

ASHFIELD DISTRICT COUNCIL

TOWN AND COUNTRY PLANNING ACT 1990

SECTION 78 APPEAL

Appeal by **Hallam Land** against the non-determination of a planning application
by
Ashfield District Council for

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

at Land at Newark Road, Coxmoor Road, Sutton in Ashfield

Planning Inspectorate Reference: APP/W3005/W/24/3350529

Council Reference: V/2022/0629

STATEMENT OF CASE

1.0 INTRODUCTION

- 1.1 This Statement of Case (“SoC”) relates to an appeal lodged by Hallam Land (“the Appellant”) to the Planning Inspectorate (“PINS”) with a start date of 24th September 2024, under reference APP/W3005/W/24/3350529. The SoC sets out the case for Ashfield District Council (“The Council”) in respect of the appeal which has been made against the Council’s non-determination of a planning application, under reference V/2022/0629, on land at Newark Road, Coxmoor Road, Sutton in Ashfield.
- 1.2 The description of development is as follows:
“Outline planning application (with all matters reserved except access) for a residential development of up to 300 dwellings with associated infrastructure and landscaping”.
- 1.3 On 23rd October 2024, the Council’s Planning Committee considered that, had the appeal not been made, they would have been minded to refuse the planning application for 5 reasons. These are set out below:

Reason 1

The site is not a sustainable location for further residential development by virtue of the limited public transport opportunities and the need to travel by car to access higher level services. The development would therefore be contrary to Policy ST1 of the Ashfield Local Plan Review 2002 and the aims and objectives of the National Planning Policy Framework (2023).

Reason 2

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).

Reason 3

The proposed development would have an adverse impact on the character and appearance of the open countryside. The development is therefore contrary to Policy ST1 of the Ashfield Local Plan Review 2002 and objectives of the National Planning Policy Framework (2023).

Reason 4

Insufficient information has been provided to demonstrate that the development proposed would be suitable to provide a residential use taking account of ground conditions and risks arising from contamination. The development is therefore contrary to paragraphs 180c) and 189 of the National Planning Policy Framework (2023).

Reason 5

Insufficient information has been provided to fully assess the impact upon the local highway network. In particular there is insufficient information on the impact of the development having regard to its proximity to the existing the level crossing and the implications when the crossing gates are closed during peak times. Consequently, this lack of information means that it has not been demonstrated that the proposal would not have a severe impact upon the highway, which would be contrary to Policy ST1 of the Ashfield Local Plan Review 2002 and paragraph 115 of the NPPF.

- 1.4 This SoC provides a description of the site, its surroundings and the proposed development, relevant planning history, national and local planning policy context and relevant guidance, the Council's case with regard to the resolved reasons for refusal and outlines its statutory duties.
- 1.5 The Council will seek to agree details where possible within the Statement of Common Ground ("SoCG") prepared by the Council and the Appellant.
- 1.6 This SoC is prepared on behalf of the Council and in accordance with the Inquiries Procedure Rules (SI 2000/1625) and having regard to the Inspectorate's 'Procedural guide: Planning appeals – England' (updated 17 September 2024)

("the Procedural Guide"), in particular section 11 Inquiries. It provides a succinct statement of the case that the Council will present at the Public Inquiry.

2.0 THE APPEAL SITE & PROPOSALS

- 2.1 The site ("the Site") comprises 21.4 hectares of open countryside set to arable production on the edge of the town of Sutton in Ashfield. To the north-west the site is bounded by the B6022 Newark Road across which is a commercial/ industrial estate. To the north-east the site bounds the B6139 Coxmoor Road across which is open countryside. To the south-west the site bounds the existing residential development off Sotheby Avenue and to the southeast the site abuts open countryside. The Sherwood Observatory and Coxmoor Golf Club are located approximately 440m to the south-east.
- 2.2 The topography of the application site slopes down from Coxmoor Road and from the southeast of the site to the north-west.
- 2.3 Within its 21.4ha area, approximately 97% of the Site is Grade 3a, "Good" quality agricultural land and 3% is of Grade 3b "Moderate" quality agricultural land.
- 2.4 The appeal seeks outline planning permission for the construction of up to 300 dwellings with all matters except for access reserved for subsequent approval. The site would be accessed via a new traffic signal-controlled T-junction on Newark Road and would provide on-site open space provision and 10% affordable housing.

3.0 RELEVANT PLANNING HISTORY

- 3.1 V/2017/0565: Outline application with some matters reserved for a residential development of up to 300 dwellings, new public open space, landscaping, drainage infrastructure and access at land at Newark Road. Application closed with no decision made.

4.0 THE DEVELOPMENT PLAN

4.1 The Development Plan for the Borough consists of:

- Ashfield Local Plan Review (ALPR) 2002

4.2 The following policies of the ALPR are relevant in the determination of the appeal:

- Policy ST1: Development.
- Policy ST4: The Remainder of the District
- Policy EV2: The Countryside.
- Policy HG3: Housing Density.
- Policy HG4: Affordable Housing.
- Policy HG5: New Residential Development.
- Policy HG6: Open Space in Residential Developments.
- Policy TR2: Cycling Provision.
- Policy TR3: Pedestrians and People with Limited Mobility.
- Policy TR6: Developer Contributions to Transport Improvements.

5.0 RELEVANT MATERIAL CONSIDERATIONS

5.1 National Planning Policy Framework (“NPPF” or “the Framework”) (revised in December 2023). The chapters of the December 2023 NPPF considered relevant to the proposal include:

- Part 2: Achieving Sustainable Development.
- Part 5: Delivering a Sufficient Supply of Homes.
- Part 8: Promoting Healthy and Safe Communities.
- Part 9: Promoting Sustainable Transport.
- Part 11: Making Effective Use of Land.
- Part 12: Achieving Well-Designed Places.

- Part 14: Meeting the Challenge of Climate Change, Flooding and Coastal Change.
- Part 15: Conserving and Enhancing the Natural Environment.

5.2 Other material considerations include:

- Planning Practice Guidance
- Ashfield Residential Design Guide 2014.
- Ashfield Residential Car Parking Standards 2014.
- The National Design Guide 2020.
- National Model Design Code 2021.
- Building for a Healthy Life 2020.
- Gear Change: A Bold Vision for Cycling and Walking 2020.
- Cycle Infrastructure Design (LTN 1/20) 2020.
- Manual for Streets 2 2010.
- Nottinghamshire Highway Design Guide 2021.
- Residential Car Parking Standards 2014.
- Written Ministerial Statement of 30 July 2024.

6.0 THE COUNCIL'S CASE

6.1 The Council's reasons for refusal comprise the following elements, by way of summary, which will be addressed in turn:

- i. The site is not a sustainable location for further residential development by virtue of the limited public transport available and the need to travel by car to access higher level services;
- ii. The proposal would result in the loss of best and most versatile agricultural land;
- iii. The proposal would have an adverse impact on the character and appearance of the countryside;
- iv. It has not been demonstrated that the development proposed would be suitable to provide residential use taking account of ground conditions and risks arising from contamination; and

- v. The proposal has provided insufficient information to determine the impact of development on the existing highway network pressures created by the level crossing on the B6022 Station Road and provides the potential for harm to the highway network in the absence of such information.

Planning Policy Context

- 6.2 The basket of policies from the development plan most important for determining this application are considered to be those concerning the delivery of housing development within and outside of the boundaries of the main urban areas of Ashfield District, namely policies ST1, ST4 and EV2 of the ALPR.
- 6.3 Policy ST1 sets out the overall strategy for assessing development proposals and states, amongst other criteria, that Development will be permitted where, at a) *“it will not conflict with other policies in this Local Plan”*.
- 6.4 Having regard to the provisions of ST1(a) other policies that go to the principle of development therefore include ST4 and EV2. Policy ST4 sets out that outside of main urban areas and named settlements, permission will only be given for *“a) sites allocated for development”* and *“b) development appropriate to the Green Belt or countryside as set out in Policies EV1 and EV2”*. The site is not allocated, so does not meet the test set out in ST4 a) and is required to be assessed against EV2, as countryside land.
- 6.5 EV2 states that *“in the countryside permission will only be given for appropriate development. Development must be located and designed so as not to adversely affect the character of the countryside, in particular its openness.”* The appeal scheme does not fall into any of the categories of development identified within Policy EV2 as appropriate in the countryside. Furthermore, it would have an adverse impact on the rural character of this area of countryside and fail to preserve its openness.

- 6.6 The proposal is therefore contrary to Policies EV2 and ST4 and therefore ST1(a) of the Local Plan. The proposal should therefore be refused unless material considerations indicate otherwise.
- 6.7 Whilst it is recognised that the Appellant's Statement of Case states that these policies are out of date and as such should be afforded reduced weight, the Council conclude that insofar as the policies seeks to limit development in the countryside to that which protects its character, they are broadly in accordance with the Framework's requirement to recognise the intrinsic beauty and character of the countryside, at paragraph 180b).
- 6.8 The Council are required to demonstrate a 4-year deliverable supply of housing sites, as their emerging Local Plan has reached Regulation 19 stage setting out a proposed allocation strategy. The draft Local Plan is a material consideration in this appeal, in particular because the Site is not allocated within the proposed housing allocation strategy, however given the status of the draft Local Plan and the extent of unresolved objections, it is to be afforded limited weight in this appeal, in accordance with NPPF paragraph 48.
- 6.9 It is accepted that the Council cannot currently demonstrate a 4-year housing land supply. Therefore, the tilted balance outlined within Paragraph 11(d) of the Framework is considered to be engaged and an assessment of whether any adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole, is required.

Resolved RFR1: Sustainability and Public Transport

- 6.10 As is stated above, the proposal seeks to locate housing outside of the areas where housing development is to be directed by ALPR Policies ST1, ST4 and EV2 and therefore is in conflict with the development plan.

- 6.11 In evidence, the LPA will show the poor quality of available and accessible public transport provision that would be available to future occupiers. The Council will demonstrate that due to the limitations of the bus service, it is unlikely to be a reliable option for access to employment or for leisure and does not offer a genuine choice of transport for future occupiers. Inevitably this will lead to a high frequency of car journeys. That is the case irrespective of the contribution the Appellant offers to make towards improving the bus service, which in isolation the Council accepts provides some benefit.
- 6.12 The LPA will set out how as a consequence of the above, residents of any new dwellings would be expected to travel by car on a regular basis to access services and facilities that are not located at sustainable distance from the Site.

Resolved RFR2: Agricultural Land Quality

- 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.

Resolved RFR3: Landscape and Visual Impact

- 6.15 The proposed development will result in the introduction of new built form into an area of currently undeveloped agricultural land on the edge of the village of Sutton in Ashfield. The Council will present evidence to demonstrate that the proposal would result in encroachment into, and an irreversible loss of, open countryside and will have an unacceptable adverse impact upon that character.

- 6.16 In evidence, the Council will set out that this is contrary to Policy ST1 of the Local Plan and weighs against the development.

Resolved RFR4: Ground Conditions and Contamination

- 6.17 In evidence, the LPA will show that insufficient evidence has been provided to demonstrate that the development proposed would be suitable to provide residential use taking account of ground conditions and risks arising from contamination. The site has formerly been used as a quarry which has been subsequently back-filled with waste.
- 6.18 Paragraph 180(c) of the NPPF states *“Planning policies and decisions should contribute to and enhance the natural and local environment by [amongst other things] preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability”*. This is expanded upon by paragraph 189 which states *“Planning policies and decisions should ensure that... a) a site is suitable for its proposed use taking account of ground conditions and any risks arising from land instability and contamination. This includes risks arising from natural hazards or former activities such as mining, and any proposals for mitigation including land remediation (as well as potential impacts on the natural environment arising from that remediation)”*.
- 6.19 The Council will set out that insufficient evidence has been provided to demonstrate that the risk to water and drainage contamination can be satisfactorily mitigated in a circumstance where further ground condition testing is required to be carried out to inform proposed mitigation measures given the lack of uniform testing across the site; and in a circumstance where the Appellant’s report provides inaccuracies, such as assuming that the site contains “no onsite water courses”. In the absence of sufficient information to inform the effectiveness of proposed mitigation measures, the proposal is contrary to paragraphs 180c) and 189 of the Framework.

Resolved RFR5: Impact on the Highway Network

6.20 In evidence, the LPA will show that insufficient evidence has been provided to understand the impact of the development having regard to its proximity to the existing the level crossing and the implications when the crossing gates are closed during peak times. Consequently, the LPA will set out that this lack of information means that it has not been demonstrated that the proposal would not have a severe impact upon the highway, which would be contrary to Policy ST1 of the Ashfield Local Plan Review 2002 and paragraph 115 of the NPPF

Other Material Considerations

6.21 With reference to paragraphs 9.110 to 9.124 of the appellant's Statement of Case, the following points are accepted by the Council as benefits of the scheme:

- Contribution to market and affordable housing supply;
- Creation of on-site open space and community facilities
- Financial contributions to bus service improvements and to off-site sports and recreational facilities.
- Economic benefits through increased local spending on local services and facilities and through construction
- The ability for the scheme to achieve biodiversity net gain for habitats and hedgerows

6.22 In their evidence the Council will explain the weight that it considers should be attributed to these benefits.

Conclusion

6.23 Taking into account all of the above, it will be demonstrated that the adverse impacts of the development would significantly and demonstrably outweigh the benefits of the proposal and therefore, that this is an unsustainable form of development. On this basis, the Inspector will be invited to dismiss the appeal.

Statutory Duties

- 6.24 The appeal site is not located within a conservation area and does not impact on the setting of a listed building; as such Sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 do not arise.

Draft Conditions

- 6.25 If the Inspector were minded to allow the appeal, a series of conditions would be required. The Council will prepare a schedule of conditions in advance of the Inquiry. The Council will seek to work with the Appellant to find common ground on a schedule of drafted conditions and will submit these to the Inspector.

Documents to which the Council may refer will include:

1. The original officers recommendation report and the update to committee members
2. Ashfield Local Plan Review (ALPR) 2002
3. National Planning Policy Framework (2023)
4. Planning Practice Guidance
5. Timetables of bus services in the locality of the site
6. Any other relevant reports, documents, statistics published by the Council before or during the appeal process
7. Relevant case law and appeal decisions
8. Relevant decisions of the Secretary of State which may arise during the appeal process
9. Relevant evidence base documents to inform the preparation of the emerging Local Plan
10. Annual Monitoring Reports
11. Any other relevant documentation or Government guidance that is published during the appeal process.