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Ashfield District Local Plan Examination

Matter 1 Hearing Statement

On behalf of Hallam Land.

Date: 22 October 2024 | Pegasus Ref: EMS.2254

Local Plan Respondent ID: 240

Author: Clare Clarke



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Matter 1 – Procedural and Legal Requirements including the Duty to Cooperate

Issue 1

Whether the Council has complied with the Duty to Cooperate in the preparation of the Ashfield Local Plan

Duty to Cooperate

- 1.1. **Having regard to the proposed release of land from the Green Belt, what discussions have been held with neighbouring authorities as to whether they could accommodate some of the identified need for housing and employment development?**

Ashfield District forms part of the Nottingham Outer Housing Market Area and the Council is a member of the Greater Nottingham Joint Planning Partnership. Whilst there has been joint working between the authorities on evidence base, the partnership has failed to address the issue of unmet housing needs.

The Duty to Co-operate Statement of Compliance (DTC.01) and Statements of Common Ground (SCG.01 and SCG.02) confirm that each local authority will meet their own identified housing need with no redistribution of housing numbers. There is little evidence that the potential for Green Belt release to be reduced or avoided in Ashfield has been considered beyond a request from Ashfield in May 2022 and a response from each authority that they were not in a position to meet any of Ashfield's local housing need (paragraph 3.3–3.4 of SCG.01 and 3.4–3.5 of SCG.02).

Both Statements of Common Ground note that the majority of the neighbouring local planning authorities also have significant areas of land within their districts which are identified as part of the Nottingham–Derby Green Belt. This starting point appears to lead to a failure of the authorities to collectively consider their options for meeting housing needs in a cooperative and joined up manner, so as to properly utilise land that could meet the wider need, and which is not Green Belt.

Ashfield District includes large areas not designated as Green Belt, as do other districts in the Core and Outer Nottingham Housing Market Area (Rushcliffe, Newark & Sherwood and Mansfield). Background Paper 1 (BP.01) notes that *'a substantial part of the District is designated as part of the Nottingham and Derby Green Belt and equates to approximately 41% of Ashfield'* (paragraph 10.6), this leaves 59% outside the Green Belt including land adjoining the Main Urban Areas of Sutton-in-Ashfield and Kirkby-in-Ashfield (see Map 2: Extent of Green Belt in Ashfield District, BP.01, page 34), both of which in distribution and sustainability terms are obvious and suitable candidates for extra residential development.

The documented unmet need from Nottingham City is also relevant. The unmet need in Nottingham City is set out in the Greater Nottingham Strategic Plan Preferred Approach consultation published in January 2023 which states that the City will meet 25,760 homes of the standard method requirement for 28,368 (Extract in Appendix A). There does not appear to have been any work undertaken to establish whether this need could be redistributed to



Ashfield or other authorities with substantial non-Green Belt land, just an assumption that the existence of the Green Belt around the City would prevent this.

Our response to Matter 3 will set out our view that Ashfield District Council has failed to fully examine all other reasonable options for meeting its identified need for development within the authority boundary without Green Belt release and this extends to a failure to consider the potential to meet needs arising in Nottingham City. The Council need to demonstrate exceptional circumstances in order to take land out of the Green Belt and this means there must be evidence of non suitability of non-Green Belt sites for this test to be met. This sequential approach is underscored by the draft changes to the National Planning Policy Framework consulted on in July 2024.

1.2. **What form did these discussions take, and what was the outcome?**

No comment

1.3. **Is this clearly evidenced?**

There is no clear evidence that the redistribution of housing needs within the Core or Outer Nottingham Housing Market Area has been considered with reference to the evidence of land availability or opportunities or constraints data.

The potential for Green Belt release to be avoided in Ashfield through the redistribution of housing needs, as with all questions related to the redistribution of housing needs within the Housing Market Areas, appear to have been dealt with through a transactional request and response with a request being made by Ashfield and a response provided by each authority confirming they are unable to assist (paragraph 3.4 of SCG.01 and 3.5 of SCG.02).

This is not considered sufficient to meet the duty to cooperate, the intention of which is to require authorities to cooperate in evidencing and addressing cross boundary issues rather than collectively agreeing not to address those issues based on assumptions about capacity.

1.4. **What are the cross-boundary issues relating to economic growth and employment land provision?**

No comment

Other Strategic Matters

1.5. **Are there any other relevant strategic matters in relation to the Duty to Cooperate?**

No comment

1.6. **If so, how have they been addressed through co-operation and what is the outcome of this? How have these informed the plan's policies?**

No Comment

1.7. **Are there any strategic cross-boundary issues in relation to any of the proposed site allocations and any general policies, and if so, how have they been considered via the Duty to Cooperate?**



No comment

Overall

- 1.8. **Overall, has the Council maximised the effectiveness of the Local Plan by engaging constructively, actively and on an ongoing basis with the prescribed bodies on relevant strategic matters during the preparation of the Local Plan?**

It is not clear from the evidence available that the Council has maximised the effectiveness of the Local Plan by engaging constructively on the strategic matter of housing needs.

Issue 2

Whether the Council has compiled with relevant procedural, legal and other requirements.

Plan Preparation

- 1.9. **Has the plan been prepared in accordance with the Council's Statement of Community Involvement and met the minimum consultation requirements in the Regulations?**

No comment

- 1.10. **Has the preparation of the plan been carried out in accordance with the Local Development Scheme?**

No comment.

- 1.11. **Is the plan sufficiently clear whether there are any policies from the existing development plan that would be superseded by its adoption?**

No comment.

Habitats Regulations Assessment

- 1.12. **How was the Habitats Regulations Assessment (HRA) carried out and was the methodology appropriate?**

No Comment

- 1.13. **What potential impacts of the Local Plan were considered? What were the conclusions of the HRA and how has it informed the preparation of the Local Plan?**

No Comment

- 1.14. **Have any concerns been raised regarding the HRA and if so, what is the Council's response to these? How has Natural England been involved?**

No Comment

Sustainability Appraisal

1.15. **Does the Sustainability Appraisal (SA) meet the requirements for a Strategic Environmental Assessment?**

The Sustainability Appraisal (SA) fails to meet the requirements for a Strategic Environmental Assessment. This is a legal compliance issue and cannot be rectified through a modification to the plan.

Whilst alternative options were selected and appraised to inform the preferred spatial strategy identified in the Draft Local Plan consulted under Regulation 18, the Pre-Submission Draft Local Plan sets out a new, significantly different, spatial strategy and it is not clear how the SA has informed this final strategy which is under examination.

The Draft Plan (Regulation 18) set out a strategy for two new settlements with further moderate Green Belt release and more limited development in/adjoining Sutton and Kirkby, and existing rural settlements. This strategy reflected Option 10 in the SA. The Pre-Submission Draft Local Plan does not include the two new settlement sites and a new dispersed strategy is set out, described by the Council as reflecting Option 3 in the SA.

The SA fails to demonstrate that the selection of the new preferred strategy has been informed by a consideration of the SA findings or took account of alternative options. The SA fails to provide updated conclusions with reference to the SA findings on:

- the reasons the rejected options are not being taken forward; and
- the reasons for selecting the preferred approach in light of the alternatives.

It is essential to ensure that the decision about the appropriate strategy for growth took account of the reasonable alternatives.

This final strategy appears to have been arrived at through a decision not to proceed with two new settlements, with the majority of the remainder of the sites being carried forward with some additions and adjustments and described as a dispersed strategy and failing to meet the housing needs over the full plan period.

There is no evidence of an SA informed, decision that dispersed growth is an appropriate strategy taking account of reasonable alternatives. Whilst the SA is a process and does not dictate an outcome, it is a process that has to inform the choice of outcome from the available reasonable alternatives in a meaningful way for it to be any proper SA process at all. This informing of outcome is absent. There is also no evidence that the option to not identify sufficient sites to meet needs over the plan period was assessed at all as an option, though that is what the Plan does.

The preferred strategy does not help to achieve the Council's environmental, economic and social objectives and fails to provide sufficient land to meet housing needs.

Options 4, 5 and 6 need to be revisited in light of the decision not to proceed with the new settlements. These options scored well in the SA and provide proceedable alternative options which would meet the housing requirement whilst directing growth to the most sustainable locations.

1.16. **How has the SA informed the preparation of the Local Plan at each stage and how were options considered?**

The SA is an important tool and legal requirement which assesses the likely effects of the plan when judged against reasonable alternatives. This tool was used to inform and appraise the preparation of the Regulation 18 Draft Local Plan but there have been significant failings following that consultation.

The Draft Plan (Regulation 18) set out a new settlement based spatial strategy, with two new settlements identified with further moderate Green Belt release and more limited development in/adjoining Sutton and Kirkby, and existing rural settlements. This strategy reflected Option 10 in the SA.

The Pre-Submission Draft Local Plan did not include the two new settlement sites, which were removed primarily due to the significant level of response to the Regulation 18 consultation. The majority of the remainder of the sites did however remain and were carried forward with some additions and adjustments. The strategy is then described as a new dispersed strategy, reflecting Option 3 in the SA.

Background Paper 1 – Spatial Strategy and Site Selection (BP.01) supporting the Pre-Submission Draft Local Plan explains that (emphasis added):

*'Subsequent to careful consideration of the public consultation outcomes, together with the uncertainty surrounding future Government policy for plan making, the Council made the decision to progress with the plan, but to exclude the proposed New settlements. This has **meant some changes to the spatial approach taken initially**, but also reflects the constantly evolving process of plan making'.* (paragraph 3.9)

The Background Paper states that *'Option 3 in the SA has now been taken forward as it represents the best option to deliver sustainable development and meet the Vision for the District'* (para 4.3). However, the reports setting out the decision to change the strategy focus on the decision to remove the new settlements, this is not the same as a decision to proceed with Option 3 – a dispersed growth strategy. It is unclear whether the Council at the point they decided not to proceed with new settlements, considered the reasonable alternative options available before deciding to proceed with Option 3. In any event, it is unclear whether the Submission Plan actually fulfils Option 3, and if it is said to do so, whether Option 3 could then be described as a reasonable option to deliver sustainable development, given that it consequently fails to allocate sufficient housing sites over the plan period, is reliant on the allocation of inaccessible sites and is reliant on at least partly unnecessary release of Green Belt land.

Planning Practice Guidance sets out that the development and appraisal of proposals in plans needs to be an iterative process, with the proposals being revised to take account of the appraisal findings (Paragraph: 018 Reference ID: 11-018-20140306). Here the proposals appear to have been revised to respond to high levels of public objection without reference back to the SA to consider the alternative options properly and the likely significant effects on environmental, economic and social factors.

There is no clear justification or planning based explanation provided in the Draft Local Plan, background papers or SA to explain how the SA led to or informed the new preferred spatial option. The decision to remove the proposed new settlements is documented, but not the decision to shift to a dispersed approach rather than any of the other seven options sustainability appraised.

The issue is highlighted in paragraph 4.9 of the Sustainability Appraisal Report (SD.03) which sets out the changes to the Plan since the 2021 (Regulation 18) consultation. It states (emphasis added):

*'Change in spatial strategy with a revised focus on dispersed development (Option 3 – Dispersed Development (across the district) rather than the earlier focus on two new settlements, further moderate Green Belt release and more limited development in/adjoining Sutton and Kirkby, and existing rural settlements (Option 10). The spatial strategy options were assessed in the Draft Local Plan (Regulation 18) SA Report 2021 and **the appraisal has been reviewed in light of the Council's change in strategic approach.** See Section 5.5.) to a dispersed approach of smaller sites (Option 3).*

The Council changed its approach based on objections and the political assessment of those and the SA was updated, but the SA does not evidence how it was used to inform the decision making.

1.17. **What were the conclusions of the SA and how has it informed the preparation of the Local Plan?**

The role of the Sustainability Appraisal is to consider and compare options and whilst it appraises all eight spatial strategy options against the sustainability objectives, it fails to provide an analysis of how the preferred option compares to the alternatives or set out why it was selected as the preferred option in the context of that analysis.

Failure to set out reasons for selecting the spatial strategy preferred option

The section titled 'Reasons for the selection of the preferred option and rejection of alternatives' (paras 5.5.76–5.5.84) documents the process of decision making not the reasons for the decisions. It states 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).

The Sustainability Appraisal leaves the reader with a paper trail to follow and when it is followed, reports refer to the emerging and potential planning policy changes at the national level and ministerial intentions to reduce Green Belt release across the country and amend how housing need is calculated. There is no consideration of the SA findings or alternative options.

Options were considered by Ashfield Cabinet 27th September 2022, Ashfield Local Plan Development Panel 15th November 2022 and then again by Cabinet 13th December 2022. None of the reports to these meetings included the SA as an appendix and none of the reports included a summary of the SA findings or recommendations.

The Sustainability Appraisal concludes that:

'Council has therefore identified the spatial strategy as an appropriate spatial approach to ensure that new development is located in the most sustainable locations in the District around existing developments and that uncertainty related to the new settlements is removed.' (para 5.5.82).

This conclusion is not evidenced by or related to the SA findings. Table 5.4 and paragraph 5.5.8 of the SA finds that in relation to the criteria related to transport and accessibility, the dispersed strategy (Option 3) would have mixed minor positive and significant negative effects on transport, with no such significant effects identified for all but one other option. The report notes:

'Development of smaller sites, unless concentrated around a specific settlement, is unlikely to create the critical mass of new development needed to support the provision of new public transport provision, and/or walking and cycling improvements. Development located within rural settlements could also exacerbate the need to travel to higher level settlements for services and facilities.' (paragraph 5.5.8)

A dispersed strategy of growth does not ensure new development is located in the most sustainable locations. In fact, it excludes sites adjoining the most sustainable settlements, the Main Urban Areas, simply because sites are larger than 500 homes.

Failure to provide appropriate reasons for rejecting alternatives

The SA also fails to provide appropriate reasons for rejecting alternative spatial strategy options. Our client's land south east of Sutton-in-Ashfield forms part of the rejected Options 4, 5 and 6 as a potential Sustainable Urban Extension adjacent to Kirkby/Sutton. A Concept Masterplan of this potential Sustainable Urban Extension is shown in Appendix B which shows how the site could deliver a significant scale of growth at one of the Main Urban Areas, integrating with existing infrastructure and delivering sustainable development.

The reason set out for rejecting the options with an urban extension to Kirkby/Sutton, despite scoring well against the sustainability criteria, is as follows (emphasis added):

*'The urban extension is located in the countryside on the Main Urban Area fringe. The site has been proposed for allocation in a number of draft Local Plans. **It has encountered substantial local opposition.** The site at Sutton Parkway was identified in the withdrawn local plan in 2018 for residential purposes.'* (Table 5.5, page 86-88)

As set out in our representations to the Regulation 18 consultation, this justification does not present a clear **planning** reason for the rejection of these options and is therefore fundamentally flawed. The level of objections and political acceptability are not planning reasons justifying the rejection of this spatial strategy option.

Options 4, 5 and 6 were assessed as having the same or more positive impacts against all the sustainability criteria as the preferred strategy, with the exception of landscape. All these options were assessed as having more positive impacts for Sustainability Objective 13 – Climate Change and Energy Efficiency and 14 – Travel and Accessibility (Table 5.4).

The lack of any sound planning justification for the selection of the preferred strategy or the rejection of strategy options 4, 5 and 6 raises a severe concern as to legal compliance.

Inappropriate reasons for rejecting alternative site option

This issue of rejecting options adjacent to the Main Urban Area due to local opposition rather than sound planning reasons is also seen in the site selection process. The Ashfield Local Plan Sustainability Appraisal Consultation Draft Local Plan (Regulation 18) published at the time of the Regulation 18 consultation set out the reason for rejection of the site from

allocation in favour of significant release of Green Belt land in the Regulation 18 Draft Local Plan as follows (emphasis added):

*'The site has been proposed for allocation in a number of draft Local Plans. It has encountered substantial local opposition **and has not been politically acceptable for the site to be taken forward by the Council.**'* (Appendix H page 28 onwards).

Our representations to the Council on the Regulation 18 Draft Local Plan and SA highlighted that this was not an appropriate reason to reject the site and included an extract from the SA at the time of the consultation. At some point the Regulation 18 Sustainability Appraisal was amended by the Council and Appendix C provides a comparison of the extract provided in our Regulation 18 representations taken from the SA published at the time of the consultation and the version of this SA on the Council's website now.

- 1.18. **Are the likely environmental, social and economic effects of the Local Plan adequately and accurately assessed in the SA?**

No comment

Climate Change

- 1.19. **Does the plan accord with s19(1A) of the Planning and Compulsory Purchase Act (2004) (as amended) by including policies that are designed to secure that the development and use of the land in the District contribute to the mitigation of, and adaptation to, climate change?**

No Comment

Equality and Diversity

- 1.20. **Having regard to the Equality Impact Assessment [SD.09], in what way does the Plan seek to ensure that due regard is had to the three aims expressed in Section 149 of the Equality Act 2010 in relation to those who have a relevant protected characteristic?**

No Comment

Other matters

- 1.21. **Are any other the implementation policies to be regarded as 'strategic policies'?**

No Comment

Appendix A: Greater Nottingham Strategic Plan Preferred Options Consultation Document Extract

Chapter Five: Approach to Housing Need

- 5.1 The NPPF sets out the Government’s approach to significantly boosting the supply of homes and confirms that the standard method for assessing local housing need should be the starting point for determining the minimum number of homes required, unless exceptional circumstances justify an alternative approach. Nottingham City is one of the 20 largest urban local authorities in the Country, accordingly the standard method applies a 35% uplift to its housing need. The Government justifies this by arguing it will promote brownfield development, and that changes to the planning system, such as permitted development, will facilitate more new homes through changes of use of existing buildings. The approach to housing provision is set out in the Greater Nottingham Housing Background Paper (2022).
- 5.2 Nottingham City does not have the capacity to meet the entirety of its need once the 35% uplift has been added, and so its housing target is based on the anticipated housing land supply over the plan period. Including the 35% uplift, Nottingham City’s standard method need between 2022-2038 is 28,368, against an estimated supply of 25,760, a difference of 2,608. For all the other Councils, the housing target is calculated using the standard method. Each of these Councils also applies a buffer to the housing need figure to allow for flexibility and to ensure that housing need is met. No buffer is applied to the City’s housing target, as the target is the available housing supply.
- 5.3 The preferred approach to housing provision is:

Preferred Approach: Housing Provision

5.3.1 A minimum of 49,900 new homes (2022 to 2038) will be provided for, distributed as follows:

Authority	Housing Target	Minimum Flexibility Buffer
Broxtowe Borough Council	6,240	10%
Gedling Borough Council	7,950	10%
Nottingham City Council	25,760	0
Rushcliffe Borough Council	9,950	10%
Greater Nottingham	49,900	N/A

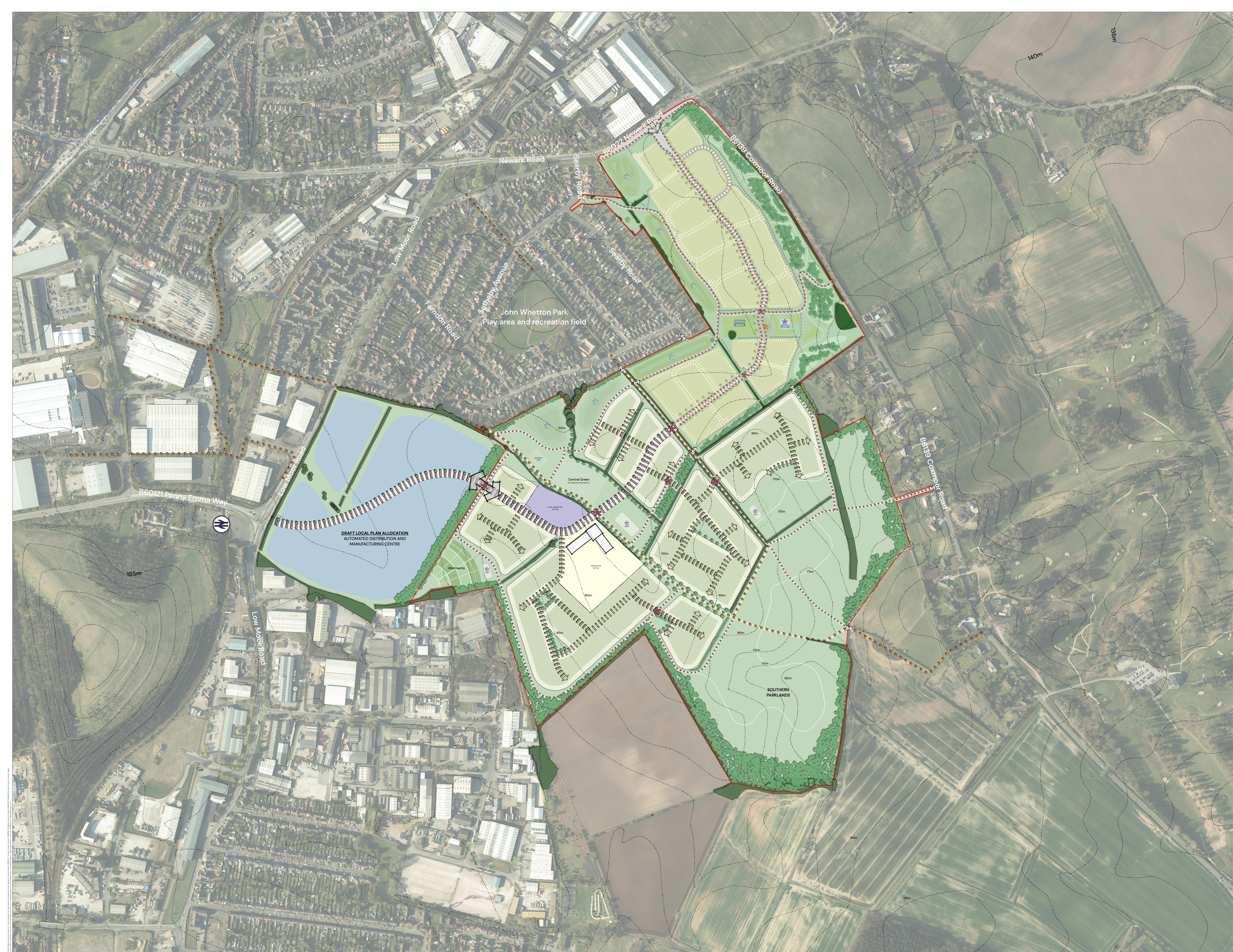
5.3.2 Approximately 41,650 homes will be provided for in or adjoining the existing main built up area of Nottingham, in the following distribution:

- Broxtowe Borough Council: 4,270
- Gedling Borough Council: 3,980
- Nottingham City Council: 25,760
- Rushcliffe Borough Council: 7,640

To include (numbers are indicative):



Appendix B: Sustainable Urban Extension Option South East of Sutton-in-Ashfield Concept Masterplan



- Key**
- Site Boundary**
Total: 75.64Ha
[21.40Ha of total - Land off Newark Road (V/2022/0629)]
 - Residential Development**
Total: 28.41Ha - circa 850 dwellings
[0.62Ha of total - circa 300 dwellings - Land off Newark Road (V/2022/0629)]
 - Local Centre**
0.70Ha
 - Primary School Site**
2.00Ha
 - Adjacent Employment Land**
Automated Distribution & Manufacturing Centre
 - ✦ **Sustainable Urban Drainage System**
 - ✦ **Play Space**
NEAP, LEAP, Informal and Formal Play
 - ||| **Primary Street**
 - ||| **Streets & Lanes**
 - **Public Right of Way**
 - **Cycle and Pedestrian Movement**
 - ✦ **Key Pedestrian Crossing Point**
 - **Existing Vegetation**
 - **Proposed Buffer Planting**
 - **Proposed Trees**
 - Illustrative Sport Provision**



Appendix C: Sustainability Appraisal Extract

Ashfield Local Plan Sustainability Appraisal – Consultation Draft Local Plan (Regulation 18) Sustainability Appraisal Extract

Appendix H Page 28 Extract as shown in our representations to the Regulation 18 consultation

Site Ref:	Use	Status at Reg 18	Allocation Ref	Site Address:	Justification for Selection / Rejection
KA027	Housing	Reasonable alternative		East of Lowmoor Road, Kirkby-In-Ashfield	Not Selected - Located in the countryside on the Main Urban Area fringe. The site has been proposed for allocation in a number of draft Local Plans. It has encountered substantial local opposition and has not been politically acceptable for the site to be taken forward by the Council.
KA035	Housing	Reasonable alternative		Land east of Sutton Parkway Station, Kirkby-In-Ashfield	Not Selected - Located in the countryside on the Main Urban Area fringe. The site has been proposed for allocation in a number of draft Local Plans. It has encountered substantial Local opposition and has not been politically acceptable for the site to be taken forward by the Council.
SA001	Housing	Reasonable alternative		Sutton Parkway (Newark Road & Lowmoor Road), Sutton-In-Ashfield	Not Selected - Located in the countryside on the Main Urban Area fringe. The site has been proposed for allocation in a number of draft Local Plans. It has encountered substantial local opposition and has not been politically acceptable for the site to be taken forward by the Council.
SA024	Housing	Reasonable alternative		South of Newark Road, Sutton-In-Ashfield	Not Selected - Located in the countryside on the Main Urban Area fringe. The site has been proposed for allocation in a number of draft Local Plans. It has encountered substantial local opposition and has not been politically acceptable for the site to be taken forward by the Council.

Appendix H Page 28 onwards as available on the Council's website

Site Ref:	Use	Status at Reg 18	Allocation Ref	Site Address:	Justification for Selection / Rejection
KA027	Housing	Reasonable alternative		East of Lowmoor Road, Kirkby-In-Ashfield	Not Selected - Located in the countryside on the Main Urban Area fringe. The site has been proposed for allocation in a number of draft Local Plans without a Plan being adopted. The site formed part of a number of spatial strategy options but was not taken forward for the reasons out lined in the SA of alternative spatial strategies.
KA035	Housing	Reasonable alternative		Land east of Sutton Parkway Station, Kirkby-In-Ashfield	Not Selected - Located in the countryside on the Main Urban Area fringe. The site has been proposed for allocation in a number of draft local Plans without a Plan being adopted. The site formed part of a number of spatial strategy options but was not taken forward for the reasons out lined in the SA of alternative spatial strategies.
SA001	Housing	Reasonable alternative		Sutton Parkway (Newark Road & Lowmoor Road), Sutton-In-Ashfield	Not Selected - Located in the countryside on the Main Urban Area fringe. The site has been proposed for allocation in a number of draft Local Plans without a Plan being adopted. The site formed part of a number of spatial strategy options but was not taken forward for the reasons out lined in the SA of alternative spatial strategies. A planning application was submitted in on part of the site in 2017 but has not been determined to date.
SA024	Housing	Reasonable alternative		South of Newark Road, Sutton-In-Ashfield	Not Selected - Located in the countryside on the Main Urban Area fringe. The site has been proposed for allocation in a number of draft Local Plans without being adopted. The site formed part of a number of spatial strategy options but was not taken forward for the reasons out lined in the SA of alternative spatial strategies. A planning application was submitted in 2017 but has not been determined to date.

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

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