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Ashfield Local Plan: Regulation 19 Consultation

Land at Tibshelf Road, Fackley

Document prepared by Fisher German LLP on
behalf of the Joint Executors to the Estate of the
Late Mrs Barbara Keeling



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1. Introduction

1.1 These representations are submitted by Fisher German on behalf of the Joint Executors to the Estate of the Late Mrs Barbara Keeling and relates to their land interests at of Field 3911, Tibshelf Road, Fackley, Sutton in Ashfield (Figure 1 below).



1.2 An outline planning application for the residential development of up to 9 dwellings, all matters reserved was refused on the site earlier this year (Ref: V/2023/0088). The application was refused predominantly on the basis of conflict with extant Policy EV2 and the site representing an unsustainable location.

1.3 This site formed a draft allocation in the Regulation 18 Plan (H1Sp) for around 10 dwellings, however, was removed at Regulation 19 stage. When voting to remove the site, Members at the Council’s Local Plan Development Committee on the 11th September 2023 were informed by a paper relating to proposed amendments to housing allocations (Ashfield Local Plan - Sites Update). This paper proposed the removal of our client’s land interests at Tibshelf Road, Fackley, stating *“H1Sp has been refused residential planning permission on appeal earlier this year due to its unsustainable location.”* This statement was factually incorrect. Whilst an outline planning application was refused earlier this year, an appeal on the site has only just been submitted and is yet to be determined.

- 1.4 Our opinion is that the grounds of refusal were not sufficiently substantiated and have submitted an appeal on that basis. In terms of plan making however the removal of the site is procedurally and factually incorrect.
- 1.5 Firstly, the rationale provided to Members was inaccurate. Members of the Council were clearly misinformed by papers as an appeal had not been dismissed in relation to the site. It is telling that members of the Planning Committee voted to approve a similar application in the vicinity of the site, 'the Heathfield decision' (V/2023/0088) and in doing so explicitly rejected the conclusions of the Officers report, which was similar to the delegated report which justified the refusal on our client's application. It is unclear how the Council can substantiate a claim that our client's land interests, which are adjacent to defined settlement boundaries, are unsustainable and unsuitable, but land further away from the same services and facilities, relied upon and a site entirely disconnected from any existing settlement limit, was explicitly considered acceptable. Had Members have been correctly informed, or been able to consider our client's land interests at Committee rather than a delegated decision, they may have reached a more consistent decision.
- 1.6 Secondly, plan making as a matter of fact must be based on evidence. The Council have not substantiated any new evidence between Regulation 18 and Regulation 19 to justify the removal of the site. The removal of the site is based solely on the Officer's Delegated Report, which itself was not substantiated by any evidence. This means that the change to the Plan was not justified, and the site should not have been removed.
- 1.7 Since the submission of the Appeal, the Council's Planning Policy Team has contacted us via email, in a response to a letter submitted by ourselves, to confirm that the reason for the site's removal was not related to site suitability, but instead as the indicative site yield had dropped to below 10-dwellings in the refused application, thus was incapable of being allocated through Policy H1, which requires sites to be a 10-dwellings or greater. The Council responded as follows.

"This site was re-evaluated on the back of the planning application for 9 dwellings. Taking account of the reduction in developable area due to an on-site mine shaft, together with the low density character of the area it was considered that the site would be unlikely to support a yield of more than 9 dwellings should it come forward for development. As such this falls below the threshold at which housing allocations are identified in the Local Plan, but does not preclude the site from being dealt with appropriately through the planning application process".

1.8 This rationale is not substantiated in the policy, neither in its wording or application, nor does it reflect the submitted evidence document. The policy wording does not necessitate 10 dwellings, and the policy itself actually allocates a site of only 6 dwellings (H1Vd - Adj 149 Stoney Lane, Selston). This rationale therefore is not accurate and serves only to provide greater confusion as to the reason the site was removed. The Council seemingly could have allocated the site for 9 dwellings, and have provided an arbitrary reason why this was not done. Our opinion is this reason was offered due to the issues relating to process and the implications for the Plan's evidence and allocations if the previous reason for removal was advanced instead from a plan making perspective. That being the rationale provided in the Officers Report, that sites over 800m from services and facilities, should be considered inherently unsustainable. We consider a number of the Council's proposed allocations would fail to meet this criteria. The lacking of any evidential change is also deeply concerning and points to key procedural flaws in the Plan. As a side point, we consider that the site could deliver 10 dwellings and a masterplan can be provided demonstrating this, having regard for the highlighted issues of local character and the mine shaft on site, neither of which formed formal reasons for refusal of the submitted application.

1.9 On the above basis, and for the reasons set out in representations, we consider strongly that the site should be reintroduced.

2. Representations

Legal Compliance

- 2.1 The Sustainability Appraisal (SA) process necessitates the testing of 'reasonable alternatives' to achieve relevant environmental, economic and social objectives. The scope of reasonable alternatives is however dependent on each authority, as what would be constituted as reasonable in one authority, may not be reasonable in another. Ten reasonable alternatives were identified by the Council, however two were discounted prior to being formally tested by WYG, the Council's external consultants. The two discounted were Option 1: Containment within existing settlements; and Option 2: Urban Concentration within/adjoining existing settlements, with no Green Belt release. Both of these options were excluded from being reasonable alternatives as there wasn't sufficient land to meet the minimum housing requirement, a questionable conclusion given the Council's eventual adopted strategy cannot meet its development needs in full. It is however noted that the only non-Green Belt release option was that of urban concentration, the Council did not test, or justify not testing, an option of no Green Belt release inclusive of dispersed development. Given the inherent protection afforded to Green Belt, this is a fundamental failing in the process undertaken. This option should have been tested, or at the very least rationale explained clearly why it was not reasonable. This is a significant flaw in the SA process and needs to be rectified prior to submission, as legal compliance is not an issue that can be rectified by Main Modifications and necessitates the failure of the Plan at examination.

Strategic Policy S1: Spatial Strategy to Deliver the Vision

- 2.2 We note and support the identification of Fackley as a "Named Settlement". We agree that through its close proximity to services and facilities, albeit inclusive of those in a different but spatially close settlement (Stanton Hill), means that there are a range of services and facilities which provide residents access to many of the necessary day to day services and facilities without the need of a private car.
- 2.3 Concern is raised that whilst Green Belt is alluded to in the policy insofar as it relates to Part E of the policy, it has not adequately informed the spatial strategy and that the Council have not had due regard for the need to provide sufficient protection to the Green Belt in adopting a spatial strategy. The result of which is a plan which proposes significant Green Belt release, including in locations comparatively sustainable as our client's land interests, despite our client's land being rejected at Development Management on the basis of being unsustainable. The Spatial Strategy should have been formed with sufficient regard for Green Belt as a major constraint and this should also have

been reflected in the SHLAA process to ensure sufficient land was available. As discussed above, a reasonable option logically should have included a more dispersed pattern of development, but with no Green Belt release.

Strategic Policy S4: Green Belt

- 2.4 The NPPF (2023) sets out the National Policy for the management of Green Belt in the UK. Paragraph 137 confirms that the Government attaches great importance to Green Belts. It continues that *"the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence"*.
- 2.5 Paragraph 138 confirms that the Green Belt serves 5 purposes as follows:
- a) to check the unrestricted sprawl of large built-up areas
 - b) to prevent neighbouring towns merging into one another
 - c) to assist in safeguarding the countryside from encroachment
 - d) to preserve the setting and special character of historic towns
 - e) to assist in urban regeneration, by encouraging the recycling of derelict and other urban land
- 2.6 Paragraph 140 confirms that *"once established, Green Belt boundaries should only be altered where exceptional circumstances are fully evidenced and justified, through the preparation or updating of plans. Strategic policies should establish the need for any changes to Green Belt boundaries, having regard to their intended permanence in the long term, so they can endure beyond the plan period"*.
- 2.7 Paragraph 142 states that *"when drawing up or reviewing Green Belt boundaries, the need to promote sustainable patterns of development should be taken into account"*. Moreover, that when removing land from the Green Belt Strategic policymaking authorities *"should also set out ways in which the impact of removing land from the Green Belt can be offset through compensatory improvements to the environmental quality and accessibility of remaining Green Belt land"*.
- 2.8 Government communications have long been that simple housing need in itself is not sufficient to justify 'Exceptional Circumstances' to be confirmed, we understand, by the imminent publication of the revised NPPF.
- 2.9 Paragraph 141 of the NPPF states that *"before concluding that exceptional circumstances exist to justify changes to Green Belt boundaries, the strategic policy-making authority should be able to*

demonstrate that it has examined fully all other reasonable options for meeting its identified need for development". We note the Council's reference to Statements of Common Ground, but do not agree with the statement that there is no capacity to meet Ashfield's need in neighbouring authorities, particularly those which are not impacted by Green Belt. This is simply the most convenient answer, but that does not mean compliance with Paragraph 141. Moreover, as set out above we continue to assert there is suitable non-Green Belt land available within Ashfield also which has not been fully exhausted.

2.10 The justification for Green Belt release of each site is provided within Background Paper 1. The justification for release generally includes proximity to Nottingham City, perceived low Green Belt harm or delivery of the spatial strategy. However, as a matter of principle the Spatial Strategy should have better explored options which precluded Green Belt release, as discussed above. The justification provided in all cases may have met the threshold of Exceptional Circumstances had the Borough been more constrained by Green Belt, and lacked alternative options. That is not the case in Ashfield. Ashfield has ample non-Green Belt land available for development, and the justification provided does not provide the justification required to demonstrate that releasing such a significant quantum of Green Belt is sound. Perceived low Green Belt harm is in itself not justification for Green Belt release.

2.11 We note the commentary of Ashfield in their submissions in respect of our client's ongoing appeal. At Paragraph 5.15 of the Council's Statement of Case states "*whilst screening might reduce the visual impact on openness, it would not remove it. It is not a factor which could be permanently relied on to screen the development. In any event, the appellant has failed to have regard to the spatial limb of openness. The erosion of space, arising from the physical presence of the development would, in itself, result in a reduction of the spatial openness of the site, irrespective of any views*". It is clear therefore that in terms of openness as so far as it relates to Paragraph 137, it is the view of Ashfield District Council that any development will have an impact on openness, regardless of consideration of the wider purposes of the Green Belt, and this is clearly a considerable harm when equating the above view and Paragraph 137 of the NPPF. It is impossible to therefore, reconcile the opinion of Ashfield District Council in respect of its development management function and its view on openness, and its plan making function and its seeming disregard of this exact same principle. Ashfield District Council clearly concede this harm and in the context of available, non-Green Belt land, such harm should weigh heavily against any consideration that the approach adopted is sound.

2.12 Whilst we do not feel it is necessary to consider every Green Belt site in granular detail, as the overriding principle of release in terms of exceptional circumstances has not been demonstrated.

However, we note the release of land at New Brinsley, which as discussed below does not meet the sustainability thresholds applied when assessing our client's land. Given the site's low sustainability, Green Belt release is clearly not justified. Other similar allocations in other lower standing settlements are also considered unacceptable on this basis, given sustainability was the overriding rationale for the refusal of our client's planning application, despite it being an emerging allocation at the time. We cannot see how the Council's approach can be reconciled with supposed exceptional circumstances for Green Belt sites to be released, despite those sites benefiting from very similar levels of sustainability as sites the Council have recently rejected due to being unsustainable.

- 2.13 The approach advocated in the plan is not considered sound, as it is not justified or consistent with national policy.

Strategic Policy S7: Meeting Future Housing Provision

- 2.14 The Council makes provision for a minimum of 7,582 new dwellings over the period 2023 to 2040. This is on the basis of a Local Housing Need derived from the Standard Method of 446 dwellings per annum. We agree that this forms the LHN, however the Council should consider whether there is justification to increase the housing requirement, particularly with a view to boost economic growth or increase the level of affordable housing delivery, particularly given recent years of low housing growth.

- 2.15 It is particularly noted that affordable housing need is at 237 dwellings per annum (Iceni - Ashfield Housing Need Assessment), approximately 50% of the proposed housing requirement. Even being generous and assuming all sites will deliver the full affordable housing requirement of 25%, inclusive of brownfield land for which Policy H3 only requires the delivery of 10%, and full delivery of the LHN, this would equate to delivery of 112 affordable dwellings per annum, less than 50% of that required, and increasing affordable housing need by 125 dwellings per annum, with significant implications later in the Plan, with affordable housing need increasing by thousands of dwellings. This is an integral issue now and will not be solvable by subsequent Plan review, as the issue will have compounded significantly. The only way it can be mitigated, even in part, is through increasing the housing requirement in the short term so greater levels of affordable housing can be delivered prior to the first Plan review, albeit we concede the level of affordable housing need means it is unlikely that this need can reasonably be met in full, however certainly an improvement can be made from the above position and this provides the justification needed through the PPG.

- 2.16 Whilst we support the utilisation of a lapse rate, something particularly relative given the shortfall of housing provision as discussed below, we do not support the level of windfall assumed. Whilst the Council do not engage a windfall allowance until 2028 to reflect existing commitments, we do not support the level of windfall proposed by the Council. The Council's justification for this approach is contained within Background Paper 2. Historic allowances for windfall equate to an average of 73 per year, however this is reduced to reflect windfall delivery on garden land as such development is generally not considered desirable thus reduced by 13 to provide a figure of 60 per annum. We do not agree that it reasonable to assume that windfall delivery will continue at historic rates for a number of reasons. Firstly, the pressure on housing due to a lack of 'normative' housing delivery over many of the most recent years, where a five year housing land supply could not be demonstrated, will have increased windfall pressure. Secondly, by definition, in areas with restrictive settlement limit policies, such opportunities are limited and will diminish over time, as suitable locations for new windfall development will deplete over time and whilst new opportunities may arise through the PD rights or new brownfield opportunities, we do not believe that is reasonable that such delivery will simply continue indefinitely. The windfall allowance should therefore be reduced to reflect these factors, by at least 20 dwellings per annum.
- 2.17 Part 1 of the Policy sets out that this level of housing need justifies Green Belt release in order to meet identified housing needs, however as set out above we do not believe this proposition has been adequately justified, notwithstanding our comments below which will increase the housing land required.
- 2.18 The Council concede that the Plan only makes provision for sufficient supply to meet the needs of the first 13 years post adoption. This is justified at paragraph 3.63 of the Plan in that Ashfield consider there is no requirement to identify land for years 11-15 of the Plan, as the criterion within Paragraph 22 of the NPPF simply states this should be demonstrated 'if possible'. Whilst we disagree with this approach in generality, we do not believe this approach can be reconciled with the requirements of Paragraph 143 of the NPPF, Part E, which states "*when defining Green Belt boundaries, plans should... be able to demonstrate that Green Belt boundaries will not need to be altered at the end of the plan period*" [our emphasis]. On the basis of the submitted Plan, we cannot even be sure that further Green Belt release will be needed within the Plan's defined plan period if we follow the Council's current logic that Green Belt release is necessary to meet housing needs for just the first 13 years. If this is truly the case, then the Council would need to identify safeguarded land to ensure permanence of the amended Green Belt in accordance with Paragraph 143 of the NPPF, particularly criteria C and E. If it is not the case, as we assert, then there simply isn't the justification

for Green Belt release at this time, or at the very least Green Belt release of this scale. It may be that non-Green Belt sites can be identified now, and the capacity created in supply can then turn some Green Belt allocations into safeguarded land, to ensure the Plan provides the permanence required by the NPPF.

2.19 Your attention is also brought to the recent Post Hearings Letter provided by the Inspector in the Bedford Borough Local Plan 2040 Examination (Exam Ref: ED79) who set out that the Plan could not currently be found sound for a number of reasons, however a key theme was lack of certainty in relation to the overall quantum of housing over the Plan period. Whilst the Council point to five year reviews as a mechanism to deliver this, given Ashfield's history of Plan making that is scant consolation and cannot be relied upon. There is nothing to guarantee that the present scenario, of a significant shortfall of housing and a drastically out of date plan, won't repeat itself. To give Ashfield certainty at least over the Plan period, including in Green Belt terms, sufficient allocations must be identified to meet the housing requirement in full. It would seem a somewhat bizarre situation if Bedford were punished for trying, but ultimately failing, to meet their housing requirement in full, when they would have been better off simply not showing such allocations and stating it will be sorted by a later review, as proposed by this Local Plan. Such a result will ultimately disincentivise Councils from trying to meet their housing needs in full, when they can simply provide 10-years of supply and rely on later Plan's to solve the issue. This proposed direction also serves to reduce the choice and competition in the land market, raising land prices, pushing viability and challenging deliverability.

2.20 The approach to housing delivery is therefore considered unsound, particularly due to breaches in national policy (namely Paragraph 143 of the NPPF), but also on the basis that it is not likely to be effective, nor has the approach been sufficiently justified.

Policy H1: Housing Allocations

2.21 It is not clear that the Council have satisfied the requirements of Paragraph 69a which requires 10% of an areas housing requirement to be delivered on sites of under a hectare. The Council have not set out whether the submitted Plan meets this requirement, and if not, provided any justification for not meeting such a requirement. The Council should confirm the compliance with this policy and if non-compliant should provide justification as to why it is not possible to be met.

2.22 For the reasons we have set out above, we consider there are intrinsic flaws in the Plan, which cannot be rectified without the identification of additional housing allocations. Our client's land

interests represent a suitable, available and achievable site. As set out below, there is latent capacity within the site for additional housing to be delivered to bring the site above the 10-dwelling threshold as set out as required by the Council. The delivery of this site will also help the Council satisfy the requirement of Paragraph 69a of the Framework.

Conclusions

- 2.23 As set out in these representations, there are fundamental issues in respect of this Plan. The SA must consider a non-Green Belt release, dispersed scenario. Moreover, additional housing land is required to demonstrate that the housing needs in Ashfield can be met in full. The Council must fully exhaust its non-Green Belt sites before any Green Belt land is released for development as exceptional circumstances cannot be justified until that threshold is demonstrably passed. The Plan in its current form is unsound and requires significant amendment before it can be capable of being found sound.

3. Land South of Tibshelf Road, Fackley

- 3.1 Our client's land interests south of Tibshelf Road, Fackley, are a logical location for housing growth, forming land located between existing development of Fackley and development further west alongside Tibshelf Road. The site extends to approximately 0.5 hectares (Ha) and comprises an equestrian field on the existing settlement edge of Fackley.
- 3.2 The site is bound by the existing built residential form of Fackley to the east (Croft End). The western boundary is defined by residential development south of Tibshelf Road but outside of the currently defined settlement boundary. To the north of the site is Tibshelf Road itself, which benefits from an existing thick hedgerow on the northern carriageway and beyond that agricultural land. To the south of the site is further land associated with equestrian uses including stables, fields and a menage area, with the Silverhill Trail beyond.
- 3.3 The site is maintained as private land with no public rights of way that cross the site. However, a public right of way runs adjacent to the site's western boundary.
- 3.4 The site does not contain nor is near to any designated heritage assets. The nearest is the Conservation Area of Teversal to the north east of the site (circa 0.5m), which also contains a number of Listed Buildings. Views to Teversal are however screened from view from intervening vegetation and built form. The SHELAA assessment of the site refers to potential impacts from Hardwick Hall, however again due to existing vegetation and topography views towards this important historic feature are again screened from view.
- 3.5 The site is located within the Environment Agency's Flood Zone 1 (low risk of fluvial flooding).
- 3.6 The site is within 200m of a public house 'The Carnarvon', a family establishment serving food and drinks, and event hosting. Other local amenities include the "Teversal Community Hub" immediately adjacent to the public house, where a variety of community events take place, including a Baby & Toddler Group, craft group and church group amongst others. Also adjacent to the public house and Community Hub, is The Flower Hut, a local florist. Adjacent to The Flower Hub and opposite the public house are two bus stops which are served by the number 417 service to Sutton-in-Ashfield (12-minutes) through other villages such as Stanton Hill and Teversal. The 417 operates 3 services a day Monday to Friday, which provides access to a wide variety of employment opportunities and larger retail facilities.

3.7 In addition to the facilities within Fackley, Stanton Hill is acknowledged to benefit from a larger range of services and facilities and lies only a circa 16 minute walk from the site (0.8 miles). The following represent local facilities and services within circa 1 mile of the site (as measured from the centre of the site):

- Healdwood Infant and Nursery School
- Co-op Food Stanton Hill
- Healdwood GP Surgery/Skegby Family Medical Centre
- Skegby Pharmacy
- Healdswood Park
- Skegby and Stanton Hill Library
- Other local services and facilities such as hair salons, takeaways and other supermarkets on Stanton on the Hill High Street
- Brierley Park Industrial Estate

3.8 Further to the wide range of services and facilities at Stanton Hill, within walking distance of the appeal site, there are also more public transport options available. As well as the number 417 which serves Fackley and Stanton Hill, Stanton Hill is also served by the number 141 service to Sutton-in-Ashfield (13 minutes), Mansfield (18 minutes), Hucknall and Nottingham. Services operate from 06:38-17:38 Monday to Saturday (Nottingham bound) and from 07:00-20:15 Sutton-in-Ashfield bound). The times of service and frequency would reasonably service commuting, and travel for other reasons including larger retail needs.

3.9 The site scores favourably in respect of sustainability within the SA. The extant Local Plan, albeit out of date, acknowledges that Fackley and Teversal are appropriate for small scale infill development. This is a conclusion retained in the emerging Local Plan, something which we support.

3.10 The site can deliver circa 10 dwellings, and despite assertions of the Council, can be allocated if the quantum was determined to be below this figure. Whilst the allocation of this site in isolation will not rectify the soundness of the Plan, it should not have been removed and helps the Council meet its requirements, both in terms of overall delivery and also in demonstrating 10% site delivery on sites under a hectare. The site is not within the Green Belt, and does not require exceptional circumstances to be delivered.

3.11 Beyond a breach in Policy and a perceived unsustainable location, the Council have provided no other reason why the site cannot reasonably be delivered. On the basis of the justification provided in these representations, it is considered that the site should be reinstated.