



CLOSING 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, except access to the site, for the development of up to 300 dwellings, associated infrastructure and landscaping.
- 1.2 The application was recommended for approval by officers in July 2024 and deferred. The reasons for the deferral are set out in the minutes of that meeting¹. They included seeking clarification of the relationship between the drainage and contamination strategies (driven by a concern that SUDs ponds could interfere with contamination).
- 1.3 Shortly after the July deferral, as 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 lodged².
- 1.4 The Council's 23rd October 2024 Committee resolved it would have refused for 5 reasons. Two of these were new. 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 drainage strategy and the SUDs ponds disturbing/releasing contamination.
- 1.5 The stance of the Council's Environmental Health Officer on this matter is relevant. In January 2024, on the basis of the RLL Phase 1 report of February 2022, the RLL permeability report of September

¹ CD 3.3

² 21 August 2024

2017 and the RLL ground gas report of May 2018³ the officer had said there were no objections on the grounds of contamination subject to conditions⁴. On 29 July 2024 the officer rejected suggestions by local residents that there was evidence of cancer risks⁵, and then, before the Council's 23rd October 2024 committee meeting and after the July deferral, the officer was consulted on the terms of the RLL letter dated 16 September 2024⁶ and was clear in her response that whilst asbestos testing was needed in due course, the solution with an outline application was to impose a "full contamination condition" as had been stated in her January 2024 response⁷. Her final comment on the matter in November 2024⁸, whilst expressing the ability to grant permission with a full contamination condition (as had been maintained throughout) contradicts the earlier position, now suggesting that she was about to ask for a phase 2 report but as one had now been submitted, she was content anyway. This was clearly an attempt to try to support the members decision to offer a putative refusal reason that was not defensible. In truth, the Council EHO was content throughout the whole process, did not require a phase 2 report for the grant of outline permission (in line with the position of the EA⁹) and the concern of members was both unfounded.

- 1.6 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 refusal¹⁰. This is claimed to be as a result of the phase 2 contamination report having been submitted and having regard to the December 2024 NPPF. Again, this is an attempt to make the Council's withdrawal of its case appear reasonable. In truth however there is nothing material to the outcome of this appeal in the changes to the NPPF. Further the contamination putative reason for refusal was always something that could not be supported by either the EA or the Council's EHO, had substantially changed from the July 2024 deferral decision and was addressed by the appellant as soon as reasonably possible after it became a live issue¹¹.
- 1.7 All this 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 Lees¹², the first attempt to review the 23 year old Local Plan was in 2010. In that 2010 plan the site was a draft allocation. It was then removed by the Council in 2012. In 2014 the Inspector examining that plan raised significant concerns¹³ 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 concerns were remarkably similar to the recent Inspector's letter on the current emerging local plan. The next attempt to produce a plan also identified the appeal

³ All to be found in CD 1.41 but are also separately in CD 13.7, 13.8 and 13.9

⁴ CD 2.31

⁵ CD 2.25

⁶ CD13.4

⁷ CD 2.24

⁸ CD 2.32

⁹ CD 2.26

¹⁰ CD 16.12

¹¹ Submitted to the Council on 13 November 2024

¹² Proof page 3

¹³ CD 12.5 and very similar to those raised by the Inspectors on the current draft Plan

site as a draft allocation. The Council resolved to withdraw that plan together for political reasons¹⁴. Following this, the site was considered in the formulation of the currently emerging draft plan. The two reasons for rejection of this site¹⁵ were a suggestion that development of the site raised highways concerns and an uncertainty as to delivery¹⁶. Both of these reasons were then and are now false. 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 plan¹⁷. 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.

- 1.8 The current emerging plan is again faltering. The Inspectors have now set out concerns in their letter of 3 December 2024. The examination has been halted. The Inspectors have concerns about the strategy of the plan, that it does not aim to meet the minimum housing figure for the district, and that exceptional circumstances for the release of Green Belt have not been proven. The Council has been asked to identify additional non-Green Belt land that it can allocate and has indicated that it will do so. 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.
- 1.9 What this rather sorry plan making context shows us is the Council has an inability to advance a Local Plan and that it has placed politics above meeting the housing needs of this district and plan making in particular 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 Councils own Action Plan¹⁸ that had to be prepared because the Council has for many years, failed to deliver enough housing. That plan specifically notes concerns about poor reasons for refusal and decisions contrary to officer recommendation as one of the key causes¹⁹.
- 1.10 It is through this lens that the complaints of Councillors Relf and Zadrozny must be seen, particularly given their involvement in the plan making and planning decision taking processes set out above. What we have learnt however over the course of the Inquiry about the approach of Councillor Relf is his focus on whether the development could be done better, not applying the planning test of whether development would cause harm, noting that he explained in his evidence in chief that he was " not fundamentally against the development of the site".

2 Officers Report and the SoCG

- 2.1 The consideration of the application by officers and all statutory consultees led to very clear recommendations for planning permission to be granted.

¹⁴ CD 12.6

¹⁵ 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

¹⁶ CD 12.10 at para 8.18– site reference SA024

¹⁷ G Lees Appendix 5

¹⁸ CD 12.22

¹⁹ See extracts at G Lees 4.6- 4.7

- 2.2 Consistent with the lack of any technical or consultee objections, the concerns expressed in July 2024 and added to in October 2024 have now been acknowledged by the Council as unfounded, through the complete withdrawal of the refusal reasons. Cllr Relf's newly emerging matters are equally unfounded.
- 2.3 Even before the withdrawal of the reasons, the SoCG addressed other matters of agreement, including the lack of 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), that the development of BMV agricultural land may be needed 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.

3 Housing Issues

- 3.1 The housing position is set out in some detail in Mr Lees proof from pages 13- 20 and can be summarised below.
- (a) There is a string of appeals in this District dealing with lack of housing supply which Inspectors have described as a situation which is "lamentable" and "very serious"²⁰. In fact, it can now be described as a problem that is both acute and chronic,
 - (b) There has been persistent undersupply – since at least 2017 amounting to some 664 dwellings,
 - (c) The Council's Action Plan recognises that the problem is caused by an out-of-date 2002 Local Plan, which fails to identify enough land for housing,
 - (d) The Council's own claimed 5 year land supply is dependent on such sites,
 - (e) The agreed²¹ current 5 year requirement (the 4 year test no longer applies in NPPF 2024) is 2,809 dwelling (with a 5 % buffer) and against this the Council claims a 3.66 year supply – 2,060 units and the Appellant 1,877 or 3.34 years. The difference derives from 4 sites; one with an expired permission, one with a smaller development now proposed on it, and two with no evidence at all of the prospect of completions in the next 5 years.

²⁰ CD 7.6- see also CD 7.1, 7.2, 7.7, 7.27 and 7.28

²¹ See 7 January 2025 - 5 year HLS SoCG – CD9.8

3.2 The upshot is that the terms of NPPF 11d are undoubtedly engaged and the so-called tilted balance is to be applied to decision making for this reason alone. The adverse impacts have to outweigh the benefits of the scheme by a significant margin and demonstrably do so for permission to be refused. There are no NPPF footnote 7 matters in play that would change that position.

4 Further Out-of-Date Nature of Policies

4.1 It is agreed that the most important policies for determination of the appeal are ST1, ST4 and EV2²². The appellant says that ST2 is also a most important policy, and the appeal proposal accords fully with it. It is agreed that ST1, ST4 and EV2 are out of date because of the land supply position described above.

4.2 In addition, however, to the extent ST1, ST4 and EV2 rely on the settlement boundaries to determine where they apply, those boundaries are fundamentally out of date:

- (a) They were defined in the context of identifying land for development only until 2011,
- (b) The annual rate of development that they were defined to allow, is far less than the current rate of development now (427 pa v 562 pa with buffer under the current SM),
- (c) The Council has as a consequence, either granted permission or had permission granted on appeal for some 1,482 homes on non-allocated sites, outside the settlement limits of the 2002 Local Plan, changing as a matter of fact the settlement boundaries across the District from those on the proposals map. Most of those permissions have been on sites where the development was been contrary to policies ST1, ST4 and EV2,
- (d) These matters have consistently been accepted as a basis for concluding the boundaries are out of date on appeal and by the Council itself in granting permissions.

4.3 Furthermore, the terms of these policies set an approach to decision making that has no allowance for balance, for taking into account of the benefits of development, and fails to follow the terms of the NPPF. ST1 seeks to prevent any development that causes any adverse effects on the character of the environment or highway safety/capacity. ST4 engages EV2 and EV2 itself has an absolute, no harm approach to effects on the countryside. This approach doesn't even allow for the flexibility of permitting development in very special circumstances and so is even more restrictive than Green Belt policy. These policies are not only restrictive in approach, such that the NPPF requirements to boost housing

²² SoCG at CD 9.1- para 6.4

and make balanced judgements in achieving that aim is frustrated but are inconsistent with the specific language of the NPPF on landscape and highways matters. NPPF 187 requires decisions to *recognise* the character and beauty of the countryside. EV2 and ST1 deal with the same topic, but do so in a fundamentally different way; to stop all harm to something is fundamentally not the same as to recognise the value of it. Similarly, NPPF 116 when dealing with highways matters, uses the concepts of unacceptable safety issues and severe capacity issues, not prevention of any adverse effect at all.

- 4.4 These inconsistencies have been relied upon many times by inspectors on appeal and by the Council itself to determine these policies out of date²³.
- 4.5 It follows therefore, that in addition to the most important policies being out of date for land supply reasons, they are also out of date for reasons related to consistency with the NPPF and because the boundary that defines the built-up area from the countryside is itself fundamentally out of date. These points are important as they severely diminish the weight to be given to any breach of policy in the planning balance.

5 Emerging Local Plan

- 5.1 For the reasons already set out above and in particular with regard to the examining Inspectors' letter of 3 December 2024, whilst it was already agreed that the emerging plan should carry limited weight²⁴, even that is now an over statement. The future of the ELP is uncertain and the content even more so. There is a strong push on the Council to find large non Green Belt sites to meet the housing shortfall. The appeal site is a perfect candidate.

6 Sustainable Location

- 6.1 Before turning to the evidence of Mr Cummins, it is important to note that the appeal site adjoins the built-up edge of the largest settlement in the District which sits at the top of the settlement hierarchy of the adopted Local Plan²⁵. It is in the northern part of the District, when the southern part is tightly constrained by Green Belt²⁶ and when compared to the Council's constraints mapping²⁷ is one of the very few sites that adjoins the urban area and is unconstrained when all technical, sustainability and policy constraints are applied. This is highly relevant as sustainability is not a matter to be judged in a vacuum, divorced from reality. It is a matter of choices in the circumstances and here the unconstrained choices are very limited indeed. The emerging plan acknowledges the inherent sustainability of such locations as explained by Mr Lees.

²³ See G Lees 5.43- 5.50 for instances and references

²⁴ SoCG at 8.7

²⁵ ST2

²⁶ See extract from CD 11.2 at G Lees page 39

²⁷ G Lees page 41- also from CD 11.2

- 6.2 The same themes can be taken from the Council's SA for the ELP. The appeal site was a green + score against the objective of sustainability/improving travel choice in that exercise²⁸.
- 6.3 Mr Cummins' evidence sets out in detail the sustainability characteristics of the appeal site.
- 6.4 In terms of walking, he identifies the facilities that can be walked to, and the distances to them, as well as explaining that the routes are essentially flat, paved, lit, predominantly overlooked, and safe in terms of crossing roads etc. The list of facilities in a decent walk distance is extensive.
- 6.5 There are always debates about how far people will walk at public inquiries and whilst ideals of 800m are referred to in some documents we know that Guidelines for Providing Journeys on Foot describes 2,000 as the preferred maximum, that 80% of journeys up to a mile (1.6km) are on foot²⁹, and the average walk distance is described as 1.36 km³⁰. The local facilities plan at Mr Cummins' Appendix C shows a 1km and 2 km range from the site and what can be walked to, from it. Mr Cummins' proof at page 11 sets out the walk distance to the centre of Sutton at just over 2 km and also everything that is passed along the way there. In his rebuttal he has revisited the distance to walk to the rail station, which varies between 1.4 km and some 1.86km depending on which part of the site one starts at and the route chosen³¹. This falls under the 2 km figure and sits favourably compared to the figures for average and 80th percentile walk distances from the documents set out above. The station provides a quick, convenient and frequent (every 30 mins at peak times and a 34 min journey time) service to Nottingham. Mr Cummins' Proof at Figures 5 and 6 also sets out the relatively modest walk distances to local employment sites – between 540 m and 1.35km. In total the routes, distances and opportunities for walking are attractive and convenient.
- 6.6 The same can be said of cycling opportunities and Mr Cummins shows how the appeal proposals will fill gaps in local cycle infrastructure and connect to a wide range of places and facilities. Extra cycle facilities will be funded at the station to allow that short and convenient cycle to be carried out with security to leave a bike and board a train.
- 6.7 In respect to buses, Mr Cummins' Proof sets out the empirical evidence that expects bus patronage, based on the local area, to be some 6.4% of movements to and from the site. In other words, this is the sort of level that might be expected on average for this area of Sutton generally. That amounts to some 18 peak hour movements.
- 6.8 The Council's original concern regarding sustainable travel appears to be rooted in the change of bus service so that a service that virtually passed the site is now running on a route that is further away. The answer to this is firmly to be found in the effect of the contribution sought by the County Council to

²⁸ CD 12.19 and 12.20 as to what the scoring means

²⁹ CD 14.4

³⁰ CD 14.5- National Travel Survey 2020

³¹ The police architectural officers have not objected to the scheme on the grounds of the pedestrian connections to the existing estate

enhance bus services in the area. This was summarised in the letter to the Council before their decision to contest the appeal³² and is fully set out in Mr Cummins' Appendix B. In that document – which is agreed by NCC as accurate, Mr Cummins describes how the contribution will be spent and the various sources of other funding and revenue that will be applied alongside it. He then sets out what has been agreed with the County Council in terms of the options available to return buses to run along the original route on Searby Road or potentially into the site (for which the junction and road widths provide, as well as a turnaround area at the end of the site). Four different options are explained and agreed with the County, who are the party with the responsibility for running some services, and subsidising others. The outcome will be good services, close to the site and every prospect of attracting the 6.4 % of all trips as bus trips that can be expected.

- 6.9 Overall, the site is in a sufficiently sustainable location, especially so when compared against the alternatives available for meeting housing needs in the District.

7 Landscape Character and Views

- 7.1 The landscape effect of the proposal wasn't raised by members in July 2024 and has been rightly dropped since. The site is not part of a valued landscape and has no designation regarding its status or value for landscape purposes. It is ordinary farmland, with no tree or hedge cover save for around its boundaries and one internal hedgerow. One veteran tree sits in the site and will be retained and protected. It is the sort of site that the Council will inevitably have to allocate for development to meet development needs and the terms of the Inspectors letter of 3 December 2024 regarding the ELP.
- 7.2 The development of any greenfield site on the edge of a settlement will mean that edge will change. There will always be views of the new development that didn't exist before. That is why the terms of the NPPF require decision makers to recognise the landscape in the planning balance exercise, and not to prevent development of greenfield sites, just because that will result in change.
- 7.3 In the circumstances of this site, the key factors of relevance are:
- (a) The ordinary nature of the site and its landscape features,
 - (b) The topography which causes this site to slope towards the settlement of Sutton and not away from it, so that change in the landscape will relate to the settlement and not be apparent from the wider countryside,
 - (c) The physical and visible presence of the settlement edge when seen from surrounding view points,
 - (d) The limited visual envelope of the site created by topography,

³² CD 12.27

- (e) The screening of views of the site, by existing landscape features, and also the extensive areas of built form that define the current settlement edge,
- (f) The amount of on-site mitigation; open space and new planting.

7.4 Having regard to these matters, the appellant commends the analysis of James Atkin to you as a fair reasoned, informed and objective assessment of the site's landscape and visual qualities, sensitivity and its ability to accommodate the development proposed.

7.5 The key features of Mr Atkin's evidence are:

- (a) The limited local Landscape context and a degree of separation from the wider SPZ 11 area (which itself is described as having moderate condition and moderate sensitivity³³).
- (b) The low to medium landscape sensitivity of the site itself.
- (c) The modest effects on landscape components being limited to a loss of agricultural land and some hedgerows at the site edges that can be replaced and indeed achieve betterment as a consequence³⁴.
- (d) The effects of topography and settlement edge in both landscape and visual terms.
- (e) The site's containment, such that the focus of views where there will be either a minor/moderate or moderate effect (at 15 years) is limited to a small number of areas:
 - (i) Coxmoor Road- where the views are short lived, partially screened, influenced by the character and nature of the road, and affected by the very apparent settlement edge.
 - (ii) Searby Road, the surrounding estate and settlement edge- where the views are typical of an ordinary edge of settlement location, are heavily influenced by the existing residential development, and the change would be similar that that of green field site. The view of houses in this location is a typical part of the viewer's experience.
 - (iii) Views from the two public paths to the south of the site that converge at Windmill Hill- where the topography slopes most noticeably towards the

³³ CD 10.1 at page 98

³⁴ As noted in the Officers report to committee – CD 3.1

settlement edge, with some views foreshortened by a small ridge that separates the site from these routes or by hedgerows and planting.

- (iv) Views from slightly higher ground to the east – a wide panorama that takes in both existing and newly approved (Advanced Manufacturing and Distribution) development in the foreground.
- (v) Views from Newark Road in the vicinity of the site frontage, where there is already an influence of existing development creating an urban fringe context and character.

7.6 The inbuilt mitigation of the masterplan is one of the outcomes of the LVIA process that is designed to recognise the character of the landscape by considering and responding to the matters above. It is an important feature that assimilates the proposed development into its context. The development envelope is set back from its edges, vegetation is kept where possible and replaced and enhanced where not. Green infrastructure and open space are significant features of the scheme with some 30% of the site left as open space. The Newark Road hedgerow is replaced but with a hedge of better diversity and quality and capable of being created within 3-5 years and screening the site within 8 years³⁵.

7.7 When all these matters are considered, in the context of the NPPF requirement to recognise the character and beauty of the countryside, the clear and correct view of Mr Atkin is that the landscape and visual effects are not sufficient to support the putative reason for refusal, but of course it is a matter to go into the planning balance, the appellant says with limited weight.

8 Agricultural Land

8.1 The site is almost entirely grade 3a and so best and most versatile by definition. The terms of the NPPF (187) require this to be recognised in the decision-making process. This is a matter to be weighed in the balance, but Mr Kernon's proof provides context for why this matter should be given limited weight, in addition we have the Council's own acceptance that meeting the housing needs may well involve the development of best and most versatile land, which Mr Kernon shows to be inevitable.

8.2 The key considerations are:

- (a) Whilst 19.2 ha is grade 3a, it is wet in spring which delays access and needs regular rain in May and June. It is not suitable for root crops,
- (b) The land forms part of two farms and amounts to less than 5% of one and 1% of the other. Its loss to farming will have no material effect on those businesses,

³⁵ Mr Atkin in answer to the Inspector

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- (c) The uplift between grade 3b and 3a for this site, in terms of economic output, is less than £4,500 per annum. In terms of food production, it is some 23 tonnes and in the context of the national output, this is one millionth of the annual production. Food production as a measure has now been removed from the NPPF,
 - (d) The site is below 20Ha in area and therefore below the size that triggers consultation with NE. It can be viewed as not significant in size for several reasons, including being viewed as not significant when undertaking an EIA, as explained by Mr Kernon in his proof at pages 17 and 18,
 - (e) The Council has also given limited weight to this matter in its own decision making as shown by:
 - (i) Allowing development on BMV (including Grade 2 land) in the past,
 - (ii) Granting permission on such land recently,
 - (iii) Identifying new allocations on such land in the ELP, and
 - (iv) Only considering whether land is Grade 2 and not 3a in the ELP process.

8.3 This is a matter that consequently carries only limited weight in the planning balance.

9 Contaminated Land

9.1 As explained already the Council's case on this matter changed before being withdrawn and was never supported by any competent technical parties such as the Council's EHO or the EA.

9.2 The original concern about locating SUDs ponds in the area of the former landfill (on an illustrative masterplan) was readily capable of being addressed, and has been in the alternative illustrative masterplan that has now been produced. This could always have been dealt with by condition, if necessary, although the evidence of Mr Leask is that there is no reason why it should be (SUDs features in areas of former landfill being relatively commonplace and needing only the appropriate engineering approach to avoid concerns).

9.3 The latest iteration of the Council's concern, before it was withdrawn, is related to whether the site is in principle suitable for residential development because of the past landfill operations on part of it. In short there is no doubt it is suitable, subject to the imposition of standard planning conditions.

9.4 The PPG, at 33-08-20190722 addresses the question of what should be done at the outline stage. It confirms the information should be proportionate and the LPA should understand the condition of the site, the way it is to be remediated and has sufficient information to be confident that it will be able to

grant permission in full later with remediation that is viable and practical. The NPPF sets the test, required to be met for the grant of permission as being the avoidance of "**unacceptable risks**"³⁶.

9.5 Both of these tests were judged three times to be met by the Council's EHO and separately by the EA.

9.6 The proof of Mr Kitson- Boyce addresses this in more detail. He explains:

- (a) There was a Phase 1 report done by his practice in February 2022 which had appended to it a permeability report of September 2017 and a ground gas report of May 2018³⁷. This was supplemented by the Council receiving an earlier SWK report of 1998³⁸ that itself included intrusive examination of the site and chemical testing (including of the former landfill area). Subsequently there has been submitted to the Council, in November 2024 the Phase 2 ECE report of May 2022 and the ECE ground water and piling report of July 2022³⁹ that were undertaken for Harron Homes,
- (b) There is a full understanding of the hydrogeology and hydrology of the site – an issue the EA are primarily concerned with such that the risks to the aquifer are assessed and understood to be very low,
- (c) The location, in the northern part of the site, and history of the former landfill is fully explained as well as the limitations on the license for its operation, which prohibited anything other than construction waste, in particular combustible putrescible or other waste likely to cause pollution was prohibited,
- (d) The approach to testing and understanding the site via intrusive survey that has been carried out and which has included 122 exploratory positions across the site, with 90 of these in the former landfill area. This is ample to meet the task of proper assessment and is detailed and empirical evidence that can be relied upon, in sharp contrast to the anecdotal and anonymous⁴⁰ suggestions of councillors and local residents,
- (e) The findings as to the depth of topsoil and capping layer on the former landfill,
- (f) The absence of asbestos from the analysis of the site,
- (g) The absence of domestic or putrescible material on the site,

³⁶ NPPF 187 (e)

³⁷ These are all in CD 1.41 and separately in CD 13.7-9

³⁸ CD 13.1

³⁹ CD 13.2- 3

⁴⁰ Described as such by those who spoke on the matter

- (h) The absence of water bodies or springs,
- (i) The existing porosity of the site which means that as in its current state it is not allowing leachate to cause any issues (confirmed by examination of the material below the landfill) the reduction in permeable area and removal of potential pathways brought about by the development can be seen as a matter of modest betterment,
- (j) That in terms of the outcome of the chemical testing (44 samples at different times, including the SWK/Rolls Royce Report- across the former landfill area) whilst some marginal exceedances were found of some chemicals, these were all either so minor, at depth or would be covered in a conventional remediation approach of a 600mm clean capping layer (or a combination of all these) so as not to pose any unacceptable risks (proof pages 29-33). Indeed, the evidence of Mr Kitson Boyce was that the 600mm clean capping layer would address any risks even if there was more contamination or it was closer to the surface,
- (k) Further it is explained that there would be no unacceptable risks posed to groundwater or surface water,
- (l) That there are acceptable piling solutions that will not change any of these findings,
- (m) A full assessment of ground gas has been undertaken and the results require the lowest category of mitigation – CS2, which requires a ground membrane and passive underfloor ventilation, which will be applied not just to the landfill area but also the areas adjacent to it for good measure.

9.7 Overall, there is comprehensive evidence that there are no unacceptable risks to people, water or otherwise by carrying out the development as proposed with the conditions suggested. There is certainly ample material to grant outline permission. Mr Kitson- Boyce also explains how his evidence compares to other similar cases approved either by local authorities or on appeal, some with much more contaminated sites to start with.

10 The Level Crossing

10.1 This matter was not raised by the County Council as an area for concern, nor by Network Rail or even by the Councillors as a basis for deferral in July 2024. As with all other matters the Council has now withdrawn its October 2024 concerns.

10.2 Mr Cummins' Proof confirms the following:

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- (a) In terms of accidents, those that have occurred at the mini roundabout to the east of the level crossing were not caused by issues that indicate a specific fault of the network and no accidents were connected with the operation of the level crossing itself. Any other suggestion is anecdotal and unevidenced,
 - (b) The operation of the level crossing has been surveyed twice (2017 and 2024) and the results are sufficiently consistent. The barrier goes down for some 3 minutes and 3 seconds on average with only a couple of outliers. This happens approximately every 15 minutes. It is an existing feature of the network and delays traffic when it happens. Network Rail have been consulted and confirm the timings cannot be changed. They are required as a function of the safe passage of north and southbound trains (see DC Proof at page 30) Network Rail has no concern with regard to the development and the level crossing (save for the construction traffic avoiding it),
 - (c) The mini round about at Kirkby Folly Road/ Newark Road has been surveyed and resurveyed for completeness in 2024. The development will add just 3.3% in terms of traffic at this junction,
 - (d) The capacity analysis of the junction shows that the Kirkby Folly Road/ Newark Road junction currently has issues with west bound straight ahead traffic on Newark Road but that this doesn't stop left turning traffic heading for Kirkby Folly Road and in a similar manner whilst there are queues on the Kirkby Folly Road approach to this junction, the queue of left turners (heading towards the level crossing) does not inhibit the right turners. The capacity of this junction on the west bound approach (from the direction of the level crossing) is good and there is a 40 m / 7 car space between the level crossing and the junction in this direction.
 - (e) The mitigation proposed at this junction is shown to result in a better than nil detriment effect with the development in place.
 - (f) In summary, the Kirkby Folly Road/ Newark Road junction will be little affected by the development (3.3% more traffic), will be improved as a result of the development to a better than nil detriment situation, and in particular has no capacity issues on the approach from the level crossing.
 - (g) The interaction with the level crossing and the mini roundabout is therefore as follows:

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- (i) The barrier down time creates an average queue of some 16 vehicles eastbound and 13 westbound now,
 - (ii) On the same basis the development will add 0.6 of a vehicle to the eastbound queue and 0.2 of a vehicle to the westbound queue, which is very modest indeed,
 - (iii) In the case of the west bound approach to the level crossing there is no safety issue now or caused by the development- when the barriers are down there will be an unnoticeable additional amount of traffic that queues back from the crossing towards and over the mini roundabout,
 - (iv) In the case of the eastbound traffic, as the barrier lifts and traffic approaches the mini roundabout from the direction of the level crossing, it will be able to pass through the mini roundabout relatively unimpeded as there is ample capacity on this approach. There is then some 15 minutes before the barrier is due to go down again to allow all stopped traffic time to clear the mini roundabout. There is no safety issue now and none will be created,
 - (v) Finally, it is important to note that the level crossing itself is monitored by CCTV and controlled by a signaller who is able to halt trains in the event that there was ever traffic on the crossing when the barrier is due down.

10.3 The development does not create a safety or capacity issue associated with the level crossing, the mini roundabout or otherwise.

11 Searby Road/Newark Road

11.1 Cllr Relf has raised a concern regarding the capacity of the Searby Road junction and location of the give way line that is to be relocated on Searby Road to incorporate the County Council's desired cycleway.

11.2 In relation to the first of these points, the assessment of traffic effects has been scoped with the County Council as LHA and has been assessed in detail. The appeal scheme adds no traffic to Searby Road, provides a box junction that will assist egress from Searby Road in the unlikely event there was queuing across the junction on Newark Road, will not cause queues back from the access junction to this point and will platoon traffic as it passes the access junction heading westbound. There is no case at all to suggest the appeal scheme will have a severe effect as a consequence of the traffic it generates. This has never been a concern of the County Council over their many back and forth consultation responses and requests for analysis and design changes.

11.3 The other claim is that there will be inadequate visibility at this junction. This is not correct as set out in Mr Cummins' rebuttal on this matter. The Cllrs photograph is taken from the wrong location. A surveyed and scaled drawing shows the ample adequacy of the visibility splay.

11.4 There is no evidence of a safety or capacity issue that would fail the 116 NPPF test at this junction.

12 Flood Risk and Drainage

12.1 Cllr Relf also raises concerns about flooding and drainage. These are fully addressed in the original statement from Mr Leask and his technical note of rebuttal.

12.2 As agreed with the Council there is no basis for refusal related to flooding⁴¹. There is no objection from Severn Trent Water ⁴² and none from the EA or the County Council as the LLFA.

12.3 All up to date and published sources of information show that only a small part of the site is subject to the lowest risk of flooding. This includes the FRA, SFRA, EA records and CC documents as the LLLFA.

12.4 The Appellant is and has always been aware of the silted-up land drain that crosses the site and is as a consequence inoperable. This silting up appears to be the cause of the low risk flooding recorded by the EA in this area. It is in effect a maintenance issue. The scheme addresses the replacement of it with a series of other features that will manage any water and reduce the speed of run off. These will be properly designed, very different from an unjointed farmer's land drain and be subject to proper maintenance.

12.5 The drainage strategy for the site will bring material betterment to the existing situation in the nearby residential area as run off flows will be materially reduced for any major events.

12.6 The position of STW in relation to foul capacity and connections is clear in CD 2.29A. They have no objection, do not require any form of modelling and are happy to see permission granted with a standard condition imposed.

12.7 The heart of the issue with historic events of combined sewers flooding off site is related to the storm events causing additional surface water to enter them. It is not related to foul capacity. Surface water from the site will be materially reduced in storm events due to on-site storage. The off site events that have been raised by locals have been in areas that the EA flood mapping has identified as at medium or high risk and are to be distinguished from the site in that respect. No other flooding issue or flooding policy issue has been raised or explanation sought from any party.

13 Planning Balance and Conclusions

⁴¹ SoCG at 8.56

⁴² CD 2.29A- the latest of the responses

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- 13.1 The tilted balance is clearly engaged. The weight to be applied to conflict with the most important policies is limited as they are not only out of date but harmful to the delivery of the key objectives of national policy; the delivery of housing and affordable housing. The weight to be applied to the loss of agricultural land that is at the lowest category of best and most versatile is limited for the reasons set out above and so too the weight to be given to the modest landscape and visual effects of the scheme.
- 13.2 On the other hand, the weight to be given to the building of houses given the desperate position the Council is now in with an increased annual requirement, a failure of delivery that stretches back years and a third attempt at plan making that looks to be on the rocks unless sites just such as this are quickly added to the plan as allocations, is substantial. For similar reasons the weight to be given to the provision of 30 affordable homes is also substantial (see James Stacey proof- there is a massive need, a massive shortfall in past and future supply and every person or family in need are real people in a housing crisis).
- 13.3 There are moderately weighted economic benefits as set out by Mr Lees (see proof and Appendix 3) and there are moderately weighted environmental benefits related to the location of the site, the BNG to be delivered, the 30% of the site to be accessible open space, and new planting. Minor benefits can also be ascribed to the reduction of run off from the site and the concerns that local residents have about the existing situation, which will be improved, as well as to an improvement to any risks associated with contamination.
- 13.4 As concluded by Mr Lees, the appellant would ask you to approve this appeal and grant permission because the benefits significantly and demonstrably outweigh the adverse effects of the proposal, not the other way around which would have to be found for permission to be refused.

14 Planning Obligation Issues

- 14.1 There are three issues that are contentious: secondary education, off site public open space and the waste contribution.
- 14.2 In relation to secondary education the following matters are highlighted:
- 14.2.1 There is a surplus of 246 school places,
 - 14.2.2 This provides capacity for 1,537 dwellings,
 - 14.2.3 The appeal scheme creates a need for 48 places,
 - 14.2.4 There is no CIL charging schedule in place or proposed,
 - 14.2.5 The County Council notes that there are applications for planning for 1,912 dwellings, but that 1,227 of these are dependent on the emerging local plan which the District Council

accepts is to be given limited weight. All the balance, which includes the appeal site, can be accommodated by the capacity that is available,

- 14.2.6 There is no doubt that the appeal site and all planning commitments (permissions granted) can be accommodated by the capacity that is available,
- 14.2.7 The Council has not consistently sought contributions from other similar developments, notably in a recent appeal for some 124 dwellings at Frackley Road and its own officers have written reports explaining why it would not be CIL 122 complaint to do so,
- 14.2.8 Not only is there is ample current capacity, but there is a reduction in primary and first year secondary pupil numbers which will feed through to a secondary surplus anyway by the time the appeal site pupil yield is reaching any material amount,
- 14.2.9 There can be no lawful and CIL regulation 122 compliant basis for seeking that the appeal site is to pay for capacity issues it does not create and share the cost of capacity issues that may arise in the future as a result of other development that may or may not materialise but in no clear timescale,
- 14.2.10 It would simply not be lawful or indeed necessary to seek the contribution sought and for that to be used in any part of the decision to grant permission. The usual first come first served approach should apply.

14.3 In relation to public open space:

- 14.3.1 The appeal scheme meets the Local Plan policy in terms of on-site open space provision,
- 14.3.2 The Council can point to no other policy, SPD or other guidance that supports their case and the references to the POS document at CD 12.4 provides nothing of tangible assistance,
- 14.3.3 Whilst the Council's CIL Statement (CD 9.5) refers to the recently improved sites at Roundhill, Sutton Lawns and Kingsmill Reservoir, it expressly states that the appeal site is **not** expected to contribute to these, essentially because they have already been massively improved to a high standard. They are also accessible from the site,
- 14.3.4 The Council has failed to evidence either the extent of any local shortfall, the need for more than is provided on the site, or already in the surrounding area or any basis behind the calculation of the figure sought which is a simple £3,000 per dwelling. We have no idea what it would be spent on, how it has been arrived at or why it is suggested to be needed to meet the needs of this development,
- 14.3.5 CD 9.7, the Council's latest note on the matter, casts no light either. Its costs are not a basis for answering the questions above, but simply the cost of on site provision of a series of unjustified and unexplained items of possible expenditure, that come to a different figure altogether. There is then some vague references to improving connectivity to other open space in the area which is neither explained, justified, or costed.
- 14.3.6 There is no basis, consistent with the CIL regulations, for requiring this contribution.

- 14.4 The waste contribution is based on a calculation related to a share of the cost of a new waste facility, needed now anyway for the District and adjoining Districts. The scheme is on an unknown site with an approximate cost.
- 14.5 This contribution would also not be necessary to make the development acceptable, reasonable related to it or directly and fairly related in scale and kind. It would not be CIL compliant.

Richard Sagar
Walker Morris
16 January 2025