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# OPENING SUBMISSIONS OF THE APPELLANT

## APPEAL BY HALLAM - LAND AT NEWARK ROAD/COXMOOR ROAD SUTTON IN ASHFIELD

### S78 TOWN & COUNTRY PLANNING ACT 1990

### PLANNING INSPECTORATE REF: APP/W3005/W/24/3350529

### LOCAL AUTHORITY REF: V/2022/0629

#### 1 Introduction

- 1.1 This appeal relates to the non-determination of an application for outline planning permission, with all matters reserved for further determination (except access to the site), for residential development of up to 300 dwellings, associated infrastructure and landscaping.
- 1.2 The application was recommended for approval by officers of the Council in July 2024 and deferred by members. It was reported back in October 2024 with no change of officer recommendation after an appeal had been lodged for non-determination. The reasons for the deferral in July are set out in the minutes of that meeting<sup>1</sup>. They were to seek clarification of the relationship between the drainage and contamination strategies (driven by a concern that SUDs ponds could interfere with contamination), more information regarding bus provision, cycles storage at the parkway station (with the concern that both of these matters could affect car usage), and a better understanding of the impact of the loss of agricultural land.
- 1.3 Shortly after the July deferral, Council officers indicated they did not know when the matter would be reported back to members or what the outcome would be, regardless of what was said by the applicant. The appeal for non-determination was lodged on 21 August 2024. A letter to address the matters set out in the minutes of July 2024 was sent on 18 October 2024<sup>2</sup>. This letter followed an earlier letter of 16 September 2024, sent to the Council on 18 September 2024<sup>3</sup> from RLL about the drainage and contamination strategies relationship. The 18 October 2024 letter also addressed how bus contributions would be spent (with information from the County Council), the offer to enhance

<sup>1</sup> CD 3.3

<sup>2</sup> CD12.27

<sup>3</sup> CD 13.4

secure cycle parking at the station and explained that agricultural land matters were already set out clearly and were issues to be weighed in the planning balance.

- 1.4 The Council's 23<sup>rd</sup> October 2024 Committee resolved it would have refused for 5 reasons. Two of these were not adverted to at all in the minutes of the 31 July 2024 meeting (landscape and the highways effects of the scheme relative to a level crossing). Further, the contamination related reason was materially different to the concern previously expressed. It was now said that there was insufficient information that the site would be suitable for residential use at all, taking account ground and contamination risks. It was no longer a concern about the SUDs ponds disturbing/releasing contamination. The first the appellant knew of these reasons was the Council's Statement of Case on 30<sup>th</sup> October 2024. Soon thereafter the appellant sourced a phase 2 contamination report of intrusive ground investigations that had been undertaken in 2022 for Harron, the intended builder of the site, and submitted this<sup>4</sup> to the Council to address the newly formulated putative contamination reason for refusal.
- 1.5 Since then, we now have a complete withdrawal of the Council's opposition to the grant of permission, and a complete withdrawal of the reasons for refusal<sup>5</sup>. Even before this full withdrawal, the SoCG also addressed other matters of agreement, including the lack of 4 year (at the time) land supply, the engagement of the presumption in favour of development in NPPF 11d, the need for affordable housing, the limited weight to the ELP (now almost none) the lack of landscape designation (and that it is not valued landscape, unique or remarkable), the development of BMV agricultural land being effectively inevitable to meet housing needs, the lack of harm to any heritage asset, the low impact on trees and hedges, and the lack of concerns about noise, air quality and flood risk that would warrant refusal.
- 1.6 The overall position needs to be seen in the context of the planning history of this site through local plans and planning applications. As set out by Mr Lees<sup>6</sup>, although the last development plan, in the form of the Ashfield Local Plan Review, was adopted in 2002, at the first attempt to review that plan in 2010 the site was a draft allocation. It was then removed from the draft plan by the Council in 2012 and then in 2014 the Inspector examining that plan raised significant concerns<sup>7</sup> based in large part around the revisions the Council had made to the draft; it not meeting housing needs, the approach to the release of Green Belt and the unexplained relationship between the analysis of the sustainability appraisal and the draft allocations. The next attempt to produce a plan also identified the appeal site as a draft allocation. The Council then resolved to withdraw that plan together for political reasons<sup>8</sup>. Following this the site was considered in the formulation of the currently emerging draft plan. The two

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<sup>4</sup> CD 13.2- the ELE May 2022 Report

<sup>5</sup> CD 16.12

<sup>6</sup> Proof page 3

<sup>7</sup> CD 12.5

<sup>8</sup> CD 12.6

reasons for rejection of this site<sup>9</sup> were a suggestion that development raised highways concerns and an uncertainty as to delivery<sup>10</sup>. Both of these reasons were then and are now, false. There are no highways concerns held by the LHA and there were none at the time this statement was made. The concerns as to delivery are based on the Council insisting that they would not determine the 2017 application, due to the passage of time. The site is fully deliverable, being promoted by an established land promoter and with a named builder. Further insight into the real reason for not allocating the appeal site is to be found in the language of the Regulation 18 SA for the emerging plan<sup>11</sup>. Here we learn that it was not allocated as it was not "politically acceptable", though in later versions of the SA this language was redacted, no doubt because it showed the Council's true colours.

- 1.7 The current emerging plan is again faltering. The first hearings of its examination were held in November 2024 and the Inspectors have now set out concerns in their letter of 3 December 2024 (published 7 January 2025). The examination has been halted. The Inspectors have concerns about the strategy of the plan, given it does not aim to meet the minimum housing figure for the district, and that its approach could well have excluded consideration of larger non-Green Belt sites. The Council has been asked to identify non-Green Belt land that it could allocate. The appeal site and land to the west of its southern section is a clear and obvious candidate, was presented to the emerging local plan Inspectors and referred to by inference in their letter of 3 December 2024.
- 1.8 What this rather sorry plan making context shows us is the Council has an almost pathological inability to advance a Local Plan (indeed it was specifically written to by the SoS on this matter in December 2023<sup>12</sup>) and that it has placed political intervention above plan making consistently and for almost two decades. The same is clearly true in terms of decision making, as set out both in the way this appeal application (and its predecessor) have been dealt with, and as echoed in the Council's own Action Plan<sup>13</sup> that had to be prepared because the Council has for years, failed to deliver enough housing. That Action Plan specifically notes concerns about poor reasons for refusal and decisions contrary to officer recommendation as one of the key factors for poor delivery<sup>14</sup>.

## 2 Issues

2.1 The evidence from the appellant will show that:

- (a) The Council cannot demonstrate a 5 year supply (3.66 years at best), this should be given substantial positive weight,

<sup>9</sup> Whilst the Council otherwise sought to release Green Belt land in a dispersed distribution strategy, avoiding large sites and not meeting its recognised housing needs

<sup>10</sup> CD 12.10 at para 8.18– site reference SA024

<sup>11</sup> G Lees Appendix 5

<sup>12</sup> CD 12.8

<sup>13</sup> CD 12.22

<sup>14</sup> See extracts at G Lees 4.6- 4.7

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- (b) The Council has a very poor record of housing delivery, this should be given substantial positive weight,
  - (c) The Council has a desperate record of affordable housing delivery, and future supply is weak, this should be given substantial positive weight,
  - (d) The Council has an even worse record of plan making,
  - (e) The most important policies are out of date due to land supply problems, changed circumstances and inconsistency with the NPPF,
  - (f) The tilted balance for decision making is fully engaged,
  - (g) Those policies in relation to which there is any alleged conflict are to be given limited weight,
  - (h) The emerging local plan is to be given very limited weight,
  - (i) The site is in an acceptably sustainable location, on the edge of the largest settlement in the District and with acceptable walking and cycling distances to a range of facilities, it has a clear means of optimising bus accessibility, and is within walking and cycling distance of the station,
  - (j) The site is ordinary landscape and certainly not a valued landscape. It is impacted by the edge of settlement location, faces towards the settlement and not the countryside in topographical terms, has a limited visual envelope and the development proposal has inbuilt landscape and planting mitigation. It is unremarkable and typical of many green field sites that are suitable for development such that the impact of its development should be given limited weight,
  - (k) The weight to be given to the development of under 20Ha of grade 3a agricultural land is limited,
  - (l) There has been ample intrusive and fully tested examination of the former landfill area to be clear that standard forms of mitigation, with a 600 mm clean ground cover and normal ground gas mitigation will address contamination risks in an acceptable way, indeed bringing modest degrees of benefit. There is no need to locate SUDs ponds in the former landfill area if it was felt desirable to avoid this,
  - (m) The highways network will operate safely and effectively with the development, including having regard to the safety and capacity of the Kirkby Folly Road/ Newark

Road mini roundabout and its relationship with the nearby level crossing and both the site access and alterations to the Searby Road/Newark Road junction,

- (n) The site is at low risk of flooding and the drainage strategy will address run off and surface water drainage to provide betterment to the surrounding area in times of storms,

2.2 Overall, the appellant will show that the balance of benefits provided by this development will far outweigh the adverse effects on a flat balance, even though to refuse permission the adverse effects would have to significantly and demonstrably outweigh the benefits; the tilted balance in favour of development.

**Richard Sagar**  
**Walker Morris**  
**14 January 2025**