018)

Appendix D – Ashfield Publication Local Plan Appendix 3 (September 2016)

Appendix E – Letter from the Secretary of State to Ashfield District Council (December 2023)

Appendix F – Extract Comparison from Ashfield Consultation Draft Local Plan (Regulation 18) Sustainability Appraisal Report

Appendix G – Monkhill Ltd v Secretary of State for Housing, Communities and Local Government [2019] EWHC 1993 (Admin)

Appendix H – Bloor Homes East Midlands Ltd v Secretary of State for Communities and Local Government [2014] EWHC 754 (Admin)

Appendix I – Wavendon Properties Ltd v Secretary of State for Housing, Communities and Local Government [2019] EWHC 1524 (Admin)

Appendix J – Appeal Decision for Ashlands House – APP/W3005/W/21/3278394

Appendix K – Appeal Decision for Land West of Beck Lane – APP/W3005/W/18/3213342

Appendix L – Appeal Decision for 211 Alfreton Road – APP/W3005/W/20/3252949

Appendix M – Appeal Decision for Land off Millers Way – APP/W3005/W/20/3263882

Appendix N – Costs Decision for Land off Millers Way

Appendix O – Appeal Decision for Land at Gilcroft Street – APP/W3005/W/21/3272262

Appendix P – Appeal Decision for Land at Ashland Road West – APP/W3005/W/21/3274818

Appendix Q – Appeal Decision for Quantum Clothing Group Limited, North Street – APP/W3005/W/15/3035794



# 1. Introduction

- 1.1. Pegasus Group is instructed by Hallam Land ("the Appellant") to act on its behalf in preparing this Statement of Case. This appeal is made pursuant to section 78 of the Town and Country Planning Act 1990 (as amended) ("TCPA 1990"), against the failure of Ashfield District Council ("the Council") to determine an outline planning application within the extended period.
- 1.2. This Statement of Case is submitted pursuant to the Town and Country Planning (Inquiry Procedure) (England) Rules 2000, as amended by the Town and Country Planning (Hearings and Inquiries Procedures) (England) (Amendment) Rules 2009 and the Town and Country Planning (Hearings and Inquiries Procedure) (England) (Amendment) Rules 2013.
- 1.3. This Statement should be read alongside all documents submitted in support of the planning application, and similarly, those submitted in support of this appeal.
- 1.4. Appendix A lists those documents relied upon within this Statement which have not been submitted with the appeal, to accord with the Planning Inspectorate's appeal guidelines.
- 1.5. The Appellant reserves the right to update this Statement of Case and provide supplementary evidence, where necessary, to address issues raised by the Council, including, but not limited to, any putative reasons for refusal.

## Appeal Site

- 1.6. The appeal site comprises agricultural land which extends to approximately 21.4 hectares. The site lies southeast of the town of Sutton-in-Ashfield and is referred to as "Land at Newark Road", shown on the Site Location Plan submitted with this appeal.
- 1.7. Residential development on Searby Road bounds the site to the west. To the north, and further to the northeast, lies industrial development, which includes the completed employment land allocation, "North of Hamilton Road" (Policy EM1SI, Ashfield Local Plan Review, adopted in 2002). To the southeast, some residential properties extend along Coxmoor Road.
- 1.8. In views along Newark Road (to the north) and Coxmoor Road (to the east), the site is substantially screened by mature vegetation around its edges.
- 1.9. For planning policy purposes, the appeal site lies adjacent to the Main Urban Area of Sutton-in-Ashfield.

## Planning Application

- 1.10. The application which is the subject of this appeal was registered as valid on the 23rd of August 2022 and assigned the reference V/2022/O629.
- 1.11. The description of development reads as follows:

*"Outline planning application (with all matters reserved except access) for a residential development of up to 300 dwellings with associated infrastructure and landscaping."*



- 1.12. The application was supported by a suite of documents and plans, including an Illustrative Masterplan which depicts the general arrangement of the site. The scheme has evolved in response to consultee comments on an earlier application (reference V/2017/O565). Up to 300 new dwellings are proposed, incorporating a mix of house types and 10% affordable housing.
- 1.13. The site is to be accessed via a new traffic signal-controlled T-junction on Newark Road and would provide, amongst other things, a Local Equipped Area for Play ("LEAP") and on-site open space provision.
- 1.14. Amendments and supplementary details have been provided in response to consultee comments. The final list of documents submitted in support of the application is set out within the draft Statement of Common Ground.
- 1.15. There are no technical objections raised, subject to conditions. This is reflected within the Council's Committee Report, which recommended that the application be approved, and that planning permission be granted.

## 2. Local Planning Authority Engagement

- 2.1. Over the course of the application, the Appellant developed a positive working relationship with the Case Officer(s) at Ashfield District Council and the Highways Officers at Nottinghamshire County Council ("NCC"). Positive meetings were held with the original Case Officer in May 2023, and with the original lead Officer and wider team from Nottinghamshire County Council Highways.
- 2.2. Following a submission to County Highways in September 2023 to address some earlier queries, no further feedback was received until a response on the 22nd of February 2024, despite best efforts to engage.
- 2.3. A new Case Officer was assigned to the application in January 2024 and a meeting was held to discuss outstanding consultee responses, which were then proactively sought by the Council. A further meeting was held in June 2024 to discuss planning obligations.
- 2.4. The Appellant worked proactively to resolve any issues raised by consultees, in order for the application to be brought before the July 2024 Planning Committee. It was envisaged that the application would be brought before an earlier meeting of the Planning Committee, however, final comments from Nottinghamshire County Council as the Highway Authority and Severn Trent Water delayed matters.
- 2.5. Comments from both NCC Highways and Severn Trent Water were eventually forthcoming, and no objections were raised, subject to conditions.
- 2.6. Notwithstanding the positive recommendation of the Case Officer, the Planning Committee resolved to defer consideration of the application until a later time. An appeal against non-determination is therefore the option of last resort.

### 3. Appeal Procedure

- 3.1. Pursuant to section 319A of the TCPA 1990, the Secretary of State has the power to determine the procedure for section 78 appeals. On the 21st of April 2022, the Planning Inspectorate published guidance<sup>1</sup> on the criteria for determining the procedure for planning appeals.
- 3.2. Under the Inspectorate's guidance, an inquiry is appropriate where:
- There is a clearly explained need for the evidence to be tested through formal questioning by an advocate; or
  - The issues are complex; or
  - The appeal has generated substantial local interest to warrant an inquiry as opposed to dealing with the case by a hearing.
- 3.3. The drafting of this guidance shows that these criteria are not dependent on one another; the satisfaction of just one would suffice. Indeed, these criteria broadly align with those at 6.47 of *Sweet and Maxwell's Planning Law: Practice and Precedents*. In the instant case, the first two criteria are particularly relevant (as demonstrated below), but there is also substantial local interest in the case:
- As this appeal concerns the Council's failure to give notice of its decision, the Inspector will need to consider a full range of issues. This will require evidence to be tested through formal questioning and will involve large amounts of highly technical data.
  - The Inspector will need to examine the weight to be attributed to out-of-date policies and the weight to be attributed to both the benefits and the alleged harms of the scheme, having regard to the operation of paragraph 11(d) of the Framework. The Appellant considers that these points also require scrutiny through formal cross-examination.
  - The issues are complex and technical and are set against the context of the Council's chronic failure to deliver housing.
  - The principal parties cannot adequately present their respective cases over one sitting day (which is normal practice for a hearing)<sup>2</sup>.
- 3.4. For the reasons set out above, the appellant considers that a public inquiry is both appropriate and reasonable, having regard to all the facts of the case. The extent of public interest is also relevant to the need for a public inquiry. This is also reflected in the interest from the ward councillor, who called in the application for determination by the Council's committee, and the Sutton Junction Residents Association.

---

<sup>1</sup> [Criteria for determining the procedure for planning, enforcement, advertisement and discontinuance notice appeals - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/103421/criteria-for-determining-the-procedure-for-planning-enforcement-advertisement-and-discontinuance-notice-appeals.pdf)

<sup>2</sup> 6.31 of *Sweet and Maxwell's Planning Law: Practice and Precedents*.

## 4. Development Plan and Material Considerations

- 4.1. Section 70(2) of the TCPA 1990 sets out that, in dealing with proposals for planning permission, regard must be had to the provisions of the Development Plan, so far as material to the application, and to any other material considerations.
- 4.2. Furthermore, section 38(6) of the Planning and Compulsory Purchase Act 2004 ("PCPA 2004") states that, if regard is to be had to the development plan for the purpose of any determination, then that determination must be made in accordance with the plan unless material considerations indicate otherwise. Taking these sections together, a decision-maker must, therefore, consider the Development Plan, identify any provisions within it which are relevant, and then properly interpret them.

### Development Plan

- 4.3. For the purposes of this appeal, the Development Plan comprises the saved policies of the Ashfield Local Plan Review 2002 ("ALPR 2002"). For the avoidance of doubt, there is no Neighbourhood Plan that applies to the appeal site.
- 4.4. The following policies are relevant to this appeal:

#### Ashfield Local Plan Review 2002 Saved Policies

- Policy ST1 – Development
- Policy ST2 – Main Urban Areas
- Policy ST4 – The Remainder of the District
- Policy EV2 – The Countryside
- Policy EV8 – Trees and Woodlands
- Policy EV11 – Ancient Monuments and Archaeological Sites
- Policy HG3 – Housing Density
- Policy HG4 – Affordable Housing
- Policy HG5 – New Residential Development
- Policy HG6 – Public Open Space in New Residential Developments
- Policy TR2 – Cycling Provision
- Policy TR3 – Pedestrians and People with Limited Mobility
- Policy TR6 – Developer Contributions to Transport Improvements

## Material Considerations

### The National Planning Policy Framework ("the Framework")

- 4.5. The Framework does not purport to change the statutory framework or displace the primacy of the development plan; rather, it is a material consideration for the purposes of section 70(2) of the TCPA 1990 and section 38(6) of the PCPA 2004.
- 4.6. The National Planning Practice Guidance ("NPPG") (Para 006 Reference ID: 21b-006-20190315) makes clear that the Framework represents up-to-date government policy and is a material consideration that must be taken into account where it is relevant to a planning application. If decision takers choose not to follow the Framework, where it is a material consideration, clear and convincing reasons for doing so are needed.

### Pre-Submission Draft Ashfield Local Plan 2023 – 2040

- 4.7. The Regulation 19 consultation concluded in respect of the Pre-Submission Draft Ashfield Local Plan 2023 – 2040 on the 29th of January 2024. Ashfield District Council submitted the Local Plan and supporting documents to the Secretary of State for independent examination on the 29th of April 2024. On the 20th of May 2024, the Secretary of State appointed two Planning Inspectors to conduct the independent examination.
- 4.8. Paragraph 48 of the Framework sets out that local planning authorities may give weight to relevant policies in emerging plans according to:
- a) The stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given);
  - b) The extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and
  - c) The degree of consistency of the relevant policies in the emerging plan to the Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given).
- 4.9. The Council's Emerging Local Plan ("ELP") has not yet been the subject of Examination in Public and unresolved objections are yet to be considered by the Inspectors. It is at a stage which several Inspectors and Secretary of State decisions have described as attracting limited weight.<sup>3</sup> This point appears uncontested by the Council, for the Committee Report states:
- "The emerging plan however is not the development plan until adopted and the emerging policies cannot therefore be afforded significant weight in the decision process."*
- 4.10. Furthermore, from all the available evidence, there are a large number of fundamental unresolved objections to the relevant policies in the ELP, including, but not limited to, Policy S1: Spatial Strategy to Deliver the Vision, Policy S2: Achieving Sustainable Development, Policy

---

<sup>3</sup> See [4] of APP/F2605/W/18/3194045; [3] of APP/H2265/W/18/3202040; and [5] of APP/Y3940/W/23/3329064.

S7: Meeting Future Housing Provision and Policy H1: Housing Allocations. These objections question the soundness of the Plan and pertain to the Council's planned failure to meet its objectively assessed housing need, the favoured 'dispersed strategy', the release of Green Belt for housing allocations (and the requisite exceptional circumstances) when suitable non-Green Belt land exists and is left without draft allocation, and the implications of a proposed allocation in Kirkby-in-Ashfield on the potential proposed Special Protection Area.

- 4.11. Objections have been received from various representers, including statutory consultees: Nottinghamshire County Council, Natural England, Severn Trent Water, Sport England and Historic England. For instance, and with regards to the latter, Historic England maintains its concerns over development within the setting of Dalestorth House, with express reference to the following Housing Allocations<sup>4</sup> in the Sutton Area: H1Sf<sup>5</sup>, H1Si<sup>6</sup> and H1Ss<sup>7</sup>, all located north east of Sutton. Cumulatively, these allocations<sup>8</sup> provide for a potential yield of 499 dwellings.
- 4.12. It follows from the above that not only is the emerging plan at a relatively early stage of preparation, but there are significant unresolved objections and serious issues about consistency with the NPPF. These matters all underscore that, applying the approach in NPPF paragraph 48, very limited weight should be attached to the emerging plan.
- 4.13. As regards the history of plan-making, a brief commentary on the Council's past performance is also necessary. Since the adoption of the ALPR 2002, two draft plans have been withdrawn from examination. As regards the first, Inspector Jeremy Youle wrote to the Council on the 26th of March 2014 (Appendix B), wherein he raised "significant concerns." These concerns related to site selection and Green Belt matters. It was recommended that the plan be withdrawn.
- 4.14. As regards the second withdrawal, an Extraordinary Council meeting was held on the 6th of September 2018, where it was resolved that the Emerging Local Plan be withdrawn. There was a myriad of reasons, citing conflict with the vision of the new political administration (Appendix C).
- 4.15. Under the second withdrawn plan, the larger of the two land parcels of the appeal site formed a draft housing allocation (SKA3e – Land at Newark Road) (Appendix D).
- 4.16. On the 19th of December 2023, the Secretary of State ("SoS") wrote to the Council to address Ashfield's "persistent failure" to adopt a plan (Appendix E). To ensure full and effective coverage of the district by a development plan, the SoS exercised his powers under section 15(8)(b) of the PCPA 2004 and directed that the Council revise its Local Development Scheme ("LDS"). The Council responded to the Secretary of State's letter on the 8th of January 2024, confirming its intention to proceed under the published timetable. On the 29th of January 2024, Cabinet resolved to reaffirm its commitment to its LDS, as previously

---

<sup>4</sup> Allocated under Policy H1: Housing Allocations.

<sup>5</sup> H1Sf: 'Rear 23 Beck Lane, Skegby' – potential yield of 23 dwellings.

<sup>6</sup> H1Si: 'Rear Kingsmill Hospital' – potential yield of 264 dwellings.

<sup>7</sup> H1Ss: 'Land East of A6075 Beck Lane, Skegby' – potential yield of 212 dwellings.

<sup>8</sup> Those objected to by Historic England in relation to Dalestorth House.

approved on the 6th of November 2023. This iteration of the LDS anticipates adoption of the Local Plan by April 2025.

4.17. Although the Council is now progressing another draft plan, there are fundamental flaws which will need to be addressed before the Local Plan can be found sound and legally compliant. The Pre-Submission Draft Local Plan, consulted on between 1 December 2023 to 29 January 2024, fails to provide a strategy which meets the District's objectively assessed needs over the plan period to 2040. Table 2 (page 57) sets out the Dwelling Requirement and Provision 2023-2040 and identifies a shortfall of 963 homes over the plan period. This shortfall is equivalent to more than two years of housing need.

4.18. The shortfall is caused by the Council's decision to remove two new settlements from the Local Plan strategy, with a revised focus on dispersed development. This followed a significant level of objection following consultation on their inclusion under Regulation 18 of the Town and Country Planning (Local Planning) (England) Regulations 2012. The Regulation 19 Pre-Submission Draft Sustainability Appraisal Report (SA November 2023) sets out that:

*'The Council's decision-making process and reasons for changing the approach since the 2021 consultation is set out in a series of committee reports and minutes of the Council's Cabinet committee and Local Plans Development Committee. A series of reports have shaped the selection of the preferred strategy...'* (para 5.5.79).

4.19. There is, however, no clear justification provided in the Pre-Submission Draft Local Plan, background papers, committee reports and minutes or Sustainability Appraisal for the new preferred 'dispersed strategy', following the decision to remove the two new settlements. There is also no robust planning reason for rejecting the strategy options which include a sustainable urban extension to Sutton.

4.20. The application site was considered both as part of a wider sustainable urban extension and as a smaller parcel in its own right as part of the site selection process for the Local Plan (SHELAA Reference: SA024 South of Newark Road). Background Paper 1: Spatial Strategy and Site Selection (October 2023) sets out the reason the application site was rejected:

*'SA024: South of Newark Road. Although this site was assessed in the SHELAA as potentially developable, there are 2 outstanding planning applications dating from October 2017 and August 2022 respectively. The applications refer to outline approval for up to 300 dwellings, but currently have unresolved highways issues. As such, it has not been put forward for allocation due to the uncertainty of delivering development. This site has an estimated yield of 377 dwellings in the SHELAA.'* (paragraph 8.18)

4.21. The highways issues referred to were fully resolved at the time the paper was written, Nottingham County Council confirmed in a consultation response dated 3 July 2019 that they did not have any objections to the development, subject to planning obligations, conditions and informatives. This is further confirmed by the lack of objection from the County Council in relation to this Appeal application.

4.22. The submission of a second planning application (this Appeal application) for the same development was only necessary because the Council refused to determine the original application. At the time the Site Selection Background Paper was written a meeting had been held with the District and County Council on 9th May 2023 and initial comments had been received from the Highway Authority on the 28th July 2023. These comments did not identify any matters of principle and related to resolvable detailed design matters. There was, and



continues to be, no uncertainty of delivering development and therefore the reason for non-allocation of this non-Green Belt site are false. Representations setting this out have been made to inform the Examination process.

- 4.23. The original stated reason for rejection of the application site from allocation in the currently emerging plan, in favour of significant release of Green Belt land, at the time of the Regulation 18 Draft Local Plan Sustainability Appraisal Report was that it has 'encountered substantial local opposition and has *not been politically acceptable* for the site to be taken forward by the Council' (emphasis added). The report stating this was later updated by the Council following representations from the appellant. A comparison of extracts from the report as published in 2021 and now are shown in Appendix F.
- 4.24. On the 22nd of July 2024, the Inspectors published their initial questions for the Local Plan Examination of the currently emerging plan. Insofar as relevant, the Inspectors question the true extent of the housing shortfall, noting differences between paragraph 3.63 of the ELP, Table 2 of the ELP and the Housing Background Paper. The Inspectors also question whether the Sustainability Appraisal considered the implications arising from the under-allocation of sites over the full plan period.
- 4.25. Whilst the Emerging Local Plan has been submitted to the Secretary of State for Examination, there remain fundamental issues of soundness and legal compliance which must be addressed. On this matter, Matthew Pennycook MP wrote to the Chief Executive of the Planning Inspectorate on the 30th of July 2024, calling for an end to excessive pragmatism. Within his letter, Mr Pennycook set out that:
- "Pragmatism should be used only where it is likely a plan is capable of being found sound with limited additional work to address soundness issues [...] Pragmatism should not be used to address fundamental issues with the soundness of a plan."*
- 4.26. As set out above, the Council's Local Development Scheme anticipates the adoption of the Local Plan by April 2025. However, taking together the above factors, the date of adoption appears overly ambitious. Indeed, there must be some anxiety as to whether their combined effect is to result in a further, withdrawn, plan. The appeal scheme affords a non Green Belt, deliverable solution in the interim and the reasons for the Council previously rejecting it as a draft allocation do not stand up to scrutiny.
- 4.27. The appeal site is under the control of Hallam Land and is promoted by Hallam Land for development by Harron Homes. Deliverability is evidenced by Harron Home's proven track record within the district. The community is familiar with the Harron Homes brand and values and Harron are equally familiar with the character and nature of the area and the local markets. Accordingly, Harron Homes has every confidence in their ability to continue to deliver successful schemes within the district of Ashfield.

#### **Other Material Considerations**

- 4.28. The following documents and guidance are also relevant to this appeal:
- Planning Practice Guidance
  - Ashfield Residential Design Guide SPD (2014)
  - Ashfield District Council Planning Guidance Climate Change (2022)



- Ashfield District Council Developer Guide to Biodiversity and Nature Conservation (2022)
- Nottinghamshire County Council Highway Design Guide
- National Design Guide
- The Manual for Streets
- Building Sustainable Transport into New Developments
- Local Transport Note 1/20

## 5. Development Plan Compliance

- 5.1. As mentioned, planning law<sup>9</sup> requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise.
- 5.2. Policy ST1 – Development (ALPR 2002) states that development will be permitted where, *inter alia*, it does not conflict with other policies in the Local Plan. Policy ST1 represents the general policy against which all development proposals are assessed, irrespective of land use.
- 5.3. The spatial strategy defines a clear settlement hierarchy within Ashfield. The first level comprises the main urban areas of Hucknall, Kirkby-in-Ashfield and Sutton-in-Ashfield. The second comprises the villages, or “named settlements” and the third consists of other small settlements within the countryside.
- 5.4. As regards its location, the site adjoins the defined settlement limits of Sutton-in-Ashfield, a Main Urban Area. Its location therefore aligns with the settlement hierarchy. However, it is not within the settlement limits, which were defined over two decades ago, and the extent of those settlement limits is out of date, so strictly the site falls within the “Remainder of the District”. Policy ST4 – The Remainder of the District (ALPR 2002) states that, outside the main urban areas, permission will only be granted in respect of sites allocated for development, or for development which is appropriate to the countryside, as set out under Policy EV2 – The Countryside (ALPR 2002).
- 5.5. Policy EV2 (ALPR 2002) sets out that, within the countryside, permission will be given for certain forms of development that are considered appropriate within the countryside; these are stated within Policy EV2. The appeal scheme does not fall within the specified forms of development. The forms of development listed are similar to the forms of development allowed in the Green Belt under NPPF.
- 5.6. Notwithstanding conflict with this aspect of the Development Plan, material considerations indicate that the development should be permitted, not least that the geographical extent of the settlement limits are fundamentally out of date in the context of changed circumstances since they were set and the terms of policy EV2 are not consistent with the much more flexible approach of NPPF.
- 5.7. Detailed in forthcoming sections, key additional material considerations include the provisions of the Framework, the presumption in favour of sustainable development, the extent of the shortfall in housing supply, the benefits of the scheme (including the provision of market and affordable housing), and the sustainability of the site.

---

<sup>9</sup> Section 70(2) of the Town and Country Planning Act 1990 and Section 38(6) of the Planning and Compulsory Purchase Act 2004.

## 6. Presumption in Favour of Sustainable Development & Tilted Balance

- 6.1. The policy presumption in favour of sustainable development is promulgated between paragraphs 11 and 14 of the Framework. At first instance, Holgate J provided a detailed analysis of the presumption, and the circumstances in which it is engaged (see, *Monkhill Ltd v Secretary of State for Housing, Communities and Local Government*<sup>10</sup>) (Appendix G). This analysis was approved by the court above<sup>11</sup>.
- 6.2. Insofar as relevant, where a case does not fall within paragraph 11(c) (as is the case here), the next step is to consider whether paragraph 11(d) applies. In this case, this requires examining whether the most important development plan policies for determining the application are out-of-date. On the 30th of July 2024, the Ministry of Housing, Communities and Local Government published the draft NPPF. It is noted that the draft Framework further clarifies the scope and operation of paragraph 11(d) and removes paragraph 226 in its entirety.
- 6.3. If paragraph 11(d) does apply, then the next question is whether one or more Footnote 7 policies are relevant to the determination of the application or appeal (limb (i)). Footnote 7 policies are those that protect areas or assets of particular importance. In the present case, no Footnote 7 policies apply.

### Out of Date Development Plan Policies

- 6.4. As regards paragraph 11(d), Footnote 8 confirms that the presumption is triggered for applications involving the provision of housing where:
- a) The local planning authority cannot demonstrate a five-year supply (or a four-year supply, if applicable, as set out in paragraph 226) of deliverable housing sites (with a buffer, if applicable, as set out in paragraph 77) and does not benefit from the provisions of paragraph 76; **or**
  - b) Where the Housing Delivery Test indicates that the delivery of housing was below 75% of the housing requirement over the previous three years (emphasis added).
- 6.5. Importantly, the Footnote 8 qualifications are not contingent on one another; to engage the presumption, the satisfaction of one will suffice.
- 6.6. As regards criterion (a), the Pre-Submission Draft Ashfield Local Plan has reached the Regulation 19 stage and has been submitted for Examination. Thus, under paragraph 226 of the Framework, Ashfield District Council should identify a supply of specific deliverable sites sufficient to provide a minimum of four years' worth of housing. In accordance with paragraph 77 of the Framework, a buffer of 20% should be applied.
- 6.7. Nevertheless, the Council cannot demonstrate a four-year supply of deliverable housing land. This point has been highlighted in recent appeal decisions and in the Council's Housing Land

---

<sup>10</sup> [2019] EWHC 1993 (Admin).

<sup>11</sup> [2021] EWCA Civ 74.

Monitoring Report (July 2024), which sets out that the Council's position is 3.63 years, which represents a significant shortfall. The Council's Committee Report, however, states that the Council currently have a 2.56-year supply. The Appellant will explore this further and provide detailed evidence as appropriate.

- 6.8. As regards criterion (b), the 2022 Housing Delivery Test results show a measurement of 74% for Ashfield, falling below the identified threshold of 75%. The 2022 results were published in December 2023 and are the most recent results. The 2023 test will cover the years 2020/21, 2021/22 and 2022/23; the results of which are awaited.
- 6.9. For these reasons and, as a matter of fact, both Footnote 8 qualifications are satisfied, engaging the so-called "tilted balance".
- 6.10. Notwithstanding the above, the lack of housing land supply and failure of the Housing Delivery Test are not the only reasons the policies can be found to be out of date. Policies which bear on the decision can be out of date irrespective of housing land supply or the Housing Delivery Test result, with the consequence that the tilted balance is triggered on a different basis.<sup>12</sup> Policies may be out of date where they have been overtaken by things that have happened since they were adopted, either on the ground or in some change in national policy<sup>13</sup> (Appendix H).
- 6.11. The phrase, "the policies most important for determining the application", has been the subject of judicial consideration. In *Wavendon Properties Ltd v SSHCLG*<sup>14</sup> (Appendix I), Dove J held that:
- "In my view the plain words of the policy clearly require that having established which are the policies most important for determining the application, and having examined each of them in relation to the question of whether or not they are out of date applying the current framework [...] an overall judgement must be formed as to whether or not taken as a whole these policies are to be regarded as out-of-date for the purpose of the decision."*<sup>15</sup>
- 6.12. It follows, therefore, that one must employ a two-stage analysis. Firstly, one must identify those policies most important to the application and, secondly, examine whether those policies are out-of-date.
- 6.13. As regards the appeal scheme, a number of policies are relevant. However, the most important pertain to the spatial strategy and the protection of the countryside. In the present case, the most important policies are Policy ST2, which identifies Sutton-in-Ashfield as a Main Urban Area, Policy ST4 and Policy EV2; given that they restrict housing outside of the Main Urban Areas defined limits (emphasis added).
- 6.14. The boundaries of the Main Urban Areas were defined in the context of the land needed to meet housing needs identified in the Nottinghamshire Structure Plan Review ("NSPR"). The NSPR was formally adopted in November 1996 and provided the basis for housing

---

<sup>12</sup> *Oxton Farm v Harrogate BC* [2020] EWCA Civ 805 [33].

<sup>13</sup> *Bloor Homes v SSCLG* [2014] EWHC 754 (Admin).

<sup>14</sup> [2019] EWHC 1524 (Admin).

<sup>15</sup> *Ibid* [58].

requirements up to 2011. The boundaries within the ALPR were adopted in 2002 and no longer reflect the position on the ground or take account of an up-to-date assessment of need.

- 6.15. The NSPR set a requirement of 8,550 dwellings across the district, between 1991 – 2011; equivalent to 427 dwellings per annum. Set against the standard method figure for 2024 of 446 homes a year, the NSPR requirement is out-of-date. More fundamentally, the ALPR 2002 only ever aimed to accommodate enough development (at that lower annual rate) to a point in time that was passed 13 years ago and the boundaries of settlements were drawn to accommodate development on that basis.
- 6.16. Furthermore, development has necessarily taken place outside the defined settlement limits, such that the situation on the ground is materially different. The following decisions provide context:
- V/2018/0783 – 206 dwellings allowed on appeal.<sup>16</sup>
  - V/2016/0569 – 322 dwellings allowed on appeal.<sup>17</sup>
  - V/2016/0208 – Outline consent granted for a maximum of 181 dwellings.
  - V/2012/0556 – ~37 dwellings allowed on appeal.<sup>18</sup>
- 6.17. Therefore, the policies most important for determining the application are out of date, due to being overtaken by things that have happened since adoption. This is in addition to the matters reflected above at 6.6 – 6.9. These policies are also out of date due to their inconsistency with the Framework (below).
- 6.18. Paragraph 3.26 of the policy subtext (to Policy EV2) sets out that the purpose of Policy EV2 is to complement strategic policies ST2 – ST4 which aim to concentrate development in the Main Urban Areas and provide for limited growth in the Named Settlements as a corollary generally to protecting remaining areas from development. The inflexible approach of Policy EV2, in prescribing acceptable uses, is more consistent with Green Belt policy. Even then, Green Belt policy, at national and local level, benefits from inherent flexibility, through the presence (or otherwise) of very special circumstances. Accordingly, Policy EV2 adopts an approach even more restrictive than that applied to the Green Belt.
- 6.19. The Framework's approach is far less restrictive in relation to countryside. Paragraph 180(b) requires planning decisions to contribute to and enhance the natural and local environment by **recognising** the intrinsic character and beauty of the countryside.
- 6.20. The inconsistency between Policy EV2 (ALPR 2002) and the Framework has been highlighted in appeal decisions across the district (see, APP/W3005/W/21/3278394) (Appendix J). At [16], the Inspector found that:

*"[...] The proposal would not accord with Policies ST4 and EV2 of the LP. However, I have concluded that these are out of date due to the Council's current housing land supply*

---

<sup>16</sup> APP/W3005/W/21/3272262.

<sup>17</sup> APP/W3005/W/18/3213342/

<sup>18</sup> APP/W3005/A/13/2200723.

*position. Moreover, their restrictive approach to location lacks consistency with the Framework, which applies a more balanced and nuanced approach. As such this reduces the weight applied to the conflict with those policies.*" (emphasis added)

6.21. A similar approach was taken in respect of 'Land West of Beck Lane' (see, APP/W3005/W/18/3213342) (Appendix K). At [4], the Inspector found that:

*"In this instance the LP policies relied upon by the Council as the most important are Policies ST4 and EV2. Policy ST4 is restrictive of development outside the main urban areas and named settlements. In this regard it lacks the balancing exercise required by the NPPF and is therefore inconsistent with it. Similarly, Policy EV2 is highly restrictive of development in the countryside, again lacking the balance required by the NPPF. Hence this policy too is inconsistent with the NPPF. The Appellant fairly concedes that the proposal conflicts with these policies, but because they are out of date and inconsistent with the NPPF that conflict is agreed to carry less weight."* (emphasis added)

6.22. The rigidity of Policy EV2 is derived, in part, from its construction; development which does not fall within the exceptions criteria, is *ipso facto* inappropriate development. The exceptions criteria are set out between criteria (a) – (h) and form a closed list, such that a binary test applies.

6.23. Furthermore, the operation of Policy EV2 is not contingent on other variable(s) i.e., whether suitable mitigation has been incorporated. To read in such allowances would be to do violence to the language of the policy. There is, therefore, no capacity under Policy EV2 for, other, relevant considerations; in this instance, the proximity of the site to the limits of the Main Urban Area, the sustainability of the location and the incorporation of mitigation measures.

6.24. It must be appreciated that the Framework does not include a "blanket protection" of the countryside for its own sake, such as existed in earlier national guidance. Regard must also be had to the other core planning principles favouring sustainable development<sup>19</sup>.

## Conclusion

6.25. The Appellant has demonstrated that, in the present case, the "tilted balance" is engaged on four counts:

1. The most important policies for determining this appeal are out of date, and in the case of the policies within the ALPR 2002, are substantially out of date. The policies within the ALPR 2002, in particular the settlement limits, have been overtaken by things that have happened on the ground, they are based on an historic assessment of need and were designed to address a time period and need long since expired and overtaken by events.
2. The most important policies for determining this appeal are out of date. The policies within the ALPR 2002 have been overtaken by things that have happened since they

---

<sup>19</sup> *Telford and Wrekin v SSCLG* [2016] EWHC 3073 (Admin) [47].

were adopted, through a change in national policy. The policies within the ALPR 2002 are inconsistent with the nuanced approach of the Framework.

3. Ashfield District Council is unable to demonstrate a four-year supply of deliverable housing sites against their identified local housing needs. In accordance with Footnote 8 of the Framework, this renders the most important policies automatically out of date.
4. The 2022 Housing Delivery Test results show a measurement of 74% for Ashfield, falling below the relevant threshold (75%). In accordance with Footnote 8 of the Framework, such underperformance renders the most important policies automatically out of date.

6.26. For all of these reasons, conflict with the Development Plan must be attributed limited weight. Indeed, the weight to be given to a Development Plan will depend on the extent to which it is up to date. A plan which is based on outdated information, or which has expired without being replaced (as is the case), is likely to command relatively little weight.<sup>20</sup>

6.27. Returning to the principles expounded in *Monkhill* (6.2 above), it has been demonstrated that paragraph 11(d) applies; the most important development plan policies that the Appeal proposal is in conflict with are out of date. In light of this, and in the absence of any applicable "Footnote 7" policies, the decision-taker must proceed to limb (ii) 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.

---

<sup>20</sup> *Tewkesbury BC v SSCLG* [2013] EWHC 286 (Admin).

## 7. Ashfield District Council's Appeal History

- 7.1. Since the turn of the decade, there have been four relevant appeal decisions which pertain to major residential development.<sup>21</sup> These appeal decisions are set out in chronological order below. It should be borne in mind that these appeal decisions were determined within the same policy context – the saved policies of the Ashfield Local Plan Review 2002.
- 7.2. On the 12th of May 2021, an appeal was allowed against the refusal of planning permission for up to 100 dwellings at 211 Alfreton Road (APP/W3005/W/20/3252949) (Appendix L). The application was brought before the planning committee on the 26th of February 2020, with officer's recommendation for approval. Nevertheless, the officer's recommendation contained within the report was rejected by the Committee, and planning permission was refused.
- 7.3. On the 28th of May 2021, an appeal was allowed against the refusal of planning permission for 54 dwellings at 'Land off Millers Way' (APP/W3005/W/20/3263882) (Appendix M). The application was brought before the planning committee on the 21st of October 2020, with officer's recommendation for approval. Nevertheless, the officer's recommendation contained within the report was rejected by the Planning Committee, and planning permission was refused.
- 7.4. As regards *Millers Way*, the appointed Inspector allowed the appellant's application for an award of costs (Appendix N). At [13] of the costs decisions, the Inspector found that:
- "Overall, the evidence provided in relation to the three reasons for refusal were vague, generalised and not supported by objective analysis. Planning conditions recommended in the Officer Committee Report [...] would have enabled the proposed development to go ahead. In the planning judgement, it appears to me that having regard to the provisions of the development plan, national planning policy and other material considerations, the proposal should reasonably have been permitted."*
- 7.5. On the 5th of November 2021, an appeal was allowed against the refusal of planning permission for 208 dwellings at 'Land at Gilcroft Street' (APP/W3005/W/21/3272262) (Appendix O). The application was brought before the Planning Committee on the 25th of November 2020, with officer's recommendation for refusal; the Planning Committee refused planning permission as per officer's recommendation.
- 7.6. On the 13th of December 2021, an appeal was allowed against the refusal of planning permission for up to 300 dwellings at 'Land off Ashland Road West' (APP/W3005/W/21/3274818) (Appendix P). The application was brought before the Planning Committee on the 17th of March 2021, with officer's recommendation for approval. Nevertheless, the officer's recommendation contained within the report was rejected by Planning Committee, and planning permission was refused.
- 7.7. In each of these appeal decisions, the Council was unable to demonstrate a five-year supply of deliverable housing land. Indeed, in the *Gilcroft Street* appeal, the Inspector described the

---

<sup>21</sup> As defined by Article 1(2) of the Town and Country Planning (Development Management Procedure) (England) Order 2015.



shortfall as "very serious" and "lamentable". In all four cases, it was found that the adverse impacts would not significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.

- 7.8. Insofar as relevant, both the *Gilcroft Street* and the *Ashland Road West* appeals were allowed despite falling outside the defined settlement limits. As in the present case, these appeals engaged Policies ST4 and EV2 of the ALPR 2002.

## 8. Representations from Consultees and Interested Parties

### Local Highway Authority Engagement

- 8.1. ADC Infrastructure, on behalf of Hallam Land Management, prepared a suite of documents to support the application, including:
- A Transport Assessment;
  - A Consolidated Transport Assessment
  - A Travel Plan;
  - Access Technical Note;
  - Revised drawings; and
  - Response tracker to initial Highways comments.
- 8.2. The Consolidated Transport Assessment collates the position agreed in respect of the previous application V/2017/O565, including agreed parameters and assessments, into one complete document. The result was that, in respect of the previous application (V/2017/O565), the Highway Authority raised no objection, subject to conditions (response dated the 3rd of July 2019).
- 8.3. As regards the present appeal application, the application was registered on the 23rd of August 2022. The applicant sought to amend the access proposals, issuing a technical note to the Highway Authority on the 21st of April 2023. In advance of that, despite many chasing attempts, no highways comments were received.
- 8.4. To explain the technical note and the changes proposed, a meeting was arranged with the Highway Authority which numerous officers attended. The meeting took place on the 9th of May 2023. Comments were eventually received from the Highway Authority on the 28th of July 2023. These comments raised detailed matters in respect of the proposed junction layouts and in relation to high standard cycleways and footways.
- 8.5. On the 28th of September 2023, ADC Infrastructure issued a detailed response. Revised drawings were attached, to address the feedback of the Highway Authority. The email was also accompanied by a 'response tracker' which addressed each point raised by the Highway Authority.
- 8.6. Numerous times thereafter, ADC Infrastructure issued emails seeking comments; none were forthcoming. On the 15th of February 2024, prompted by the new planning case officer, incomplete draft comments were received which raised various detailed matters relating to design points associated with the pedestrian and cycle provisions. ADC Infrastructure replied directly to the Highway Authority on the 22nd of February 2024. They also sought a meeting to discuss the outstanding matters.

- 8.7. On the 22nd of February 2024, after replying to the Highway Authority's draft comments, the Highway Authority's formal consultation response (dated the 21st of February 2024) was passed on by the planning case officer. It was substantially the same as the draft response, and importantly it did not raise any actual objections. ADC Infrastructure formalised their 22 February reply and despite chasing, the subsequent response from the Highway Authority was significantly delayed.
- 8.8. Eventually, on the 28th of June 2024, further comments were received. Having regard to the suite of additional drawings provided by ADC Infrastructure, the Highway Authority raised no objections, subject to conditions.

## Other Consultees

- 8.9. No objections have been received from the consultees listed below (statutory or otherwise) and there are no insurmountable issues. All outstanding matters and/or mitigation measures can be addressed either by way of condition, or by planning obligations:
- Severn Trent Water
  - Nottinghamshire County Council – Highways
  - Natural England
  - Environment Agency
  - Local Lead Flood Authority
  - Health and Safety Executive
  - NHS
  - Nottinghamshire County Council – Education
  - Nottinghamshire County Council – Minerals and Waste
  - Nottinghamshire County Council – Public Transport
  - Nottinghamshire County Council – Library
  - Nottinghamshire County Council – Rights of Way
  - Nottinghamshire County Council – Conservation
  - Ashfield District Council – Environmental Health
  - Ashfield District Council – Contaminated Land
  - Ashfield District Council – Arboriculture
  - Ashfield District Council – Ecology
  - Ashfield District Council – Housing

- Ashfield District Council – Planning Policy & Projects
- Active Travel England
- Network Rail
- Nottinghamshire Police
- Safeguarding Authority for East Midlands Airport

## **Interested Parties**

8.10. Over several periods of consultation, representations have been received from local residents.

8.11. For the sake of brevity, these objections have been summarised below:

### Environment and Wildlife

- Increased flooding and insufficient drainage.
- Birds.
- Habitat.
- Status as a former landfill.
- Light pollution.
- Loss of open countryside.
- Suitable brownfield sites within the vicinity.

### Infrastructure and Highway Matters

- Lack of services/infrastructure.
- Road surfaces have not been properly maintained.
- Increased congestion.
- Absence of sustainable transport modes.
- Transport assessment is out-of-date.
- Searby Road junction treatment with the new cycle path is unacceptable.

### Other Matters

- Increase in anti-social behaviour.
- Adverse impact(s) on existing residents.



- Reduction in the value of existing properties.

- 8.12. The application the subject of this appeal was supported by a robust evidence base addressing each matter, including, a Transport Assessment, Travel Plan, Planning Statement, Design and Access Statement, Ecological Impact Assessment, Flood Risk Assessment and a Phase 1 Geo-Environmental Assessment.
- 8.13. Matters raised by residents fall within one of two categories. Either they are anecdotal and absent substantive evidence, or they have been addressed satisfactorily by application documents as confirmed in consultee comments and officers report to committee.

## 9. The Appellant's Case

- 9.1. This appeal is made pursuant to section 78 of the TCPA 1990 against the Council's failure to determine an outline planning application within the extended period. Having regard to both the Planning Statement and the Council's Committee Report (albeit in the absence of a formal decision notice), this section anticipates what might reasonably constitute the main issues in this appeal.
- 9.2. By virtue of the Council's failure to give notice of its decision, the Inspector will need to consider a full range of issues. The Inspectorate's decision as to the appeal procedure will necessarily reflect this. The key planning issues, detailed within the Planning Statement, the Council's Committee Report and matters that have arisen through consultation, are addressed below.

### Principle of Development

- 9.3. The appeal site is outside, but adjacent to, the settlement boundaries of a top tier settlement in the settlement hierarchy, set in 2002 to meet development needs up to 2011. As such, the development would be contrary to Policies ST4 and EV2 of the ALPR 2002 which, together, restrict development outside the boundaries of the Main Urban Areas.
- 9.4. However, detailed in preceding sections, the most important policies for determining this appeal are out-of-date, and in the case of the policies within the ALPR 2002, are substantially out-of-date. The settlement boundaries within the ALPR 2002 are based on an historic assessment of need and the policy approach outside those boundaries is inconsistent with the nuanced approach of the Framework. Conflict with these policies must, therefore, attract limited weight.
- 9.5. Furthermore, both Footnote 8 triggers are satisfied. The Appellant has demonstrated that, in the present case, the "tilted balance" is engaged on four counts.
- 9.6. In the absence of any applicable "Footnote 7" policies, the decision-taker must proceed to limb (ii) of 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.

### Sustainability

- 9.7. Paragraph 114 of the Framework requires that appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location.
- 9.8. At the time of the application, bus services ran adjacent to the development site along Sotheby Avenue, 370m from the site centroid. They ran every 30 minutes from Monday to Saturday, and hourly on Sundays. Due to the length of time it has taken to resolve matters, the services have altered. Buses no longer run along Sotheby Avenue.
- 9.9. The nearest bus stops are now on Kirby Folly Road, or Hamilton Road, depending on which part of the site is being accessed. The stops on Kirby Folly Road are between 490m and



950m walking distance depending on which access is used and the resident's starting point. The stops provide access to four bus services, the most frequent being Trent Barton's 3C service. NCC Public Transport's consultation response notes that the 3C service operates 7 days a week, commencing as early as 05:00, Monday through Saturday. The service also operates on a Sunday, with reduced frequency. In the main, the service operates every 20 minutes, concluding at 00:00. Also available from the stops are the 33 and 90 services that operate with relative frequency, Monday through Saturday. The stop is also served by Stagecoach's MX90 service, that also serves the Hamilton Road stop. However, it runs infrequently.

- 9.10. Aside from existing services, throughout the application there has been a dialogue with the Highway Authority's bus team. It has been agreed that a significant contribution will be made to provide improvements to the local bus services to serve the site. The Highway Authority have confirmed that there are a range of scenarios for how this money will be used to bring bus services within walking distance of the development's residents. This includes introducing a bus that directly serves the site. A bus layover and turning area is shown on the masterplan in the centre of the site, and the spine road is designed to accommodate buses. The Travel Plan commits to giving free bus taster tickets to residents. Therefore, there will be good accessibility by bus to the development site.
- 9.11. As regards pedestrians and cyclists, there is already a comprehensive network of pedestrian routes surrounding the development. They include footways beside all the roads and include Sutton-in-Ashfield Footpath 82 that runs adjacent to the site. There are existing cycle provisions, that are to be enhanced by comprehensive proposals that form part of the Highway Authority's Local Cycle and Walking Infrastructure Plan (LCWIP).
- 9.12. These existing provisions will be significantly enhanced by provisions within the proposed development, depicted on the illustrative masterplan, with pedestrian provisions throughout and high-quality cycle routes along the spine road, anticipating its extension in the future. At the interface between the on-site and off-site provisions, the access proposals show significant works with segregated footways and cycleways along Newark Road, on to Searby Road, Coxmoor Road, and connecting to the footpath network. These connections develop the scheme's legibility and may be used to access services locally, or farther afield.
- 9.13. Manual for Streets (DfT, 2007) recognises that walkable neighbourhoods are typically characterised by having a range of facilities within 10 minutes' (up to ~800m) walking distance of residential areas, which residents may access comfortably on foot. However, this is not an upper limit as walking offers the greatest potential to replace short car trips, particularly those under 2km (emphasis added).
- 9.14. Building Sustainable Transport into New Developments (DfT, 2008) echoes this sentiment, and adds that the propensity to walk or cycle is not only influenced by distance but also the quality of the experience.
- 9.15. Taken from the proposed access, there is a wide range of services and facilities within 2km, including: a public house, restaurants, takeaways, convenience stores and a primary school. Towards the upper limit of this 'catchment' is a retail park, Wickes, The Range, a Lidl and an Aldi. Sutton-in-Ashfield is one of the most sustainable locations within the district and provides greatest access to a range of services and facilities. This is reflected through the current Local Plan strategy and allocations.

- 9.16. As regards the users' experience, the local highway network would not serve as a deterrent to pedestrians/cyclists, taking into account the wide footways, the presence of street-lighting and the 30mph speed limit along Newark Road.
- 9.17. To the north and the west, the site adjoins the limits of the Main Urban Area. The site has a close relationship to the existing settlement, due to its physical connection and proximity to built form. The proposal would form a natural extension to the existing settlement, comprising development of an appropriate scale and character. Its location, adjoining the Main Urban Area, means the site benefits from good access to services and facilities.
- 9.18. For the reasons set out above, the site would not be reliant on private car ownership – opportunities for sustainable transport modes have been maximised. The site occupies a sustainable location.

## Ecology

- 9.19. Paragraph 186 of the Framework sets out that, in determining planning applications, local planning authorities should apply the following principle: that if *significant* harm to biodiversity resulting from a development cannot be avoided, adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.
- 9.20. The application the subject of this appeal was supported by an Ecological Impact Assessment, and a Preliminary Biodiversity Net Gain Assessment. The former was prepared by RammSanderson and the latter, Wardell Armstrong.
- 9.21. The Council's Ecology Officer provided a consultation response on the 15th of February 2024, some 17 months after the application was validated. Subject to conditions, no objections were raised.
- 9.22. The appeal site comprises predominantly arable fields, bound by hedgerows and lines of trees. Scrub, marshy grassland and ditches are also present. Two trees on site were identified as having "high" bat roost potential. However, emergence surveys recorded no evidence of roosting bats. The Council's Ecology Officer therefore agrees that the development should not impact on roosting bats and that no further surveys for bats are necessary.
- 9.23. As regards nesting birds, the site was identified as containing a range of suitable habitats. However, the Council's Ecology Officer agrees that no protected or notable bird species are likely to be present and affected.
- 9.24. Although there is some limited habitat for reptiles, no reptiles were recorded during targeted reptile surveys of the site. As such, no impacts on reptiles are anticipated. The Council's Ecology Officer further confirms that the presence of otter, water vole and white clawed crayfish is unlikely.
- 9.25. The habitats of higher ecological value include individual trees, hedgerows, areas of scrub, and the area of marshy grassland. Wherever possible, these habitats will be retained; incorporated within the overall design of the scheme. The Council's Ecology Officer confirms that, although eDNA analysis of 'Ditch 1' in June 2022 returned a positive result, traditional Great Crested Newt ("GCN") survey methodology in 2023 recorded no evidence of GCN. Therefore, no further surveys or mitigation for GCN are required.

- 9.26. The Ecological Impact Assessment records two stands of Japanese Knotweed, a non-native invasive species. To prevent the spread of invasive flora, the Council's Ecology Officer has requested a suitably worded condition.
- 9.27. The Appellant's Biodiversity Net Gain Assessment demonstrates that a net gain is possible.
- 9.28. The site falls within the buffer zone of the potential proposed Special Protection Area Sherwood Forest, a candidate site for SPA classification. However, the site contains no suitable nesting or foraging habitat for any of the candidate species. Natural England have been consulted on the application and have raised no objection. Indeed, the Council's Committee Report concluded that, having regard to Natural England's recommended 'risk-based approach', the habitats on site are not favoured by the species concerned and, apart from the occasional visit by future occupiers, the sites are of sufficient distance so as not to be significantly disturbed, either directly or indirectly, by the development.
- 9.29. In summary, there are no ecological constraints that would preclude development. Consultees have not raised any technical objections. All outstanding matters can be dealt with satisfactorily by condition.

## Archaeology and Heritage

- 9.30. The application the subject of this appeal was supported by an Archaeology and Built Heritage Assessment, prepared by Pegasus Group.
- 9.31. This assessment sets out that there are no designated, or non-designated, heritage assets located within, or adjacent to, the appeal site.
- 9.32. Within the study area, three designated and five non-designated heritage assets were recorded. The assessment therefore considered whether any of the heritage assets include the site as part of their setting, and whether they may be affected by the development.
- 9.33. In order for the decision-maker to discharge their statutory duty<sup>22</sup>, they must give the desirability of preserving the building(s) or their settings "considerable importance and weight"<sup>23</sup>, when carrying out the balancing exercise.
- 9.34. However, the Appellant's assessment concludes that the development would not result in harm to the significance of any designated, or non-designated heritage assets, through changes to their settings.
- 9.35. Furthermore, the assessment concludes that the archaeological potential of the site is very low. There is no evidence to indicate the presence of archaeological remains that might preclude development.

## Pollution

### Noise

---

<sup>22</sup> Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

<sup>23</sup> *Barnwell Manor Wind Energy Ltd v East Northamptonshire DC* [2014] EWCA Civ 137.



- 9.36. The application the subject of this appeal was supported by a Noise Impact Assessment ("NIA"), prepared by Wardell Armstrong.
- 9.37. The NIA concludes that, without mitigation, receptors to the north/east of the site would be at low to medium risk of experiencing an adverse noise impact due to road traffic. Industrial noise from the units to the north is expected to have no more than a low impact and will likely be inaudible. Mitigation measures for road noise are detailed within section 6 of the NIA.
- 9.38. The Council's Environmental Health Team provided a consultation response on the 15th of January 2024. Subject to conditions, no objections were raised.
- 9.39. In summary, Environmental Health have stated that the mitigation is likely to achieve acceptable standards for occupation.

### **Air Quality**

- 9.40. The application the subject of this appeal was supported by an Air Quality Assessment ("AQA"), prepared by Wardell Armstrong.
- 9.41. The AQA concludes that, subject to conditions, there are no material reasons as to why air quality would preclude development. The proposal accords with national planning policy and local air quality will be relatively unaffected.
- 9.42. The Council's Environmental Health Team provided a consultation response on the 15th of January 2024. No objections were raised.
- 9.43. In summary, Environmental Health agree that the development will not lead to an unacceptable risk from air pollution. They accept the report with no mitigation being proposed; no conditions are requested.

### **Other**

- 9.44. The Council's Environmental Health Team have raised no objections in respect of other pollution; construction dust and lighting. Their consultation response sets out that, with large developments, such as this, construction can generate dust and noise which, in turn, can create disturbance and nuisance. Environmental Health have, therefore, requested that a condition be imposed, requiring the submission of a Construction Environmental Management Plan (CEMP).
- 9.45. As regards lighting, Environmental Health state that, in order to ensure the necessary mitigation is implemented, a condition should be imposed requiring the submission of an external lighting scheme.

### **Land Contamination**

- 9.46. The application the subject of this appeal was supported by a Phase 1 Geo-Environmental Desk Study, prepared by Rodgers Leask.
- 9.47. It is noted that residents cite land contamination issues. However, the appellant's report concludes that there is a low to moderate risk of contamination, resulting from the past land use in the northern part of the site. The remainder of the site, which comprises undeveloped greenfield land, is considered low risk. It will be demonstrated that there are no concerns that



cannot be addressed through normal mitigation arising from contamination, including the effects on water and drainage of the site.

- 9.48. The risk to controlled waters, from on-site soils and groundwater, is considered low to moderate, based on current information. On this matter, the Environment Agency have raised no objection, subject to conditions.
- 9.49. As regards ground gas, the Conceptual Site Model indicates that the potential for gas generation is very low to low, with potential sources limited to the landfill in the north. Low level gas protection measures have been recommended, based on gas monitoring.
- 9.50. No technical objections have been received in relation to land contamination. The Council's Committee Report concurs; subject to conditions, the proposal would be acceptable in respect of risks from ground contamination. Whilst public disquiet is noted, it cannot be conclusive unless it is justified scientifically,<sup>24</sup> which it simply is not.

## Landscape Impacts

- 9.51. The application the subject of this appeal was supported by a Landscape and Visual Impact Assessment ("LVIA"), prepared by Pegasus Group.
- 9.52. For the purposes of paragraph 180 of the Framework, the site is not a "valued landscape". The site does not benefit from any national or local landscape designations and is not unique for any landscape purposes.
- 9.53. The LVIA states that the local landscape character of the site and its immediate context is of low to medium value in landscape terms and is of low to medium susceptibility.
- 9.54. The appeal site adjoins the Main Urban Area of Sutton-in-Ashfield. In this context, the development would result in limited and localised adverse effects on the countryside through the urban development of arable field(s).
- 9.55. Effects on landscape character will occur at site level and within the immediate landscape context. The impacts will, therefore, have limited influence on the wider landscape character.
- 9.56. Furthermore, the character of the settlement edge is partially degraded by the characteristics of the urban fringe. The LVIA concludes that the proposal can incorporate mitigation, creating a robust landscaped edge that sits within the enduring physical limit set by the topography of the area. As a result, the proposal would not be unduly prominent in the wider landscape.
- 9.57. Overall, the development will have a limited impact, on a localised level. The scale and form of the proposal is likely to result in impacts limited to the site area and its immediate context only. The scheme will be viewed in the context of the existing settlement edge. Given the limited adverse effects, and the context of the site, the proposed development (and its landscape and visual effects) is considered to be acceptable.

---

<sup>24</sup> *Gateshead MBC v SSE* [1995] JPL 432.

## Best and Most Versatile Agricultural Land

- 9.58. The application the subject of this appeal was supported by a Soils and Agricultural Quality Report, prepared by Land Research Associates.
- 9.59. The Report confirms that the agricultural quality of the land is determined by droughtiness, wetness or slope and that land of grade 3 classification has been identified. Subgrade 3a makes up the majority of the site (97%), comprising the loamy over sandy soils limited by droughtiness and the loamy over clay soils limited by wetness.
- 9.60. The remainder of the site comprises subgrade 3b (3%). This land comprises an area of the site restricted by gradient in the southeast. The land is limited to moderate quality agricultural land due to limitations on the safe and efficient use of farm machinery on steeply sloping land. Furthermore, the erosion of coarse-textured soils is a high risk under arable cultivation on such steep slopes.
- 9.61. Annex 2 of the Framework defines Best and Most Versatile ("BMV") agricultural land as land in grades 1, 2 and 3a of the Agricultural Land Classification. The development will, therefore, result in the loss of BMV agricultural land, albeit land that has limitations as set out above.
- 9.62. Whilst the loss of BMV agricultural land is to be weighed in the planning balance (further below), Natural England's Agricultural Land Classification Map East Midlands Region (ALCO05) shows large swathes of similar land in and around the district, including Sutton-in-Ashfield. Some loss of BMV agricultural land is therefore inevitable as the Council attempts to address its chronic housing supply position.

## Arboriculture

- 9.63. The application the subject of this appeal was supported by an Arboricultural Impact Assessment ("AIA"), prepared by Wardell Armstrong.
- 9.64. The appeal site is neither within, nor adjacent to, a Conservation Area. There are also no trees within, or adjacent to the site, which are the subject of a Tree Preservation Order. There is one veteran tree which is to be retained. A veteran tree buffer is provided accordingly.
- 9.65. The AIA concludes that, overall, impacts on the loss of trees and hedgerows will be relatively low, and that compensatory planting will be undertaken. This will be dealt with satisfactorily at the Reserved Matters stage.
- 9.66. The Council's Arboriculture Officer provided a consultation response on the 23rd of February 2024. No objections were raised. The Council's Committee Report recognises that the extensive tree planting would not only ameliorate the impacts of the development but provide betterment over the long term.

## Flood Risk and Drainage

- 9.67. The application the subject of this appeal was supported by a Flood Risk Assessment ("FRA") and an Outline Drainage Strategy, prepared by Rodgers Leask. The FRA reviewed all sources of flood risk – to the proposed development, and to existing properties.

- 9.68. The appeal site falls wholly within Flood Zone 1, an area at the lowest risk of flooding. Subject to conditions, the Lead Local Flood Authority has raised no objection.
- 9.69. The FRA makes clear that the site, and surrounding land, would be at a low flood risk, following redevelopment. A robust drainage strategy has been proposed to deal with both foul and surface water which would be generated by the redeveloped site, with no surface water flooding occurring for storms up to and including the 1 in 100 year plus climate change event.
- 9.70. Flow routing has been considered to ensure that existing adjacent landowners are not subject to an increased flood risk.
- 9.71. Surface water is proposed to be via onsite storage and management, at a restricted discharge rate. The proposals for surface water attenuation will address concerns raised by local residents about run-off from the site and will not create any issues associated with disturbance of any on site contamination, subject to standard forms of mitigation and design.
- 9.72. Nottinghamshire County Council as the Lead Local Flood Authority (LLFA), Severn Trent Water, Ashfield District Environmental Protection Team and the Environment Agency all have no objection to the proposal subject to conditions. The proposal would be in accordance with the requirements of the Framework; the development is, therefore, acceptable from a flood risk and drainage perspective.

## Highways Matters

- 9.73. The Transport Assessment that supported the planning application determined the amount of traffic that would be generated by the development, and its routing on the road network. The figures were agreed by NCC. A future year cumulative traffic forecast was prepared, to include committed development. Hence, the capacity and road safety impacts of the extra development traffic was assessed within a study area agreed with NCC, where traffic would materially alter as a result of the development. Where adverse impacts were identified, mitigation was explored. The final position reached with NCC was for various works to be introduced, secured by conditions.
- 9.74. The proposed works include:
- The introduction of a signal controlled T-junction as an access to the development, including comprehensive provisions for pedestrians and cyclists such as controlled crossings, new cycle lanes, and widened footways
  - Changes to the Newark Road/Kirby Folly Road mini-roundabout to the west of the development, to enhance traffic capacity and upgrade the pedestrian provisions
  - Changes to the Newark Road/Coxmoor Road crossroads to the east of the development, including linking the signal control to the access junction, and the introduction and enhancement of pedestrian and cycle facilities
  - Changes to the Coxmoor Road/Hamilton Road mini-roundabout, to add traffic capacity and facilities for pedestrians and cyclists, including a new Toucan crossing on the northern arm.
- 9.75. The works described above were agreed by NCC to have sufficient capacity to safely accommodate the development traffic and mitigate adverse impacts. Further works are

proposed to enhanced accessibility by walking, cycling, and the bus, as described under the heading Sustainability above. As a result, NCC's formal consultation response raises no objections on highways grounds, subject to conditions.

## Housing Land Supply

- 9.76. As detailed in preceding sections, the Council cannot demonstrate a four-year supply of deliverable housing land. This point has been highlighted in recent appeal decisions and in the Council's Housing Land Monitoring Report 2024 which sets out that the Council's supply position is 3.63 years, which represents a significant shortfall. The Council's Committee Report states that the Council currently have a 2.56-year supply, which is less than the previous Monitoring Report 2023 position of 2.93 and the current published position. Whilst either figure triggers the tilted balance, the Appellant will investigate this topic further in evidence.
- 9.77. The appeal scheme affords a non-Green Belt, deliverable solution. The site would start delivering homes by 2026 and would make a contribution of 150-180 homes by 2029 (the current supply period). It would also assist the Council with the housing shortfall identified in the ELP, of some 963 homes over the plan period.
- 9.78. Deliverability is evidenced by Harron Home's proven track record within the district. The community is familiar with the Harron Homes brand and values and Harron are equally familiar with the character and nature of the area and the local markets.

## Affordable Housing

- 9.79. The appeal proposals seek permission for 300 dwellings, of which 10% are proposed as affordable which equates to a total of 30 affordable homes. The proposed development exceeds the requirements of adopted Policy HG4 – Affordable Housing which seeks 6% provision of affordable housing from qualifying developments.
- 9.80. The already agreed tenure split of the affordable housing offer comprises 75% affordable rent units and 25% shared ownership, which will be secured through a Section 106 agreement ("S106").
- 9.81. The Council's corporate priority for maximising the delivery of additional affordable housing is reflected within the following documents:
- Ashfield District Council Housing Strategy 2024 – 2026;
  - Ashfield District Council Affordable Housing Delivery Strategy 2023 – 2025; and
  - Ashfield District Council Homelessness and Rough Sleeping Prevention Strategy 2024 – 2029.
- 9.82. Greater Nottingham and Ashfield Housing Needs Update March 2024 provides evidence on the annual ongoing need for affordable housing. Appendix 1A of the Update identifies a need for 302 social/affordable rented homes a year, an increase from the 2020 Housing Needs Assessment.



- 9.83. Table 8 of the Council's Housing Land Monitoring Report (2024) shows the number of affordable housing units provided annually since 2010. Between 2010 – 2024, the Council have provided an average of 54 affordable housing units per annum. In this context, the appeal scheme would amount to ~55% of the Council's average annual provision of affordable housing.
- 9.84. To date it is noted that there is a shortfall -632 in the last 3 years or 211 pa against a requirement of 302 affordable homes per annum.
- 9.85. The appellants will consider a number of affordability indicators; for example, the number of households on the Ashfield Housing Register, which totalled 3,989 households at 31 March 2023, which is a 9% increase over the last 3 years. Other indicators include:
- House Prices;
  - Annual Earnings;
  - Affordability Ratios; and
  - Private Rents
- 9.86. Evidence will be presented looking at other material considerations such as Secretary of State and Inspectors decisions
- 9.87. The evidence shows an acute need for more affordable housing and the benefit of 10% affordable housing weighs heavily in favour of the appeal.
- 9.88. The appellants intend to agree a topic specific Statement of Common Ground in respect of Affordable Housing matters with the Council.

## **Planning Obligations**

- 9.89. The Appellant has agreed to enter into a section 106 agreement which provides for a range of contributions, including, but not limited to, affordable housing, healthcare, education, libraries, and public transport.
- 9.90. Most of these contributions are agreed, with the exception of two:
- £900,000 requested by Ashfield District Council towards the provision of off-site public open space ("POS"); and
  - £1,113,936 requested by Nottinghamshire County Council towards Secondary Education.
- 9.91. In examining the appropriateness of these two contributions, regard must be had to Regulation 122(2) of the Community Infrastructure Levy ("CIL") Regulations 2010 (as amended). Regulation 122(2) prescribes a tripartite test as to the lawfulness of an obligation. As such, a planning obligation may only constitute a reason for granting planning permission if the obligation is:
- a) Necessary to make the development acceptable in planning terms;

- b) Directly related to the development; and
- c) Fairly and reasonably related in scale and kind to the development.

### **Public Open Space Contribution**

- 9.92. The Council has confirmed that the POS contribution is calculated on the basis of £3,000 per dwelling ("p/d") (£3,000 x 300 dwellings = £900,000).
- 9.93. Although the Council has omitted any justification, it appears that reliance is placed on Policy HG6 of the ALPR 2002.
- 9.94. Policy HG6 sets out that residential development will only be permitted where open space is provided which, on sites of two hectares or more, comprises a minimum of 10% of the gross housing area. Where it is not appropriate to provide open space within a site boundary, a planning obligation will be negotiated to allow a sum to be paid towards:
- i. Existing open space provision to be improved, or
  - ii. New open space to be provided elsewhere, or
  - iii. Community woodland planting or appropriate natural habitat creation schemes to be undertaken (emphasis added).
- 9.95. There are, therefore, three matters that fall to be considered. Firstly, whether it would be appropriate to provide a commuted sum in the context of Policy HG6. Secondly, whether there is any basis for the fixed sum p/d and, thirdly, whether the contribution satisfies Regulation 122.
- 9.96. As regards appropriateness, the construction of Policy HG6 is unequivocal. The need for a commuted sum will arise only "where it is not appropriate to provide open space within a site boundary." That is to say, in instances where criterion (a) cannot be satisfied.
- 9.97. To demonstrate compliance with criterion (a), the Appellant provided a Land Use Plan (EMS.2254\_110 01 Rev D). This plan calculates the gross housing area as 10.45 hectares, whilst POS equates to 10.31 hectares. Whilst this is a concept masterplan and subject to a degree of change, it is clear that the scheme will far exceed the minimum requirement. Such provision thereby negates the need for a commuted sum.
- 9.98. As to the second matter, no justification has been provided for the fixed sum of £3,000 p/d. Paragraph 5.86 of the policy subtext sets out that the commuted sum will be calculated in accordance with the Authority's scale of charges, which will be regularly updated, and secured by means of a negotiated planning obligation. Nevertheless, and despite repeated requests, the Council has failed to provide a robust justification or basis for this arbitrary sum.
- 9.99. The arbitrariness of this sum is reflected in the differential rates employed by the Council. A small sample of applications is provided below, together with the corresponding contributions:
- V/2020/0784 – Outline application for a residential development. Land West off Fisher Close, NG17 2AA. Planning permission granted on 29/04/2022.

- Contribution requested: equivalent to £3,000 p/d.
- V/2020/0884 – Erection of 110 dwellings. 211 Alfreton Road, NG17 1JP. Planning permission granted on 22/11/2021.
  - Contribution requested: equivalent to £2,000 p/d.
- V/2020/0518 – Erection of 196 dwellings. Coxmoor Lodge Farm, NG17 7HF. Planning permission granted on 16/01/2024.
  - Contribution requested: equivalent to £2,000 p/d (submission scheme comprised 214 dwellings).

9.100. Turning to the final matter, the Council has provided no details as to how this contribution will be used. Until such time, it is not possible to conclude, with any degree of certainty, that the contribution would satisfy each of the 'tests' prescribed by Regulation 122(2).

9.101. To this effect, the Inspector should be aware of the 'North Street' appeal (APP/W3005/W/15/3035794) (Appendix Q), where the Inspector grappled with a similar request. Insofar as relevant, the Inspector found [24]–[25], that:

*"[...] such improvements would be desirable irrespective of whether the development were to go ahead, and there is no substantive evidence that I have seen or heard to indicate that the increased use that would be likely to result from 83 additional households living nearby would make a material difference to ongoing maintenance requirements or lead to any need to increase capacity or the types of facilities available in those open spaces.*

*I am not convinced, therefore, that a financial contribution is required for public open space facilities meaning that such a planning obligation would fail to meet one of the three tests set out in the NPPF."*

9.102. In light of all the above, it cannot reasonably be concluded that the open space contribution requested by the Council, to the sum of £900,000, is compliant with Regulation 122(2) of the CIL Regulations 2010 (as amended).

### **Secondary Education Contribution**

9.103. The request for this contribution is derived from Nottinghamshire County Council's consultation response.

9.104. The comments from the County Council set out that the pupil projections data forecast a surplus of school places within the Sutton-Kirkby planning area and that the impact of this proposal alone would not result in a deficit of provision. This was confirmed by the County Council in their consultation response dated the 4th of November 2022.

9.105. The updated County Council response attempts to justify the request on the basis of developments without planning permission, within the planning area, cumulatively resulting in a deficit of school places. However, this is based on the cumulative growth proposed through the Emerging Local Plan and undetermined windfall sites. The sites taken into account are not commitments; there is no certainty that these draft allocations or other

windfall sites will come forward. If and when they do, they will have to address any shortfall that they may cause in the sufficiency of school places.

- 9.106. In any event, the planning area consists of four schools with a combined capacity of 6,004 pupil places. This development of 300 dwellings is expected to generate a maximum of 48 secondary school aged children. By the 2029/30 academic year, the planning area is expected to have a roll of 5,482, which equates to 522 spare places.
- 9.107. In light of all the above, it cannot reasonably be concluded that the Secondary Education contribution requested by the County Council, to the sum of £1,113,936, is compliant with Regulation 122(2) of the CIL Regulations 2010 (as amended).

## Planning Balance

- 9.108. The Appellant, throughout this Statement, has demonstrated that the proposal constitutes sustainable development. The appellant has also evidenced that the policies most important for determining this appeal are out of date; the "tilted balance" is engaged on four counts.
- 9.109. 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.

### Benefits of Development

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

### Social Benefits

- 9.111. To support the Government's objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed and that the needs of groups with specific housing requirements are addressed.<sup>25</sup>
- 9.112. Nevertheless, the Council cannot demonstrate a four-year supply of deliverable housing land. Indeed, the Council's position is stated as 3.63 years, which represents a significant shortfall.
- 9.113. As a result of this significant shortfall and, in the context of the Council's chronic failure to deliver housing, **substantial positive weight** should be attached to the erection of 300 new dwellings. This scheme would account for 67% of the Council's overall annual housing requirement.
- 9.114. The provision of 10% affordable housing is, in its own right, a significant benefit of the scheme, which should attract **substantial positive weight**. The Council's Affordable Housing Delivery Strategy was reviewed in May 2023. The actions identified for 2023-2025 include the provision of 100 affordable homes, which now in the context of the 302 affordable homes per annum, identified in the 2024 Greater Nottingham and Ashfield Housing Needs Update,

---

<sup>25</sup> Paragraph 60 of the National Planning Policy Framework (2023).

seems unambitious. The consequence is people will be left languishing on the housing register in the wait for a new home.

- 9.115. Furthermore, the scheme provides a LEAP set within a central green, together with 10.31 hectares of Public Open Space. These benefits serve the wider community and should attract **moderate positive weight**.

#### **Economic Benefits**

- 9.116. Paragraph 85 of the Framework sets out that significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development.
- 9.117. As regards economic benefits, future occupiers would help to support local facilities and services, resulting in increased spending. Paragraph 85 of the Framework is clear in its construction; this benefit should attract **significant positive weight**.
- 9.118. The development would also generate jobs throughout construction, both directly and indirectly. Given the scale of the development, this benefit should also attract **significant positive weight**.
- 9.119. The Home Builders Federation Online Housing Calculator estimates that the proposal could support the employment of 930 people, whilst generating £3,615,900 in tax revenues, including £338,838 in council tax.

#### **Environmental Benefits**

- 9.120. The proposal would generate a host of environmental benefits, notably through delivering housing in a highly sustainable location. In the context of national planning policy, the appellant has maximised opportunities for sustainable transport. This factor weighs in favour of the scheme and should attract **moderate positive weight**.
- 9.121. The Appellant's Biodiversity Net Gain Assessment demonstrates that a net gain can be achieved.
- 9.122. The Environment Act 2021 (Commencement No 8 and Transitional Provisions) Regulations 2024 (SI 2024/44) commence provisions of the Environment Act 2021 on the 12th of February 2024 (emphasis added).
- 9.123. Regulation 3 sets out that the biodiversity gain planning condition does not apply in relation to a planning permission, where the application for planning permission was made before the 12th of February 2024. Paragraph 3 of the National Planning Practice Guidance ("NPPG") confirms this position (emphasis added).
- 9.124. In the present case, as a matter of fact, the statutory requirement does not apply. As such, and having regard to paragraph 180 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. Given that the final position is uncertain (being at outline), this benefit should attract **moderate positive weight**.

#### **Disbenefits**

- 9.125. The harms in the present case relate to conflict with the defined settlement limits. However, as detailed in preceding sections, these settlement limits were based on an historic assessment of need and to meet that need for a time period that has long since expired. They have also been overtaken by things that have happened on the ground.
- 9.126. The effects on landscape character will only occur at site level and within the immediate landscape context. These impacts will, therefore, have limited influence on the wider landscape character. Overall, the development will have a limited impact on a localised level.
- 9.127. Furthermore, and as detailed in preceding sections, the most important policies for determining this appeal are out-of-date. The policies within the ALPR 2002 are based on an historic assessment of need and are inconsistent with the nuanced approach of the Framework. The harm in this case is to be afforded **limited negative weight**.
- 9.128. The development would also result in the loss of Best and Most Versatile agricultural land; 97% of the site's area is classified as Grade 3a. However, as identified above, there is a certain inevitability as regards the loss of BMV agricultural land. The harm in this case is to be afforded **limited negative weight**.

#### **Overall Conclusion**

- 9.129. The assessment above balances the benefits and disbenefits of the development. This balancing exercise indicates that the adverse impacts of the proposal would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
- 9.130. In light of the above, the proposal constitutes sustainable development. In the instant case, material considerations indicate that this appeal should be determined otherwise than in accordance with the development plan.



## 10. Conclusion

- 10.1. This Statement has been prepared by Pegasus Group, instructed by Hallam Land. This appeal is made pursuant to section 78 of the Town and Country Planning Act 1990 ("TCPA 1990") against Ashfield District Council's failure to determine an outline planning application within the extended period.
- 10.2. Notwithstanding a protracted assessment of the appeal application by the Council, the appellant has continued to work proactively with the Council, in order for the application to be brought before the July 2024 Planning Committee. The Council has now deferred the decision and is causing more delay to the provision of much needed housing. The right of appeal is being exercised.
- 10.3. By virtue of the Council's failure to give notice of its decision, the Inspector will need to consider a full range of issues. Through detailed evidence, it will be demonstrated that the proposal constitutes sustainable development.
- 10.4. The planning balance indicates that the adverse impacts of the proposal are very modest and would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
- 10.5. In the instant case, material considerations indicate that this appeal should be determined otherwise than in accordance with the development plan. It is respectfully requested that the appeal be allowed, and that planning permission be granted.

## Appendix A – Other Supporting Documents List

### Supporting documents not submitted with the appeal application in line with the Planning Inspectorate 'How to Complete your Planning Appeal Form' Guidance which support this Statement of Case

#### Development Plan Documents

- Ashfield Local Plan Review 2002

#### National Policy and Guidance

- National Planning Policy Framework
- National Planning Practice Guidance
- National Design Guide
- Manual for Streets
- Manual for Streets 2
- Building Sustainable Transport into New Developments

#### Local Guidance

- Ashfield Residential Design Guide SPD (2014)
- Ashfield District Council Planning Guidance Climate Change (2022)
- Ashfield District Council Developer Guide to Biodiversity and Nature Conservation (2022)
- Nottinghamshire County Council Highway Design Guide

#### Other

- Consultee Responses to Application V/2022/0629

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

**East Midlands**

4 The Courtyard, Church Street, Lockington,  
Derbyshire, DE74 2SL  
T 01509 670806  
E EastMidlands@pegasusgroup.co.uk  
Offices throughout the UK.

# Expertly Done.

DESIGN | ECONOMICS | ENVIRONMENT | HERITAGE | LAND & PROPERTY | PLANNING | TRANSPORT & INFRASTRUCTURE

Pegasus Group is a trading name of Pegasus Planning Group Limited (07277000) registered in England and Wales.

Registered office: 33 Sheep Street, Cirencester, GL7 1RQ  
We are ISO certified 9001, 14001, 45001



Pegasus\_Group



pegasusgroup



Pegasus\_Group

**PEGASUSGROUP.CO.UK**