

**LAND AT JUNCTION OF
NEWARK ROAD AND COXMOOR ROAD,
SUTTON IN ASHFIELD**

**AGRICULTURAL EVIDENCE
ON BEHALF OF
THE APPELLANT
BY**

TONY KERNON BSc (Hons) MRICS FBIAC

LPA Ref: V/2022/0629

PINS Ref: APP/W3005/W/24/3350529

VOLUME 1: TEXT

December 2024





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Volume 3: Summary

1 INTRODUCTION TO THE WITNESS

The Witness

- 1.1 This evidence has been prepared by Tony Kernon. I am a Chartered Surveyor and a Fellow of the British Institute of Agricultural Consultants. I have specialised in assessing the effects of development proposals on agricultural land for over 35 years, and act nationwide for local planning authorities and applicants alike across England and Wales.
- 1.2 As part of preparing this evidence I have reviewed the relevant application material, visited the site and inspected the land and soils, and interviewed the farmers.
- 1.3 My Curriculum Vitae is at **Appendix KCC1**. As a Chartered Surveyor giving evidence, I am bound by the RICS Practice Statement “Surveyors Acting as Expert Witnesses”, 4th Edition (February 2023). A declaration is provided below.
- 1.4 In accordance with the requirements of the Royal Institution of Chartered Surveyors Practice Statement, “Surveyors acting as expert witnesses” (4th edition, amended 2023):
- (i) I confirm that my report has drawn attention to all material facts which are relevant and have affected my professional opinion.
 - (ii) I confirm that I understand and have complied with my duty to this Appeal as an expert witness overrides any duty to those instructing or paying me, that I have understood this duty and complied with it in giving my evidence impartially and objectively, and that I will continue to comply with that duty as required.
 - (iii) I confirm that I am not instructed under any conditional or other success-based fee arrangement.
 - (iv) I confirm that I have no conflicts of interest.
 - (v) I confirm that my report complies with the requirements of the Royal Institution of Chartered Surveyors (RICS), as set down in “*Surveyors acting as expert witnesses*”: RICS practice statement (2023).

Signed:



(Tony Kernon)

Dated: 16th December 2024

2 INTRODUCTION TO THE EVIDENCE

The Reason for Refusal

2.1 In its Statement of Case the Council set out in 1.3 that, had it been in a position to determine the application, the Council's second reason for refusal would have stated:

"The proposed development would result in the loss of best and most versatile agricultural land contrary to Paragraph 180 of the National Planning Policy Framework (2023)".

The Stated Justification

2.2 Paragraphs 6.13 and 6.14 of the Council's Statement of Case provide the context for the reason for refusal. They state, in full:

"6.13 The development will result in a loss of approximately 20.7ha of the Best and Most Versatile Agricultural Land ("BMVAL"). The Council will set out in evidence that planning policies and decisions are required to take account of the economic and other benefits of the best and most versatile agricultural land; and that the loss of BMVAL will conflict with paragraph 180 of the Framework.

6.14 The Council accept that the loss of some BMVAL may be inevitable in allocating land within the borough for the provision of housing supply. Nevertheless, the loss of BMVAL is harmful and must carry weight".

This Evidence

2.3 My evidence seeks to set out the relevant agricultural circumstances and considerations, in the context of policy and the local land quality, in order to inform on the economic and other benefits of using land of the Best and Most Versatile (BMV) quality. I then go on to consider the availability of land of poorer quality that could meet the need for housing, in order to enable a planning balance to be reached.

2.4 I structure my evidence as follows:

- (i) section 3 describes the site, the land quality and the farming circumstances;
- (ii) section 4 sets out key policy of relevance;
- (iii) in line with the NPPF paragraph 180 (now 187) and the Council's Statement of Case, section 5 reviews the economic and other benefits of the BMV land within the site;
- (iv) section 6 goes on to consider whether this is significant development of agricultural land and, if so, whether (in plan making terms) poorer quality land is available in preference;

- (v) section 7 then reviews local decision taking and the weight to be accorded to agricultural land in the planning balance;
- (vi) ending with conclusions in section 8.

NPPF Update

- 2.5 The Council's decision refers to the NPPF paragraph 180. In the December 2024 amendment to the NPPF paragraph 180 became paragraph 187. In my evidence I use the 2024 NPPF numbering.

3 THE SITE AND ITS LAND QUALITY

- 3.1 This section of my evidence considers:
- (i) the agricultural land classification system;
 - (ii) the site and its land use;
 - (iii) land quality of the site.

The ALC System

- 3.2 Agricultural land is measured under a system of Agricultural Land Classification (ALC). This grades land based on the long-term physical limitations of land for agricultural use, including climate (temperature, rainfall, aspect, exposure and frost risk), site (gradient, micro-relief and flood risk) and soil (texture, structure, depth and stoniness) criteria, and the interactions between these factors determining soil wetness, droughtiness and utility. The system is described in Natural England's Technical Information Note TIN049 (2012) (**Appendix KCC2**).
- 3.3 Land is divided into five grades, 1 to 5. Grade 3 is divided into two subgrades. Land falling into ALC Grades 1, 2 and Subgrade 3a is the "**best and most versatile**" (BMV) (as defined in the National Planning Policy Framework (2023), Annex 2). Natural England estimate that 42% of agricultural land in England is of BMV quality (see TIN049 in **Appendix KCC2**).

The Site and Land Use

- 3.4 The site lies on the urban edge of Sutton in Ashfield, as shown outlined in red below. It comprises land in two fields, plus access via a small parcel of non-agricultural land. The larger, eastern field is accessed direct off Newark Road, which is the only vehicular access point. The smaller western field to the south is in a different farming ownership and is accessed from adjacent fields through a gap in the hedge. The site is shown below, with photographs following from the locations identified.

Insert 1: The Site on Google Earth (imagery date 6/3/2023)



3.5 Both fields are in arable use. The northern part of the larger field, shown below, has historically been raised and suffers from impeded drainage. As a consequence this area sometimes needs to be sown or harvested at a different time to the majority of the field. It may classify as subgrade 3a, but it sometimes needs to be farmed differently to the rest of the field (eg times of access).

Photo 1: The Larger Field, Looking West



3.6 The majority of the larger field, shown in photographs 2 and 3, is currently being cropped with an agri-environmental brassica cover crop.

Photo 2: Looking North



Photo 3: Looking East



3.7 The smaller field is currently being cropped for cereals and is shown in photos 4 and 5.

Photo 4: Looking North



Photo 5: Looking East, Larger Field in the Background



Land Quality of the Site

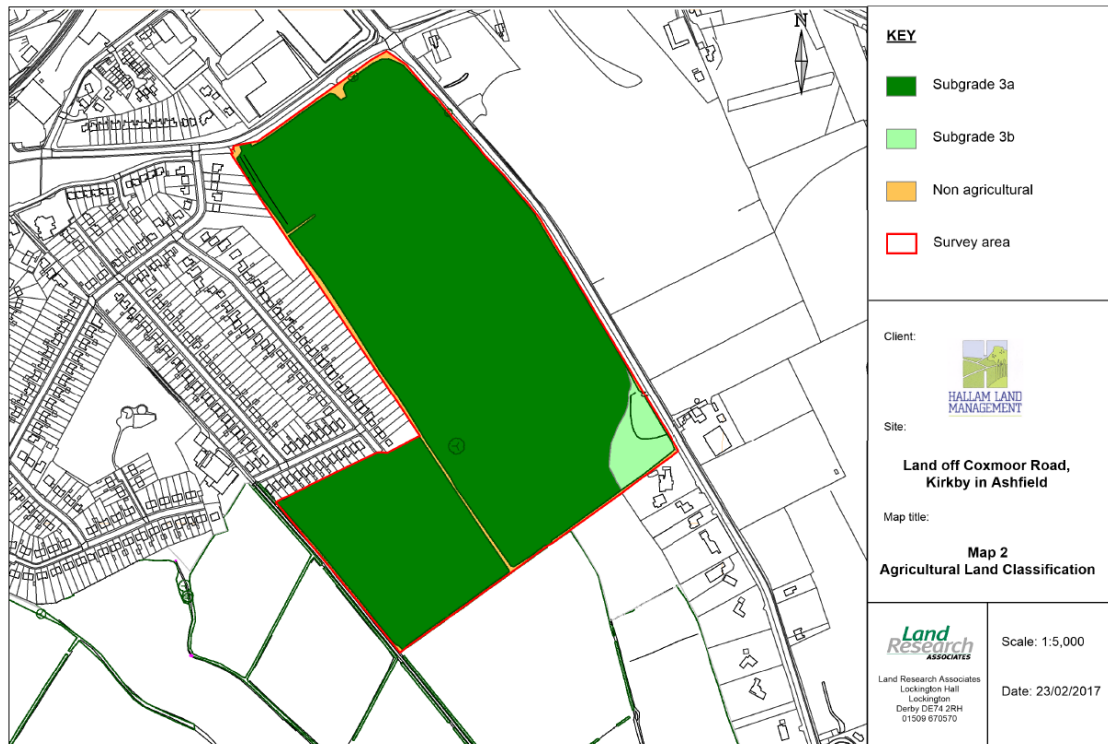
3.8 The site is shown on the “provisional” Agricultural Land Classification (ALC) maps, produced originally at a 1:250,000 scale by MAFF in the 1970s, as undifferentiated Grade 3. As described by Natural England (**Appendix KCC2**), these maps are not suitable for site specific use. They were digitised by Natural England in 2010, but the extract from the original 1:250,000 map shows the site below.

Insert 2: Provisional ALC



3.9 The Appellants commissioned an ALC survey of the site, to determine the grade. This was submitted with the application, and identifies that the agricultural part of the site comprises a mixture of mostly Subgrade 3a (good quality) with a small area, 3% of the site, being Subgrade 3b (moderate quality). The plan in extract from the ALC report is reproduced below.

Insert 3: The ALC Results



3.10 The agricultural land within the site comprises:

- 19.2 ha of Subgrade 3a;
- 0.6 ha of Subgrade 3b.

3.11 The site also contains some non-agricultural/urban land to the west, not shown on the ALC map above, but identified below.

Insert 4: Non-agricultural Part of the site



4 PLANNING POLICY OF RELEVANCE

Reasons Referred To

- 4.1 Putative Reason for Refusal No 2 refers only to the National Planning Policy Framework paragraph 180 (now paragraph 187).

NPPF

- 4.2 The National Planning Policy Framework (NPPF) (December 2024) paragraph 187 notes that planning policies and decisions should contribute to and enhance the natural and local environment by, inter alia, recognising **“the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land”**.
- 4.3 The best and most versatile (BMV) agricultural land is defined in Annex 2 of the NPPF as that in grades 1, 2 and 3a of the Agricultural Land Classification.
- 4.4 Paragraph 188 is not referred to in the reason for refusal. Paragraph 188 deals with plan making. It requires plans to, inter alia, allocate land with the least environmental or amenity value, where consistent with other policies in the Framework. Footnote 65 of the NPPF identifies that **“where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred to those of a higher quality”**.
- 4.5 There is no definition of what constitutes “significant” development. I return to this in section 6.
- 4.6 The footnote was expanded in December 2023 to include specific reference to food production. That amendment was deleted in the December 2024 NPPF update.

Local Plan

- 4.7 There is no saved policy relating to agricultural land in the current development plan (ALPR,2002).
- 4.8 In the emerging plan, the Ashfield Draft Local Plan 2023-2040 (pre-submission draft) which I understand the Council considers to be of limited weight, policy EV8 sets out that development of BMV land will only be permitted if it can be demonstrated that there is an overriding sustainability benefit and there are no realistic opportunities for accommodating the development elsewhere.

5 THE ECONOMIC AND OTHER BENEFITS OF THE BMV LAND

Reason for This Assessment

- 5.1 The Council's putative reason for refusal refers only to the NPPF paragraph 180 (now 187). Paragraph 6.13 of the Council's Statement of Case sets out that **"the Council will set out in evidence that planning policies and decisions are required to take account of the economic and other benefits of the best and most versatile agricultural land; and that the loss of BMVAL will conflict with paragraph 180 of the Framework"**.
- 5.2 No quantification of the economic and other benefits is provided in the Statement of Case, nor is it identified why these effects are so significant that the development should not be allowed.
- 5.3 Therefore in this section I seek to establish:
- the economic benefits of BMV;
 - the other benefits of BMV.
- 5.4 My evidence seeks to quantify these factors so that they can be considered in the planning balance. I do so in the context of the farming circumstances and the potential of the soils and land quality.

Farming Circumstances and Cropping Potential

- 5.5 Both fields form a small part of two separate large local farming operations. The economic impact to each farm business, measured in terms of ongoing agricultural potential for those farms, will be very limited. The following information has been provided by the farmers, and they have confirmed it is correct.
- 5.6 The eastern field extends to just over 16 ha. It forms a peripheral part and less than 5% of a substantial 325 ha arable and vegetable holding, operated from a base near Farnsfield. The Appeal site is used for growing cereals and arable (combinable) break crops. It is not suitable for root crops or vegetables, and crops suffer from drought stress in May and June if rainfall is low. The northern part has previously been landfilled, and the central section is described by the landowner as very wet in winter.
- 5.7 The western field extends to about 4 ha. It forms the edge of a block of arable land extending to 50 ha, which forms part of a 400 ha mixed farm operating from Sutton Scarsdale, near Chesterfield. The land is used for arable crops, typically cereals with an

oilseed rape or combinable break crop, and is not considered suitable and is not used for root crops or vegetables. It forms 1% of the farmed area.

- 5.8 The land has largely been classified under the ALC as Subgrade 3a. The ALC report identifies the topsoils to be sandy clay loams (SCL), medium sandy loams (MSL) or loamy medium sand (LMS), with a topsoil depth of 27cm to 36cm across the site. The upper subsoil is a medium reddish sand in most places (MSr). This is illustrated in the following photographs, dug near the centre of the larger field.

Photos 6 – 8: Soil Pit, Larger Field



- 5.9 A pit dug in the centre of the smaller, western field, shows very similar soils.

Photos 9 - 11: Soil Pit, Smaller Field



- 5.10 The farmers describe the land as wet in the spring, which limits early access. The soils, as can be seen, lie over sand, and this has in recent years resulted in poor crop yields. Sandy soils need regular rain in May and June, otherwise crops suffer from lack of available water, and as a result yields can be poor. There is no irrigation available for this land and accordingly no root crops can be grown (as they need additional water).

- 5.11 The northern part of the larger field has been landfilled in the past. The photograph below, Google Earth 2001, shows that area cropped differently. The wetter nature of the soil is shown below. There is rubble widely mixed with the soils across this area.

Insert 5: The Northern Area



Photos 12 – 13: Wet Soils in the Landfilled Area



- 5.12 In actual terms, therefore:
- the economic impacts to the two occupying farm businesses will be very limited;
 - the majority of the land, whilst Subgrade 3a, is suitable for and used for cereals, combineable break crops or agri-environmental crops, but not vegetables.

Economic Considerations

5.13 The NPPF requires that the economic and other benefits of BMV are recognised. There is no suggestion that agricultural land per se cannot be used for non-agricultural development. The NPPF, and consequently the Council’s reason for refusal, relates only to the economic benefits of BMV. The comparison must, therefore, focus on the incremental difference between BMV land and non-BMV land.

5.14 The economic benefits of BMV land on this site are modest. In the absence of any empirical data, any economic assessment is inevitably crude. Taking standard budgeting textbooks, such as the John Nix Pocketbook for Farm Management (extracts from which are reproduced in **Appendix KCC3**), it is possible to show the difference between moderate and high yields, as an illustration, between crops.

5.15 This is a theoretical assessment. It assumes that the BMV land achieves a high yield, but in this case the yields achieved are only average. In years with dry May and June weather yields are poor, but with a wet May or June good crops can be achieved.

5.16 Nonetheless, taking that crude measure for winter wheat and oilseed rape, the differences are shown below.

Table 1: Assessment of Economics of Farmed Land

Item	Winter Wheat		Oilseed Rape	
	Average	High	Average	High
Yield (t/ha)	8.3t/ha	9.5t/ha	3.5t/ha	4.0t/ha
Output (£)	£1,765/ha	£1,993/ha	£1,488/ha	£1,700/ha
Gross Margin (£)	£1,110/ha	£1,338/ha	£906/ha	£1,118/ha
Uplift (£)	-	£228/ha	-	£212/ha

John Nix Pocketbook for Farm Management, September 2024

5.17 For the 19.2 ha of BMV land within the site the economic benefits of BMV land to non-BMV land would be £4,080 - £4,380. Hence the economic benefits are modest. This assumes all the land is arable, with no field margins etc.

5.18 The proposed development will not have a significant adverse effect on any farm business, nor will it result in any other agricultural land in the wider area being affected or becoming unfarmable. Other land can continue to be managed as it is now.

Food Considerations

5.19 The amended footnote 62 of the NPPF (December 2023) related to the plan-making paragraph 181. This amendment has now been deleted in the December 2024 amendments. Footnote 62 (NPPF December 2023) required that the availability of land used for food production be considered alongside other policies. Food production is assumed to fall into the “other benefits” of BMV referred to in paragraph 187.

5.20 As set out in the table above, if we used the crude measurement from the John Nix Pocketbook the uplift in yield for wheat, the heaviest cropping arable cereal, would be 1.2t/ha over 19.2 ha, equivalent to 23 tonnes.

5.21 The United Kingdom produced just under 22 million tonnes of cereals plus 1.2 million tonnes of oilseed rape in 2023 (Cereal and oilseed production in the United Kingdom 2023, Defra, 21 December 2023 (see extracts in **Appendix KCC4**)). At the time of writing, 2024 figures are not available. They will be down because of weather-related problems in autumn 2023. The food production benefit of the BMV land compared to non-BMV land, at 23 tonnes, is clearly a negligible contribution to the UK production (one millionth of annual production).

5.22 There is no food production policy in this country. There is no food crisis. The Government confirmed, in a press release dated 6th December 2022, that food supplies are robust (**Appendix KCC5**). The specific reference to food production in the NPPF, in footnote 62 (December 2023), has now been removed (NPPF December 2024).

5.23 The focus of Government support is currently on biodiversity enhancement. The latest “Agricultural Land Use in England at 1st June 2024” figures¹ show that 305,000 ha of arable land were used for environmental benefit as at 1st June 2024.

Conclusions

5.24 There are adverse economic and food production BMV-related issues, but these are limited in scale and are not significant in the context of the UK agricultural economy and food production. These adverse effects will need to be weighed in the balance with the economic benefits accepted by the Council.

¹ Defra, 26th September 2024

6 NPPF PARA 187, 188 AND FOOTNOTE 65 CONSIDERATIONS

Reason for This Assessment

- 6.1 The Council's reason for refusal refers only to the NPPF paragraph 180 (now 187). It concludes that the loss of BMV "**is harmful and must carry weight**". In section 5 I quantified the level of harm, which is very modest, and that will need to be considered in the planning balance alongside other matters.
- 6.2 The Council's putative Reason for Refusal 2 goes no further than alleging conflict with paragraph 180 (now 187). The Statement of Case at 6.14 concedes, however, that some loss of BMV may be inevitable in allocating land within the Borough. Paragraph 188 of the NPPF, and its related footnote 65, refer to plan making considerations, with footnote 65 requiring that, where significant development of agricultural land is demonstrated to be necessary, poorer quality land should be preferred.
- 6.3 The NPPF paragraph 187 requires only that the economic and other benefits of BMV are recognised. The application was accompanied by the ALC report, referenced in the Planning Statement. Land quality was clearly recognised, and information was presented with the application. There is no direct conflict with paragraph 187, although I accept that development of BMV is a matter to be weighed in the overall planning balance.
- 6.4 In section 5 I have analysed the NPPF paragraph 187 considerations, which is all that the reason for refusal refers to. In this section I go on to cover paragraph 188 and footnote 65, should that be considered to be relevant in the planning balance.
- 6.5 This section of my evidence therefore considers:
- (i) whether this is significant development of agricultural land (footnote 65);
 - (ii) whether poorer quality land is likely to be available (notwithstanding this is a plan making para 188 consideration).
- 6.6 Section 7 of my evidence then considers how this has been applied in practice.

Whether This Is "Significant Development"

- 6.7 There is no definition of "**significant development**" in the NPPF
- 6.8 There is no definition of "**significant development**" in the Local Plan, which contains no agricultural land policy. The emerging Local Plan policy EV8 sets out that development of BMV land will only be permitted if there is an overriding sustainability benefit and no

opportunities for accommodating the development elsewhere. There is no quantum threshold for this proposed policy, which therefore does not conform with the NPPF.

6.9 Accordingly we must cast wider to identify documents that will provide a steer. In particular I consider:

- (i) the threshold for consultation with Natural England;
- (ii) guidance on the Government's website relating to scale of development;
- (iii) IEMA guidance for EIA processes.

6.10 **Threshold for Consultation with Natural England.** Natural England must be consulted under the Town and Country Planning (Development Management Procedure) (England) Order 2015, Schedule 4, part y, on development which is not in accordance with the development plan and involves, or is likely to lead to, the loss of not less than 20 ha of BMV which is, for the time being or was last used, for agricultural purposes.

6.11 Whilst not a definition of "significant", it certainly provides an indication of what legislation considers is sufficiently significant that Natural England should be consulted, notably any losses that are greater than 20 ha of BMV. In this case Natural England, in their consultation response of 2nd September 2022, stated that **"the proposed development would not appear to lead to the loss of over 20ha 'best and most versatile' (BMV) agricultural land. For this reason, we do not propose to make any detailed comments in relation to agricultural land quality and soils"**. They go on to refer to soil management, but raise no objections.

6.12 **Related Guidance.** Natural England's Technical Information Note TIN049 (2012) provides guidance on the consultation requirement (see **Appendix KCC2**). As set out in the top paragraph of the second column of page 3:

"For planning applications, specific consultations with Natural England are required under the Development Management Procedure Order in relation to best and most versatile agricultural land. These are for non agricultural development proposals that are not consistent with an adopted local plan and involve the loss of twenty hectares or more of the best and most versatile land. The land protection policy is relevant to all planning applications, including those on smaller areas, but it is for the planning authority to decide how significant the agricultural land issues are, and the need for field information. The planning authority may contact Natural England if it needs technical information or advice".

- 6.13 Natural England’s “Guide to Assessing Development Proposals on Agricultural Land” (5 February 2021) (**Appendix KCC6**) sets out in section 1 that policies and legislation aim to protect BMV agricultural land “**from significant, inappropriate or unsustainable development proposals**”, and that Natural England use these policies to advise on development proposals as statutory consultees.
- 6.14 Whilst not a definition, section 6 states that you should use ALC survey to assess the loss of land. “**You should take account of smaller losses (under 20ha) if they’re significant when making your decision. Your decision should avoid unnecessary loss of BMV land**”. This also indicates that over 20 ha can generally be considered “**significant**”. Under 20 ha will depend upon more local considerations.
- 6.15 **Planning Practice Guidance.** Paragraph 001 of the Natural Environment section of the Planning Practice Guidance suite (ref 8-001-20190721) advises that a local planning authority must consult Natural England “**before granting planning permission for large-scale non-agricultural development on BMV**”. The clear inference is that under 20 ha is “small scale”.
- 6.16 **IEMA Guide.** The IEMA Guide “A New Perspective on Land and Soils in Environmental Impact Assessment” (IEMA, 2022) sets thresholds for major, moderate and minor development. The thresholds are, respectively, 20 ha or above, 5 – 20 ha, and under 5 ha. In EIA terms development of less than 20 ha of BMV is only a moderate magnitude impact, and under 5 ha is minor magnitude. Under the IEMA Guide this is “moderate” magnitude development. The relevant section is reproduced in **Appendix KCC7**.
- 6.17 **Considerations.** The development involves 19.2 ha of BMV (not 20.7 ha as stated in the Council’s Statement of Case 6.15). This is below the consultation threshold for Natural England. It is not significant development but it is close to the often-used threshold of 20 ha.
- 6.18 Therefore whilst a requirement to consider whether poorer quality land is available under the NPPF footnote 65 is not triggered, as the development is close to (but still below) the threshold and as the Council has conceded in its Statement of Case that BMV land is likely to be needed for meeting housing needs nevertheless, I turn to review land quality in the wider area.
- 6.19 In so doing, the use of 19.2 ha of BMV for non-agricultural development should be considered in context. Natural England’s TIN049 estimates that 42% of agricultural land

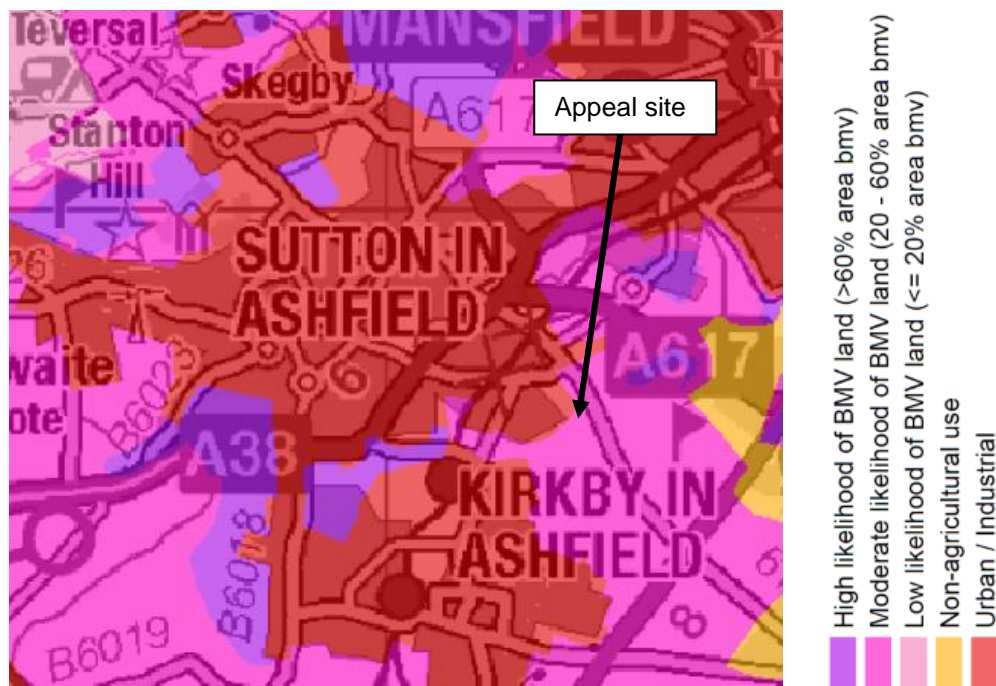
in England is BMV (**Appendix KCC2**). There are, in 2024, some 8.7 million hectares of land in active agricultural use (the Utilised Agricultural Area), and a lot more land not actively used (eg horse grazing). Taking just the Utilised Agricultural Area², that means that 3.7 million hectares of BMV agricultural land are in active agricultural use. The resource is not rare statistically (42%) or quantitatively (3.7 million ha).

Is Poorer Quality Land Available?

6.20 The provisional ALC for the periphery of Sutton in Ashfield was shown at Insert 2. The provisional map shows Grade 2 very good quality to the north and south of the town, undifferentiated Grade 3 to the east (including the Appeal Site) and some Grade 4 to the west.

6.21 In 2017 Natural England produced maps showing the “Likelihood of BMV”, dividing the country into high likelihood (>60% area BMV), moderate likelihood (20 – 60% area BMV) and low likelihood (<20% area BMV). As shown below, all of the periphery of Sutton in Ashfield falls into the moderate likelihood (including the Appeal Site) or high likelihood of BMV.

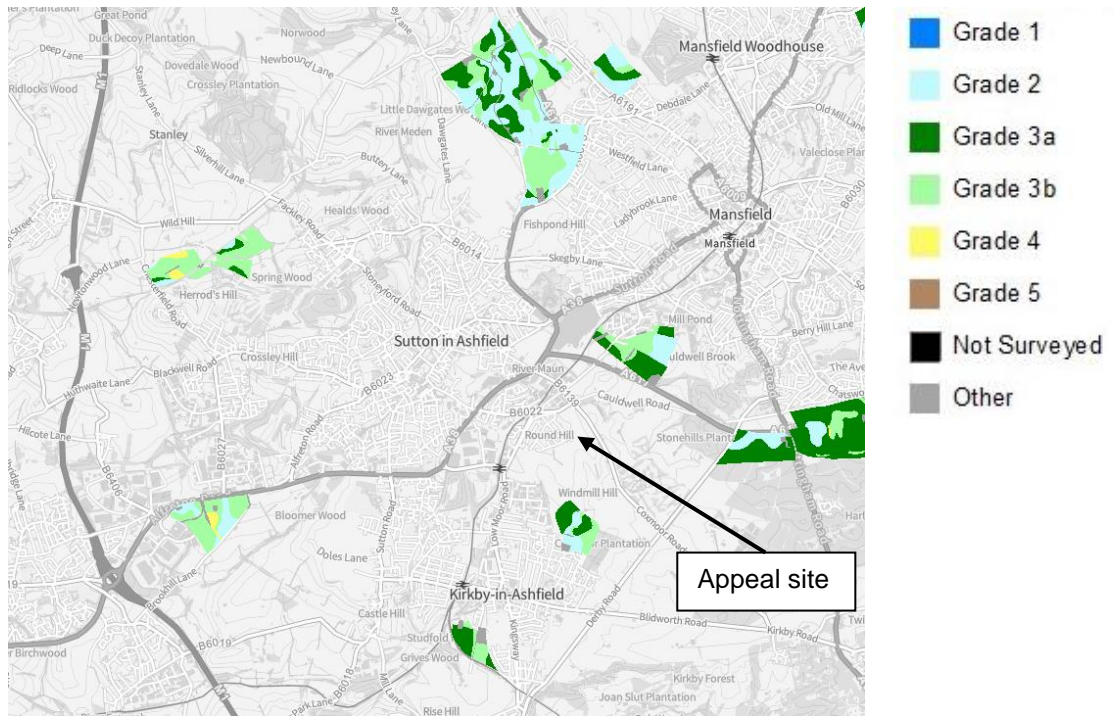
Insert 6: Likelihood of BMV Map Extract



6.22 Where there is survey data available, usually work carried out by MAFF or its agencies up to about 1997, it is published on www.magic.gov.uk. There is some data around the town, mostly showing a mix of Grades 2, 3a and 3b. There is no data for the Appeal Site.

² Agricultural Land Use in England at 1 June 2024, Defra (26 September 2024)

Insert 7: Results on www.magic.gov.uk



6.23 The provisional maps suggest poorer quality land is available to the west. The predictive Likelihood of BMV maps suggest that even to the west the proportion of BMV is likely to be in the 20 – 60% category, the same as for the Appeal Site. Where survey data exists that seems to be correct.

Conclusion

6.24 Overall land to the west is likely to have a lower proportion of BMV, but is still likely to involve some BMV land. Land to the north and south is likely to be the best quality land, in actual and proportional terms. Land to the east, including the Appeal Site, is the next poorest quality likely to be available.

6.25 I turn now to review recent decisions and allocations, to review what has been found (in terms of land quality) and determined (in terms of use of BMV land) locally.

7 REVIEW OF DEVELOPMENT MANAGEMENT DECISIONS

Reason for This Assessment

- 7.1 The Council's Statement of Case acknowledges that BMV land "**may be inevitable in allocating land within the borough for the provision of housing**". Therefore this section explores the practice of the Council, and the weight accorded to BMV land, from past decisions.

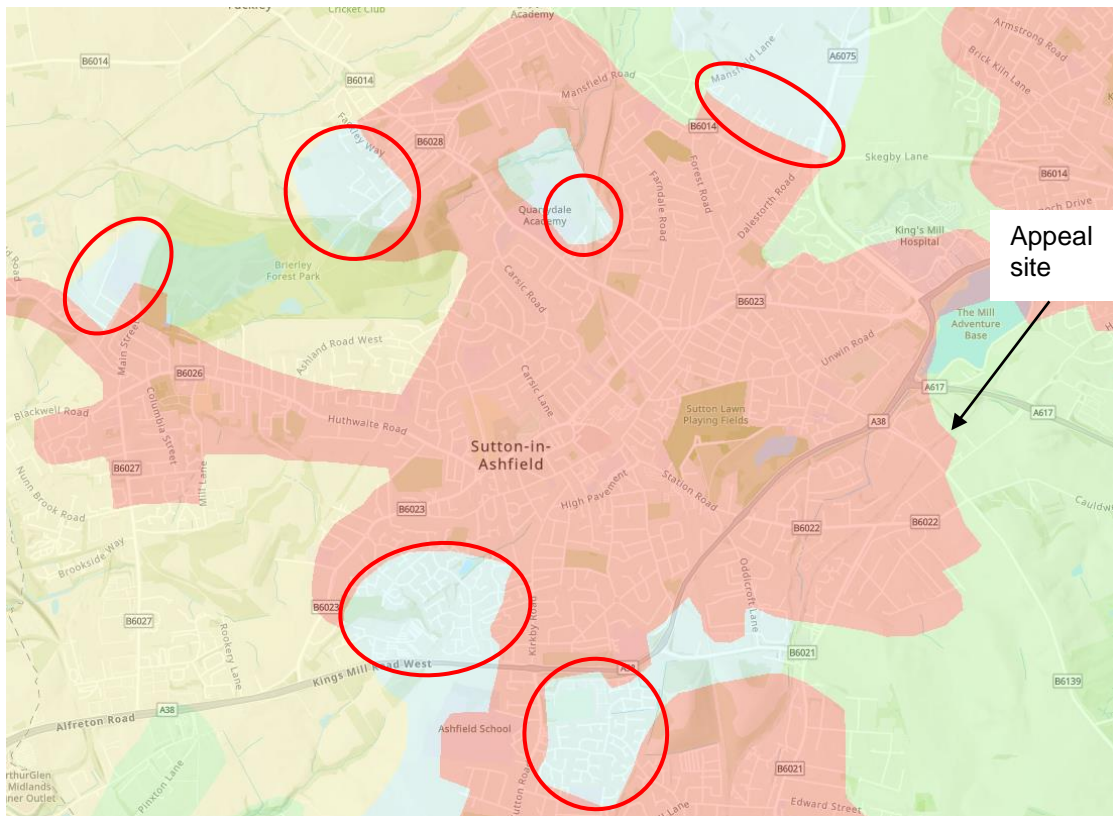
Available Data

- 7.2 This analysis has reviewed:
- (i) mapped evidence of historic development;
 - (ii) historic planning decisions;
 - (iii) emerging allocations.

Mapped Evidence

- 7.3 By digitising the provisional ALC map, Natural England have enabled a review of where development has already taken place on land based on the "provisional" ALC. The provisional ALC is not suitable for site-specific use, as described in Natural England's TIN049 (**Appendix KCC2**), but it is often the only information available.
- 7.4 By increasing the transparency of the mapping, the underlying mapping shows urban development of Grade 2 land as circled below.

Insert 8: Development Areas of Provisional Grade 2 Circled



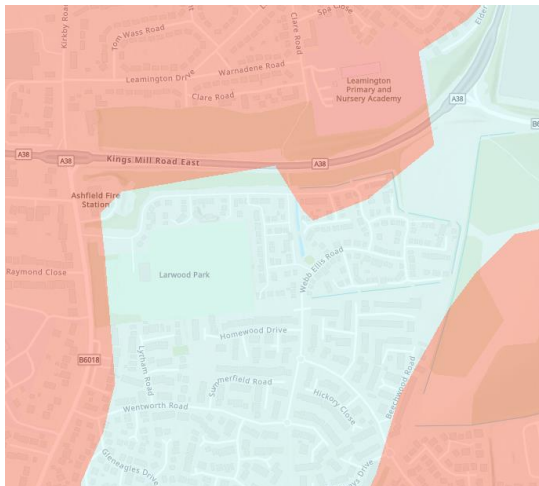
7.5 Based on the provisional ALC map, the presence of potentially “very good” quality land has not constrained non-agricultural development.

Planning Application Data

7.6 None of the areas circled have available survey results from www.magic.gov.uk. Therefore I have endeavoured to find out the Council's approach from historic planning decisions. This has proven a difficult task to achieve, because the Council's website does not have a map search facility.

7.7 Land so the south of the A38 has been developed on land of provisional Grade 2, with the most recent phase being under construction in 2016, compared below.

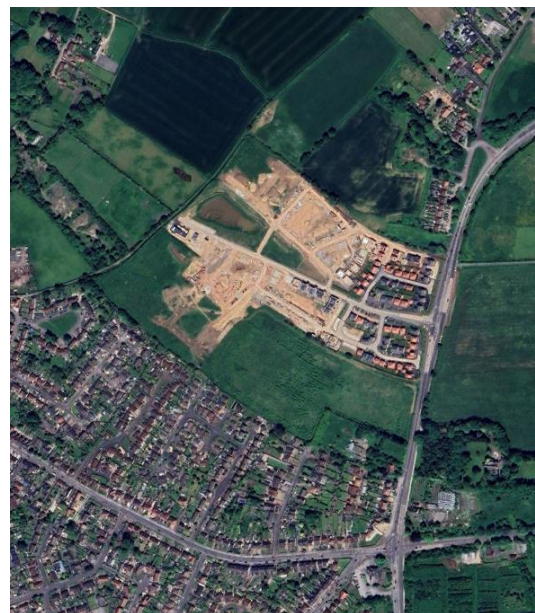
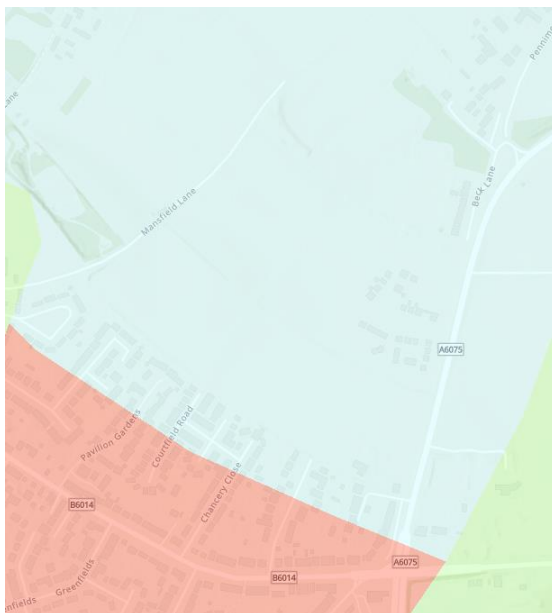
Inserts 9 and 10: Provisional Map and 2016 Google Earth



7.8 We have not been able to identify any ALC data for this site, which indicates that land quality was not given much or any weight in the planning balance.

7.9 Land north of the town, west of the A6075, is currently being built out. This is shown as provisional Grade 2, as shown below.

Inserts 11 and 12: Provisional ALC and 2024



7.10 There is no ALC document in the planning application file, no reference in the Planning Statement, no reference in the officer report in respect of agricultural land quality (Application Reference V/2021/0089). This again indicates that agricultural land quality does not seem to have been much, or any, weight in the planning balance.

Allocations

- 7.11 The Council's Ashfield Local Plan 2023 – 2040 Regulation 19 Pre-Submission Draft (November 2023) is the most up-to-date indication of proposed allocations.
- 7.12 In respect of allocations, the Council's "Analysis of Constraints for the District of Ashfield" (August 2023), Agricultural Land is identified as Constraint 7. The relevant section is reproduced in **Appendix KCC8**. This notes that the regional (provisional) land classification maps do not distinguish between the subgrades of Grade 3. Accordingly for the site selection, only land of Grade 2 is identified as a constraint.
- 7.13 The text at 7.3 notes:
"The maps indicate a large concentration of highest quality agricultural land north of the urban edge of Hucknall, in farmland to the west of Kirkby in Ashfield and in sections of open countryside north of Skegby, with smaller pockets of higher quality land located elsewhere in the district".
- 7.14 The "conclusion" identifies land quality as a potential constraint in paragraph 8.4.
- 7.15 It is evident that the policy seeks to direct development away from BMV land, but in practice the Council's allocation work restricts only land of Grade 2 on the regional ALC maps.
- 7.16 The collective mapping of constraints is shown on the plan on page 20 of the document. This shows most of the allocations in constrained areas, including housing allocations on Grade 2 land.
- 7.17 The Appeal Site is in an unconstrained area.
- 7.18 The land quality of the subsequent allocations is assessed on the following two inserts. The draft North Map housing allocations are shown below, with the "provisional" ALC grade for each site shown.

- 7.19 It can clearly be noted that the Council's allocations include land shown on the provisional maps as Grade 2. They also include land shown as undifferentiated Grade 3, without clear evidence of whether that is Subgrade 3a or 3b. The appeal site is shown as undifferentiated Grade 3 and so is comparable to the allocated Grade 3 sites, based on the information available, and poorer than the allocated Grade 2 sites.
- 7.20 To the extent that the Council assesses land quality as a constraint, it appears in plan making to be limited to Grade 2, making undifferentiated Grade 3 (as is found on the Appeal Site) the poorest quality land available. Whilst the emerging Local Plan policy requires assessment of BMV, it does not seem to have been a consideration in recent planning decisions.
- 7.21 Additionally the location of a number of allocations on what is shown as Grade 2 land demonstrates that, in the planning balance, other factors are found to outweigh land quality.
- 7.22 The evidence leads to the clear conclusion that development around the northern, eastern and southern edges of the town of Sutton will need to use land shown on the provisional ALC maps as Grades 2 or 3.

Conclusions

- 7.23 In its Statement of Case the Council accepts that the use of land of BMV quality "**may be inevitable in allocating land within the Borough for the provision of housing**".
- 7.24 That statement appears to be correct. In practice the Council's decision taking does not seem to give any consideration, or particular weight, to the loss of BMV land. In decision taking no particular weight seems to be given to the loss of BMV in the planning balance.
- 7.25 Nor is there any evidence that I have been able to find that land quality is a consideration or concern in the proposed future development around the town. The draft allocations are, from the evidence above, likely to involve the better quality land in the area.
- 7.26 Therefore in practice the Council has not been giving much, or potentially any, weight to the loss of BMV land, in either plan making or decision taking.

8 SUMMARY AND CONCLUSIONS

The Council's Decision

- 8.1 The Council's putative Reason for Refusal No 2 is that **"the loss of best and most versatile agricultural land [is] contrary to paragraph 180 of the NPPF"**. (Paragraph 180 is now paragraph 187 in the NPPF (December 2024)).
- 8.2 The Statement of Case expands on this, identifying that planning decisions are required to take account of the economic and other benefits of BMV land, and that the loss conflicts with the NPPF. It is accepted by the Council that the loss of some BMV may be inevitable in allocating land for housing.

Land Quality Affected

- 8.3 The Council's Statement of Case identifies that 20.7 ha of BMV will be lost. That is not correct. The quantum of BMV land within the Appeal Site is 19.2 ha, as confirmed in the ALC submitted with the application.
- 8.4 The land quality of most of the Appeal Site is Subgrade 3a "good" quality, with some poorer quality 3b land, and some non-agricultural land.

Relevant Considerations

- 8.5 The Council's decision notes that the decision taker must recognise the economic and other benefits of BMV land. The Council does not set out any evidence on this matter, nor does it ascribe any weight to the benefits, or ascribe any weight to the harm.
- 8.6 As a preliminary comment it is clear that land quality was recognised. The Appellants provided an ALC report as part of the application. Paragraph 187 of the NPPF does not place a bar on the use of BMV, it requires only that the benefits be recognised. They were. To that extent, therefore, there was no conflict with the NPPF paragraph 187.
- 8.7 That notwithstanding, I have endeavoured to quantify these economic and other benefits. They are minor. The economic benefit of the Appeal Site, should the land be capable of yielding at "high" performance, would be about £4,000 - £4,400 per annum compared to developing on poorer quality land instead. The other benefits, measured in terms of food production, would be about 23 tonnes per annum of cereals. The UK produces over 20 million tonnes per annum of cereals.

- 8.8 The Appeal site is suitable only for cereal crops and combinable arable break crops, or agri-environmental management. It is used for such purposes. The land will have a minor impact on the two farms involved (1% and <5%).
- 8.9 The Council's decision rests solely on the NPPF paragraph 187. The impact on the economic and other benefits of BMV land are not quantified and will need to be weighed in the balance with the economic and other benefits recognised by the Council in the Statement of Case. This will then be a matter of planning balance.
- 8.10 The Reason for Refusal does not go on to suggest that poorer quality land is available could be used in preference, although the likelihood that this will not be available is acknowledged in the Statement of Case. My analysis of historic decisions and emerging allocations shows that:
- generally land of poorer quality is not likely to be available;
 - the Council has not been giving significant weight (or any weight) to the loss of BMV in historic decisions;
 - the Council does not appear to be giving weight to the potential loss of BMV land in its proposed allocations;
 - the Council is allocating sites that are shown as Grade 2, and therefore land quality is outweighed by other factors.
- 8.11 From my analysis and research, the use of land potentially of BMV quality will be inevitable should development take place to the north, east or south of the settlement of Sutton and inevitable to meet the emerging plan development needs. The evidence indicates that the land quality of the Appeal Site is likely to be some of the poorest available.
- 8.12 The actual impacts, in terms of economic and other benefits, of using this land for non-agricultural development, are minor.

Conclusion

- 8.13 Land quality is not a matter to which the Council appears to give much, or any, weight in its historic decisions or future proposals.
- 8.14 In so far as the economic or other benefits of the BMV land within the Appeal Site are concerned, these are limited. They are insignificant in a national or regional context. In a local context the adverse economic effect of circa £4,000 - £4,400 per annum will need to