

Ashfield Local Plan Examination:

Matter 3 Statement

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



Project

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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) and dismissed at appeal. The application was refused predominantly on the basis of conflict with extant Policy EV2 and the site representing an unsustainable location, despite being demonstrably more sustainable than approved schemes in the vicinity and proposed Local Plan allocations.

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.

1.4 The Regulation 19 consultation was commenced in November 2023, in accordance with the transitional arrangements of Annexe 1, the applicable NPPF is the September 2023 NPPF (save for matters relating to policy on renewable and low carbon energy and heat, though we do not comment on these matters).

2. Matter 3

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?

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?

- 2.1 No, whilst Table 1 of the submitted Plan shows a slight bias in respect of the less constrained, non-Green Belt Northern Towns Area, given the presence of Green Belt in the Southern Town Area and Rural Villages west of the M1, the distribution of housing to the unconstrained north of the District should have been more significantly weighted to reduce the pressure on Green Belt release. Moreover, no Green Belt release at all should be proposed unless non-Green Belt options in sustainable settlements have been wholly exhausted and specific, robust justification is provided for each proposed Green Belt site for withdrawal.

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

- 2.2 We support a strategy of dispersed development and believe it to be a solid basis for the distribution of Ashfield's housing needs. A pattern of dispersed development enables the greatest range of housing typologies, serving the widest possible market assisting absorption. It also supports the sustainability of smaller settlements, ensuring population growth to support the vitality and viability of services and facilities, and help prevent the aging of localised populations. Having regard however for our comments to Matter 2, the Council must increase the housing requirement in accordance with the requirements of the NPPF, and this increase in housing should be distributed through the spatial hierarchy, particularly in the non-Green Belt constrained Northern Towns Area. This will have the benefit of increasing the distribution to this area when compared against the two Green Belt constrained areas to the west and south.
- 2.3 We believe the Council should have tested a non-Green Belt release dispersed strategy through the SA, as discussed below.

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

- 2.4 No, the Plan lacks clear expectations on housing delivery beyond the sub-areas as set out in Table 1. Such evidence must exist as it would presumably underpin the Spatial Distribution as proposed at Table 1. For clarity and monitoring, individual settlement totals should be provided, as the sub-areas are too varied in terms of settlement typology to be an effective tool in their own right and to enable the Plan's performance to be more effectively monitored.

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

- 2.5 We have no inherent objection to the proposed settlement hierarchy. Paragraph 35 of the NPPF, which confirms that for Plan's and their policies to be sound in respect of justified, it should be "*an appropriate strategy, taking into account the reasonable alternatives, and based on proportionate evidence*". The evidence in this case appears to form the Greater Nottingham Aligned Core Strategy Accessibility of Settlements Study (January 2010). This evidence is admittedly quite dated and it may be prudent for the methodology and data to be refreshed, both to reflect service provision and availability but also to have due regard to modern lifestyles. Matters such as home deliveries and home working mean that people can live more sustainable lives in less sustainable locations. We are not aware of any obvious errors in the proposed hierarchy in view of our local understanding of settlements that would make them inherently unsound.

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

- 2.6 Again, the evidence appears limited and dated, however the Council should be able to update this relatively quickly if deemed necessary by the Examination. As per the above, we have no objection with the hierarchy as identified.

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?

- 2.7 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 continue to assert there is suitable non-Green Belt land available within Ashfield which has not been fully exhausted. Moreover, Ashfield has a range of sustainable settlements in the northern part of the District which are suitable to deliver housing, to reduce the strain on

Ashfield's Green Belt.

- 2.8 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. 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 (similar to Erewash for example). That is not the case in Ashfield. Ashfield has ample non-Green Belt land available for development, and the reasons put forward do not provide the justification required to demonstrate that releasing a significant quantum of Green Belt is sound. Perceived low Green Belt harm, for example, is not in itself justification for Green Belt release under the provisions of the applicable NPPF.

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

- 2.9 Ashfield's submissions in respect of our client's non Green Belt appeal at Paragraph 5.15 of the 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. It is not possible to 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 logically weigh heavily against any consideration that the approach adopted is sound. The release of land ahead of non-Green Belt options will clearly lead to significant harm to the Green Belt's openness. In respect of permanence, as per our Regulation 19 submissions the approach advocated by the submitted Plan in respect of permanence of Green Belt boundaries.

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

- 2.10 As set out by the Council in respect of our client's appeal "*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". Mitigation therefore is unable to reduce the inherent harm of the introduction of built development in the Green Belt. Whilst we accept Green Belt release is necessary in much of the country, we are not convinced by the Council's evidence that it is necessary in Ashfield, when it benefits from a significant amount of non-Green Belt, non-Footnote 7 land.

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?

- 2.11 The Plan's strategic policies set out the scale of land proposed to be released from the Green Belt, but it does not in our view justify the need for Green Belt release. NPPF Paragraph 140 is clear that "Green Belt boundaries should only be altered where exceptional circumstances are fully evidenced and justified". Paragraph 141 continues 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"[our emphasis]. It has not been adequately demonstrated that development needs could not be met, or better met, on a strategy which minimises or negates Green Belt release.
- 2.12 Whilst ten reasonable alternatives were identified by the Council through the SA process, 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. The decision to not test these options further was clearly 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 our recommendation was that this needed to be rectified prior to submission, as legal compliance is not an issue that can be rectified by Main Modifications and potentially necessitates the failure of the Plan at examination.
- 2.13 Had the Council have proceeded with a no Green Belt strategic option, then exhausted all sites, then much more limited Green Belt release may have been justified in evidence.

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?

- 2.14 There is no evidence that further Green Belt release will not be necessary. Moreover, given the Plan only makes provision for 13 years of supply post adoption, the position is actually that further Green Belt review may be required within the proposed Plan period, through a subsequent DPD. The submitted strategy cannot pass paragraph 143 which states that 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”. This is clearly a requirement as the terminology is that plans should be able to demonstrate this. This is however not possible in respect of the submitted Local Plan.

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?

- 2.15 No, whilst non-Green Belt land in sustainable settlements remains available for development, the Council cannot have demonstrated exceptional circumstances. Failure to identify robust exceptional circumstances for Green Belt release strategically, and on a site by site basis, means Green Belt release has not been justified. The Council should seek to allocate available non-Green Belt land. As commented previously, whilst the Council has provided site by site rationale for Green Belt release in evidence, we do not agree that the assessment meets the threshold of Exceptional Circumstances for Green Belt release and thus the proposals justified.
- 2.16 To illustrate the point, we note the release of land at New Brinsley, which as discussed within our Regulation 19 submissions does not meet the sustainability thresholds applied by the Council when assessing our client’s non Green Belt land. Given the low sustainability of this site, and the availability of comparable non Green Belt sites, 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 and refused on the basis of sustainability. 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, despite being located outside of the Green Belt and located in a settlement the Plan confirms is sustainable in principle and suitable for commensurate residential development.

2.17 The approach advocated in the plan is not considered sound, as it is not justified or consistent with national policy. Whilst this Plan is not an examination of omission sites, the availability of non-Green Belt omission sites has to be material as to whether the Plan has met the requirements of the NPPF, which include, amongst other things, a requirement to utilise non-Green Belt sites.