

**Whyburn Consortium**

**Hearing Statement**

**Week 1 Matter 3**

Respondent ID: 63

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Date: October 2024



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## 1.0 Introduction

CarneySweeney are acting on behalf of the Whyburn Consortium in making representations to the emerging Ashfield Local Plan (2023-2040), with representations having been made to the previous Regulation 19 consultation stage.

Our previous representations are not repeated here but should be read in conjunction with this Hearing Statement to the Inspector's Matters, Issues and Questions for Week 1: Matters 1, 2 and 3.

As requested, we have provided separate Hearing Statements for the following Matters:

- Matter 1 – Procedural and legal requirements including the Duty to Cooperate
- Matter 2 – Meeting Ashfield's Housing Needs
- Matter 3 - The Spatial Strategy and the distribution of development

This document covers Week 1 Matter 3 – The Spatial Strategy and the distribution of development.



## 2.0 Matter 3 - The Spatial Strategy and the distribution of development

Respondent ID: 63

### Issue

*Whether the Spatial Strategy and the distribution of development are justified, and can be accommodated without releasing land from the Green Belt? If not, do exceptional circumstances exist that would justify altering the Green Belt boundary?*

*Relevant policies – S1, S4, S7, EV1*

### Questions:

*3.1 Is the spatial distribution of development across the borough justified and what factors influenced the Spatial Strategy, for example physical and environmental constraints and the capacity to accommodate development?*

No, it is entirely unjustified and at odds with the Council's evidence base which is essentially unchanged from an earlier iteration of the plan which promoted an entirely different strategy.

Our representations submitted to the Regulation 19 consultation stage sets out in detail the inadequacy of the plan making process to take forward a dispersed development approach. The plan proposes a radical change to the distribution of development from the Regulation 18 consultation stage, from one of a sustainable settlement strategy to now a radically different 'dispersed development' approach. The primary factor which has influenced the distribution of development through a dispersed development approach has been the level of objection to the previous preferred approach at the Regulation 18 consultation stage (Option 10 in CD.04 and Option 10 in SD.03), rather than a coherent evidence base.

As set out in our responses to Matter 1 questions 1.15, 1.16, 1.17 and question 3.2 below, the findings of the Regulation 18 Sustainability Appraisal (CD.04) and the Regulation 19 Sustainability Appraisal (SA.03) remain the same for the spatial options, with the reappraisal showing "no change". The reasons for why the dispersed development approach was dismissed at the Regulation 18 consultation stage have not been addressed, and therefore the Council's evidence base is fundamentally at odds with its strategy. There, has been no proper justification forming part of the plan's evidence base to support a spatial distribution of development via a dispersed development approach, which is radically at odds from its previous strategy which was supported.

The spatial distribution of development appears to have been primarily influenced by the outcome of a quantity of objections received to the previous evidenced based approach at the Regulation 18 consultation



stage, rather than a coherent reasoned explanation. There is no clear evidence that the revised approach for the distribution of development has been properly influenced by physical and environmental constraints, or capacity to accommodate development. It is simply not justified and therefore unsound.

Whilst the proposed allocations may be influenced by such factors, this does not reflect the Council's assessment of our client's site through the SHELAA process, nor the obligation to justify the plan by proportionate evidence in order for it to be sound. The Council at ADC.02 refers to the identification of sites via the SHELAA process. Our client's site at Whyburn was a proposed allocation at the Regulation 18 consultation stage for a strategic scale of development, with no constraints noted as a reason to exclude the site from allocation (former Strategic Policy S6 of the Regulation 18 Draft Local Plan CD.01). The 2023 SHELAA assessment (SEV.20 and appendix SEV.20a) reassessed our client's site at Whyburn (site reference HK028), with the overall conclusion stating *that "... the site is available, potentially suitable, and potentially achievable"*. This conclusion remains unchanged from the SHELAA assessment undertaken for the same parcel of land in 2021. It justifies precisely the opposite conclusion and therefore the Council's position is incomprehensible. ~~therefore.~~

There is therefore no sound justification as to what factors, being physical or environmental, have influenced the Council's decision to proceed with a spatial distribution for development which is not supported by the evidence base and neither through the Sustainability Appraisal process.

### *3.2 What alternative options for the spatial strategy were considered?*

10 spatial strategy options have been considered within the Sustainability Appraisal (SD.03), with two options having been dismissed from the outset as part of the Regulation 18 consultation stage but which continued to be referred to as 'dismissed' within SD.03. However, despite the authority taking a decision to change the spatial strategy to one that would no longer look to deliver a strategic scale of development, the spatial strategy options remain unchanged from the 2021 Sustainability Appraisal which supported the Regulation 18 consultation stage (CD.04). As outlined above in our response to Question 3.1, there is therefore, no justification forming part of the plan to support a spatial distribution of development via a dispersed development approach.

There has been no further consideration of alternative options for a 'non-strategic' scale of development as currently proposed in the submitted plan, but rather a reliance on the same 10 Spatial Strategy options. It is evidentially incoherent and well short of the requirement to be justified.

As contained within our response to Matter 1 question 1.15, the Inspector should require an explanation from the Council as to why there has been no refinement of alternative options, despite the authority 'going back to the start', albeit in the absence of undertaking a further Regulation 18 consultation stage. Depending on



the Council's response to this question, we may have further comments to make during the Examination Hearing session.

### *3.3 Why was the submitted approach to disperse development chosen and is it an appropriate strategy having regard to reasonable alternatives?*

The Council have placed a reliance on a "significant level of objections" received to the previous preferred spatial strategy approach (Option 10 – CD.04) as a reason to change its strategy, and wrongly places an emphasis on the quantity of objections received as opposed to the land use merit of the objections raised. The mere fact of objections does not comprise 'evidence'.

The reasons why the dispersed development approach (Option 3) had been dismissed at the Regulation 18 stage continue to fail to be addressed (please see *Table 5.5: of CD.04*). The Sustainability Appraisal (SD.03) fails to demonstrate how the revised spatial strategy for Option 3 (dispersed development) is now an appropriate strategy to support sustainable development particularly as the document outlines that there are "no changes" to the reappraisal of the spatial strategy options from the Regulation 18 stage (CD.04).

We therefore maintain our position that the now preferred spatial strategy option has not been justified or supported by an evidence base. Neither is the dispersed development approach found to be appropriate, particularly as the settlement hierarchy under Strategic Policy S1 (SD.01) directs development to the 'Main Urban Areas' representing a direct contradiction with the fundamental definition for development to be "dispersed". Finally, the dispersed development approach is not an appropriate strategy to secure the delivery of new homes as it fails to meet the Council's minimum objectively assessed housing need, resulting in a shortfall provision with a circa 13 years supply. This is addressed further within our submitted Hearing Statement for Matter 2. The failure of the submitted plan to deliver the minimum housing requirement, demonstrates that the plan has not been positively prepared (Paragraph 35 of the NPPF) and is unsound.

We therefore seek an explanation from the authority as to why the dispersed development spatial strategy approach has been selected and what evidence base justifies such an approach. Depending on the Council's response to this question, we may have further comments to make during the Examination Hearing session.

### *3.4 Are the Plan's Strategic Policies sufficiently clear about the scale of development envisaged in each settlement/ area?*

No. Strategic Policy S1 (SD.01) identifies a settlement hierarchy to accommodate future growth but incoherently does not specify the scale of development being directed to each settlement/area. The quantum of development is subsequently set out in non-strategic Policy H1, which lists all the proposed allocations within the Main Urban Areas and Named Settlements identified through the settlement hierarchy at Strategic



Policy S1. However, when comparing the ‘order’ of the ‘Main Urban Areas’ within Part 9a) Strategic Policy S1, the proportion of proposed allocations under Policy H1 does not correspond with the suggested ‘order’ of Main Urban Areas.

The Main Urban Areas are shown to be listed in the following suggested ‘order’, with the purple text summarising the total units from the proposed allocations within these areas, where referenced under Policy H1:

- Sutton-in-Ashfield (Sutton) - *3,283 units proposed to be delivered via allocations*
- Kirkby-in-Ashfield (Kirkby) - *542 units proposed to be delivered via allocations*
- Hucknall - *1,384 units proposed to be delivered via allocations*
- the areas in the district adjacent to the Mansfield Urban Area – *There is no reference to scale of development in this area of the settlement tier. However, the ‘Named Settlements’ referred to under Strategic Policy S1 c) of ‘Selston Jacksdale and Underwood Area’ are proposed to deliver 580 units via site allocations under Policy H1.*

It is unclear if the ‘order’ of the Main Urban Areas in the settlement hierarchy is **intended to be** a ‘tiered approach’ or if all areas have equal status for accommodating growth. We therefore ask that the Council explain how the settlement hierarchy would be applied for development control purposes as the status of each of the Main Urban Areas is unclear. We may have further comments to make during the Examination Hearing session following a review of the Council’s response to this question.

### *3.5 Does the submitted Plan’s approach strike an appropriate balance between the identification of land for new homes and employment?*

Question 3.5 is a matter for the Council to respond to and depending on the Council’s response to this question, we may have further comments to make during the Examination Hearing session.

### *3.6 Is the settlement hierarchy set out in Policy S1 Justified?*

No. The evidence base supporting Strategic Policy S1 refers to the “Greater Nottingham Aligned Core Strategy - accessibility of settlements study” (SEV.42), dated 2010 which is referenced at Paragraph 3.11 of SD.01 as to support the hierarchy of settlements in Strategic Policy S1.

Background Paper 1 - Spatial Strategy and Site Selection (BP.01) also refers SEV.42, with Paragraph 7.26 of BP.01 stating as follows:



*“The study identifies that the most sustainable areas in Ashfield are Sutton in Ashfield, Hucknall and Kirkby-in-Ashfield while Selston is the most sustainable rural settlement.”*

Table 10 of BP.01 is noted to record the accessibility scores of each settlement “...as taken from appendix 1 of the Accessibility of Settlements Study...”, highlighting the most sustainable to least sustainable towns based on accessibility. This table ranks the following as being the first, second and third: Sutton, Kirkby and then Hucknall – this ranking is noted to align with the ‘order’ of the Main Urban Areas within the settlement hierarchy under Strategic Policy S1 9a). Please see our response to Question 3.4 above which discusses this matter further.

Overall, the justification to rely upon an evidence base dated from 2010 for the identification of the settlement hierarchy for housing growth is unsound. The publication date of the settlements study brings into question the accuracy of the findings given the significant passage of time, and we are unaware of any updated evidence base being undertaken to cross check the accuracy of the findings of the 2010 report. On any view a sense check addendum is required.

Furthermore, the Council needs to clarify exactly to what degree the information within SEV.42 has been relied upon, and how its use is justified with regards to the test of soundness at Paragraph 35 of the NPPF. We may have further comments to make during the Examination Hearing session following a review of the Council’s response to this question.

### *3.7 What evidence is there to justify the identification of each settlement within the respective tiers of the hierarchy?*

As per our response to question 3.6 above, BP.01 makes reference to the Accessibility of Settlements Study (SEV.42) but the accuracy of the information and the appropriateness of SEV.42 forming part of the evidence base is unsound due to the age of the document, dated 2010. There is a concern that no updated services and facilities assessment has been undertaken and so the settlement hierarchy has been informed by out-of-date information.

### *3.8 What reliance does the Plan’s overall strategy have on the proposed Maid Marian line? Is there a reasonable prospect of it coming forward during the plan period? How will the Plan respond to it?*

Question 3.8 is a matter for the Council to respond to and depending on the Council’s response to this question, we may have further comments to make during the Examination Hearing session.





## Green Belt

*3.9 What proportion of new housing and employment proposed in the Plan would be on land currently designated as Green Belt?*

Question 3.9 is a matter for the Council to respond to and depending on the Council's response to this question, we may have further comments to make during the Examination Hearing session.

*3.10 What other reasonable options for meeting the identified housing requirement were considered prior to the proposed release of land from the Green Belt?*

Question 3.10 is a matter for the Council to respond to and depending on the Council's response to this question, we may have further comments to make during the Examination Hearing session.

*3.11 Not all of Ashfield District is within the Green Belt. Could the need for new housing and employment be met by locating such uses outside Green Belt? If not, why is this the case?*

Question 3.11 is a matter principally for the Council to respond to and depending on the Council's response to this question, we may have further comments to make during the Examination Hearing session. However, we note that there are no significant alternative omission sites.

*3.12 How has the assessment of sites within the Green Belt informed the Council's approach to site selection?*

Yes, but the approach is unclear. Paragraph 7.2 of BP.01 refers to a sequential approach being undertaken by the Council for the site selection process comprising of 5 stages. Stage 5 of this sequential approach is noted to be Green Belt sites assessed through the SHELAA process as "... 'achievable' or 'potentially achievable' and consistent with the Council's strategic approach for sustainable growth". This latter criterion is noted to be considered for all sites through the sequential approach assessed through the SHELAA process. However, it is unclear from BP.01 as to what "...the Council's strategic approach for sustainable growth..." consists of and how this been applied to the assessment of the SHELAA sites.

The assessment of the Green Belt sites summarised at Tables 6-8 of BP.01, and also included within the appendices of BP.04 Background Paper Green Belt Harm Assessment, assesses the sites against the 5 purposes for including land within the Green Belt and an overall harm rating. There is no reference to an assessment as to whether the proposed allocations are consistent with "... the Council's strategic approach for sustainable growth...".

How the assessment of Green Belt sites has informed the site selection process is therefore unclear in the context of the above sequential approach. Also, we wish to make the Inspector aware that the scoring of the



Green Belt sites within the appendices of Background Paper 4 (BP.04) remains unchanged for sites from the assessment undertaken for the Regulation 18 consultation stage. This includes our client’s site at Whyburn, proposed for allocation at the Regulation 18 consultation stage as part of the previous spatial strategy approach, an approach which has now changed in the Pre-Submission Draft document (SD.01) and as per our response to question 3.3 is unsound as it has not been justified or evidenced. Again, it is an incoherent approach to evidence.

*3.13 Before concluding that exceptional circumstances exist to justify changes to Green Belt boundaries, paragraph 141 of the Framework states that strategic policy-making authorities should be able to demonstrate that it has examined fully all other reasonable options for meeting its identified need for housing. This will be assessed through the examination and will consider whether the strategy:*

- *Makes as much use as possible of suitable brownfield sites and underutilised land;*
- *Optimises the density of development, and*
- *Has been informed by discussions with neighbouring authorities about whether they can accommodate some of the identified need.*

*How has the preparation of the Plan sought to make as much use as possible of suitable brownfield sites and optimise the density of development?*

Question 3.13 is a matter for the Council to respond to and depending on the Council’s response to this question, we may have further comments to make during the Examination Hearing session.

*3.14 How would the proposed release of land maintain the openness and permanence of the Green Belt?*

Question 3.14 is a matter for the Council to respond to and we may have further comments to make during the Examination Hearing session. However, in terms of our client’s site at Whyburn, we wish to reiterate that this parcel of land was proposed for release during the Regulation 18 consultation stage (CD.01 and CD.03). It was assessed through the Strategic Green Belt Review (SEV.07 and appendix SEV.07h), which continues to form part of the evidence base supporting the Regulation 19 consultation stage and assessed with Background Paper 4: Green Belt Harm Assessment (dated September 2023) (BP.04). Through the Green Belt evidence base, the overall harm rating for Whyburn has remained unchanged which during the Regulation 18 consultation stage, supported the release of the Whyburn site.

The topography of the Whyburn site comprises a topographical bowl, which would contribute to maintaining the openness and permanence of the surrounding Green Belt should it be released for development, whilst presenting a unique opportunity to bring forward a sustainable new community through a natural ‘rounding



off' to Hucknall. With there being no change to the evidence base for undertaking the Green Belt review and the overall harm scoring unchanged for the Whyburn site, there is no justification through the Sustainability Appraisal process or the plan's evidence base for the removal of this site as an allocation, and neither for the now preferred spatial strategy approach.

### *3.15 How has the Green Belt assessment considered the potential for mitigation?*

No. The contents page for Background Paper 4: Green Belt Harm Assessment (dated September 2023) (BP.04) refers to Chapter 4 dealing with *"Mitigation to reduce harm to Green Belt"*. However, the entirety of Chapter 4, and Chapter 3 *"Summary of Harm Assessment Findings"* are missing from BP.04. The document does include Table 4.1 *"Potential measures to mitigate harm to Green Belt"*, however the context for this table is unknown.

The Inspector ought to request that the Council publish the document in full prior to the Examination Hearing Session proceeding. Due to the absence of the full document, we have not been able to provide specific comments at this stage but reserve our position to make further comments during the Examination Hearing session following a review of the Council's response to this question and the publication of the full document, BP.04. This is a clear procedural concern in respect of the plan which needs to be urgently addressed.

### *3.16 Do the Plan's strategic policies set out the scale and need for the release of land from the Green Belt as required by paragraph 140 of the Framework?*

No. Paragraph 3.44 of the supporting text for Strategic Policy S4 Green Belt (SD.01) makes reference to *"...a number of changes have been proposed to the Ashfield Green Belt boundary to accommodate the spatial strategy..."*. It is noted that the supporting text for the proposed allocations under Policy H1, a non-strategic policy, refers to where a particular site was *"...previously designated as Green Belt..."*. However, in the context of Paragraph 140 of the NPPF, the strategic policies do not set out the *"...the need for any changes to Green Belt boundaries..."*. We do not disagree that the authority needs to review the Green Belt to deliver the district's housing need, but the strategic policies do not appear to deal with the requirements of Paragraph 140 of the NPPF.

### *3.17 Having regard to the shortfall of housing provision over the plan period, what evidence is there that the Green Belt boundary will not need to be altered at the end of the plan period as set out at paragraph 143(e) of the Framework?*

Paragraph 3.6 of SD.01 outlines that the SHELAA process and the Brownfield Capacity Study have identified *"...insufficient developable brownfield sites within the existing built-up areas to accommodate the required levels of growth over the plan period. As such, it has been necessary to direct new development to greenfield land outside of the existing settlements. Some of this new development requires the release of land from the Green*



*Belt...”.*

We do not disagree that the authority needs to review the Green Belt and propose sites for allocation, however, there is no evidence to suggest that the Green Belt boundary will not need to be altered at the end of the plan period. In contrast, we expect the authority will need to undertake a further review of the Green Belt boundary as the submitted plan firstly fails to meet the minimum housing requirement, and secondly, the district’s future housing requirement is only likely to increase, an increase to occur in the immediate future with the anticipated publication of the revised NPPF.

We accept that for the purposes of this Examination the pending NPPF is not the relevant document for this plan-making process, but there needs to be an acknowledgement in examining this plan that with the Government’s renewed emphasis on delivering homes, and a target of delivering 1.5 million new homes over the next 5 years, housing requirements are only going to increase. Therefore, if found sound, the submitted plan is likely to be out of date in terms of the overall housing need arising from the proposed changes to the Standard Method approach and require an immediate review.

The changes to the Standard Method approach the subject of the changes proposed through the draft NPPF published 2024 would see Ashfield’s housing need increase from 446 dwellings per annum to 604 units per annum. The matter of housing need is addressed specifically within our Hearing Statement submitted for Matter 2.

*3.18 At a strategic level, do exceptional circumstances exist to alter the Green Belt boundary, having particular regard to paragraphs 140 – 143 of the Framework? If not, how could housing and employment needs be met in other ways?*

Yes. Chapter 9 of BP.01 sets out the case for exceptional circumstances and we do not dispute this position. However, the extent and nature of the Green Belt Review undertaken is questioned as the overall scoring for sites assessed has not changed from the Regulation 18 consultation stage, which supported a different spatial strategy approach.

