

Proof Of Evidence: Planning

Evidence of Gary Lees BA (Hons) DipTP MRTPI

In Respect of a S.78 Planning Appeal at Land at Newark Road,
Sutton-in-Ashfield.

On behalf of Hallam Land

Date: 13 November 2024 | Pegasus Ref: EMS.2254

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1. Introduction

Qualifications and Experience

- 1.1. My name is Gary Robert Lees. I hold a Bachelor of Arts Degree with Honours in Urban and Regional Planning, together with a Diploma in Town Planning, both from Lanchester Polytechnic. I am a member of the Royal Town Planning Institute and a Director of GRL Planning Ltd. GRL Planning Ltd was formed in July 2024 following my retirement as Chairman of Pegasus Group. I am retained as a consultant for Pegasus Group on various projects I worked on whilst at Pegasus Group, including the appeal site.
- 1.2. I have over 30 years' experience working in a variety of planning roles in Local Government and planning consultancies. I joined Pegasus Group in 2004 and have over those years advised a range of clients in relation to the promotion of land through the development plan process and the submission of planning applications. I have appeared at development plan examination hearings and planning appeal inquiries as a witness, including in relation to housing need and supply matters.
- 1.3. The evidence I have prepared and provide to this Inquiry on behalf of Hallam Land is true and given in accordance with the code of conduct of the Royal Town Planning Institute. I confirm that the opinions expressed are my true and professional opinions.

Involvement in the Planning Application

- 1.4. My colleague at Pegasus Group, Mrs Clare Clarke (Planning Director), performed the role of planning agent at the planning application stage.
- 1.5. I have provided strategic planning advice to Hallam Land on this site over many years so I am familiar with the site and its location. Accordingly, I am fully aware of, and understand, the planning and related issues involved in this Appeal.

Scope of Evidence

- 1.6. My Proof of Evidence relates principally to matters of planning policy and the overall planning balance in respect of the appeal proposal. I also seek to address concerns raised by third parties.
- 1.7. Included at **Appendix 1** is a report on secondary education requirements, prepared by Mr Ben Hunter of EFM Ltd.
- 1.8. At **Appendix 6** is a statement of evidence on biodiversity prepared by Oliver Ramm of Ramm Sanderson.
- 1.9. Proofs of Evidence are provided under separate cover with regard to the following matters:
 - 1) Highways and Transport matters, including accessibility by bus, prepared by Mr David Cummins of ADC Infrastructure.
 - 2) Agricultural land quality, prepared by Mr Tony Kernon of Kernon Countryside Consultants Ltd.



- 3) Ground Contamination matters and related risks, prepared by Mr Darcy Kitson-Boyce of Rodgers Leask. Appended to this proof is a statement on flood risk and drainage matters prepared by Mr Matt Leask of Rodgers Leask.
- 4) Affordable Housing Need, prepared by Mr James Stacey of Tetlow King.
- 5) Landscape and Visual Impacts, prepared by Mr James Atkin of Pegasus Group.

- 1.10. I refer in this Proof of Evidence to documents that are listed in the agreed Core Documents list, using the abbreviations stylised '[CD XX]'.
- 1.11. My evidence has been compiled having regard to the previous, December 2023 version of the NPPF. In the short time available since the most recent version of the NPPF was published on 12th December 2024, I have sought to address and respond to this, but will provide either a supplementary proof or an updated version of this proof with red line and strike out to more fully reflect the new NPPF in advance of the deadline set for rebuttals.
- 1.12. An alternative illustrative masterplan (drg no EMS.2254_120 01 Rev D) is provided at **Appendix 2** of my proof. This plan is provided to show how the development could be provided on site without the need to provide surface water attenuation works over the part of the site that has been subject to licenced landfill of inert construction waste, the objective being to minimise risks, however small those risks are. The previously proposed surface water attenuation basin fronting the western part of Newark Road is removed with a consequential increase in the size of the surface water attenuation area along the western boundary of the site. The frontage area is replaced by public open space and planting.

2. Context

Introduction, The Site and Context

- 2.1. This proof of evidence has been prepared on behalf of Hallam Land (“the Appellant”), in respect of an appeal made pursuant to section 78 of the Town and Country Planning Act 1990 (as amended) (“TCPA 1990”). This appeal has been made against the failure of Ashfield District Council (“the Council”) to determine an outline planning application within the agreed, extended period.
- 2.2. This Proof of Evidence is submitted pursuant to the Town and Country Planning (Inquiry Procedure) (England) Rules 2000, as amended by the Town and Country Planning (Hearings and Inquiries Procedures) (England) (Amendment) Rules 2009 and the Town and Country Planning (Hearings and Inquiries Procedure) (England) (Amendment) Rules 2013.
- 2.3. The site and site context are as agreed in the Statement of Common Ground (“SoCG”), signed 28th November 2024 between the Appellant and the Council [CD 9.1].

Planning History

- 2.4. The planning history is as agreed in the SoCG [CD 9.1]. This highlights that the appeal site has been identified as a proposed allocation in recent draft local plans.
- 2.5. This area southeast of Sutton-in-Ashfield has been included in various forms in both of the previously withdrawn iterations of the Local Plan. It was a draft allocation in the Preferred Options Local Plan in 2010. A further Preferred Approach consultation in September 2012, however, removed the draft allocation of the site. Once the plan reached Examination, the Local Plan Inspector wrote to the Council on the 26th March 2014, wherein he raised “significant concerns” [CD 12.5]. These concerns related to the selection of sites that were being put forward and the Green Belt location of several of those sites. As regards the former, the Inspector had a “fundamental concern” that it was unclear from the Sustainability Appraisal (“SA”) of sites or from other documents, why the allocated sites had been selected and alternative sites have been rejected [CD 12.5].
- 2.6. As regards Green Belt, the Inspector was not persuaded that the ‘exceptional circumstances’ necessary for Green Belt release had been demonstrated. The Inspector felt it was not possible to reach a clear understanding of how decisions had been arrived at to allocate some sites and not others, and he was not convinced that all reasonable site options outside the Green Belt (which included the appeal site) had been evaluated. Consequently, the Inspector could not be sure that all possible options for development outside the Green Belt had been exhausted or that the development of Green Belt land would represent a significantly more sustainable option than development of land which is not in the Green Belt. Drawing the above together, the Inspector recommended that the Council withdraw the plan, which the Council did.
- 2.7. Approximately 16.9 hectares of the appeal site (**Appendix 4**) then formed part of the second iteration of a new draft Local Plan and featured in the Publication version (Regulation 19 consultation) in 2016 (draft housing allocation reference SKA3e – Land at Newark Road). The site was allocated for ~266 dwellings. This plan was unfortunately withdrawn to facilitate the new political administration’s aspirations and vision for the district. It was resolved that the



Emerging Local Plan Vision had a restrictive focus of concentrating development in and adjoining the urban and settlement areas i.e., urban concentration.¹

The 2017 Application

- 2.8. A previous application for planning permission, similar to the appeal scheme, was submitted on 29th September 2017. That application was registered as valid on 3rd October 2017 and assigned the reference V/2017/0565 (“the 2017 application”).
- 2.9. As regards the 2017 application, the description of development read as follows:
- “Outline application with some matters reserved for a residential development of up to 300 dwellings, new public open space, landscaping, drainage infrastructure and access.”*
- 2.10. During the application process, protracted discussions were held with Nottinghamshire County Council as Highway Authority. The reasons for delay were predicated on the comments of the Highway Authority and their request for a highway corridor to be reserved through the site linking to Coxmoor Road, in anticipation of the development of a wider area.
- 2.11. On 3rd July 2019, the Highway Authority confirmed that they had no objections [CD 14.1], subject to conditions and obligations. Following this, and by letter dated 13th July 2021, the Highway Authority confirmed that it no longer required land to be safeguarded for a route beyond the site [CD 14.7]. Again, no objections were raised, subject to conditions. However, despite there being no other technical objections being raised to the planning application, progress towards determination continued to stall.
- 2.12. Following an exchange of correspondence between the Council and the applicant, a number of updated technical reports were prepared, to allow the Council to reconsult with local residents. These updated reports were issued to the Council on 19th July 2022. However, on 26th July 2022, the Council via the case officer then advised as follows:
- “Officers were of the opinion that because of the time period that had lapsed since the initial submission of the planning application, together with the changes in policies and the amendments to the proposal, the submission of a new planning application would be required².”*
- 2.13. On 9th August 2022, the applicant highlighted the Council’s continuing obligation to determine the application, with reference to Article 34 of the Town and Country Planning (Development Management Procedure) (England) Order 2015. Whilst Article 34 stipulates that notice of the determination be provided to the applicant within a specified period, the duty to determine a planning application subsists beyond that period.³ Nevertheless, the Council continued to refuse to determine the application, and a new application (the subject of this appeal) was duly submitted to resolve the impasse. The 2017 application was ‘disposed of’ by the Council on 26th June 2024.

¹ The reasons for withdrawal are made clear in the recorded minutes of the Extraordinary Council meeting held on the 6th of September 2018 [CD 12.6].

² Email from Mr Morley, dated 26th July 2022 [CD 12.21].

³ See also, *Bovis Homes (Scotland) Ltd v Inverclyde DC* [1982] SLT 473.



The Appeal Application

- 2.14. The application which is the subject of this appeal was registered as valid on the 23rd August 2022 and assigned the reference no: V/2022/O629.
- 2.15. The description of development reads 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.”*
- 2.16. The application was supported by a suite of documents and plans, including an Illustrative Masterplan which depicts the general arrangement of the site [CDs 1.9 & 1.10]. The scheme evolved in response to consultee comments on the 2017 application (V/2017/O565). Up to 300 new dwellings are proposed, incorporating a mix of house types and 10% affordable housing.
- 2.17. The site is proposed to be accessed via a new traffic signal-controlled T-junction on Newark Road, details of which are set out on the ADC Proposed Access Junction Layout drg no ADC1580-DR-012 Rev P12.
- 2.18. Since the initial submission, amendments and supplementary details have been provided in response to consultee comments. The final list of documents submitted in support of the application is set out within the Statement of Common Ground [CD 9.1].
- 2.19. Over the course of the application, the Appellant developed a positive working relationship with the Case Officer(s) at Ashfield District Council and the Highways Officers at Nottinghamshire County Council (“NCC”). Positive meetings were held with the original Case Officer in May 2023, and with the original Lead Officer and wider team from NCC Highways.
- 2.20. Following a submission to NCC Highways in September 2023 to address some earlier queries, no further feedback was received until a response on 22nd February 2024 [CD 2.23], despite the appellant's best efforts to engage.
- 2.21. In responding to NCC Highways’ comments of 22nd February 2024, a suite of revised drawings/documents, together with Ownership Certificate C [CD 1.14], were provided to the Council on 8th March 2024, which reflected the desire to include a small parcel of unregistered land within the red-line boundary [CD 1.18].
- 2.22. The revised Proposed Access Junction Layout identifies two routes for footpath/cycle connections along the site frontage (Works A, the scheme confined to land under the applicant’s registered control and Works B, the scheme which utilises the unregistered land); The planning application (and thus appeal) seeks permission for both. The appellant is committed to use reasonable endeavours to implement Works B (as prescribed by the Section 106 Obligation).
- 2.23. A new Case Officer was assigned to the application in January 2024 and a meeting was held to discuss outstanding consultee responses, which were then sought by the Council. A further meeting was held in June 2024 to discuss planning obligations.
- 2.24. The Appellant worked proactively to resolve any issues raised by consultees, in order for the application to be brought before the July 2024 Planning Committee. It was envisaged that the application would be brought before an earlier meeting of the Planning Committee,

however, final comments from NCC as the Highway Authority and Severn Trent Water delayed matters.

- 2.25. Comments from both NCC Highways and Severn Trent Water were eventually forthcoming and no objections were raised, subject to conditions.
- 2.26. To summarise, no technical objections were raised to the planning application, subject to conditions. This is reflected within the Council's Committee Report, which recommended that the application be approved, and that planning permission be granted.

Officer Report to Planning Committee

- 2.27. The application was reported to the Planning Committee on 31st July 2024. The Officer Report recommended that the application be approved, subject to conditions and the completion of a Section 106 agreement [CD 3.1].
- 2.28. In considering the planning balance, the Officer Report concluded that the Council does not have a four-year housing supply (noting both 2.84 and 2.54 years supply are referenced in the report) thereby engaging the 'tilted balance' in paragraph 11(d) of the Framework. However, the Officer Report also suggests that this development is unlikely to contribute to the 4-year housing land supply and is likely to come into effect later in the housing trajectory given it is a large site requiring significant infrastructure in advance of development. The appellant refutes that assumption, and further information is provided on delivery expectations in the 'Future Failure' section below.
- 2.29. As regards the Emerging Local Plan, the Officer Report refers to the consultation response received from the Council's Planning Policy Team which notes the findings of Background Paper 1: Spatial Strategy and Site Selection⁴ ("BPO1") [CD 12.10] identifies that the appeal site:
- "Was excluded primarily due to the uncertainty that it would not deliver the homes required – paragraph 8.18 cites the duration of 2 pending planning applications dating from 2017 and 2022, with unresolved highways issues."*
- 2.30. Insofar as NCC as Highway Authority are concerned, there are no unresolved highways concerns. Furthermore, there is no uncertainty of delivery. The site is in single ownership being promoted by Hallam Land – a national, experienced land promoter with a contract in place with a regional housebuilder (Harron Homes), ready to submit a Reserved Matters application as soon as Outline Consent is granted. The Council's view of delivery appears to be echoing its own repeated failure to determine planning applications on the site.
- 2.31. As regards the weight to be attributed to the Emerging Local Plan, the Officer Report is clear that the emerging policies cannot be afforded significant weight in the decision-making process. The Report notes that, although the Emerging Plan has been submitted for Examination, this process is not yet complete, and no Inspector's Report has been received. Accordingly, the Officer Report attributes only *"some weight (albeit small)"* to the Emerging Local Plan. The Council maintains this position at paragraph 6.8 of their Statement of Case.

⁴ Emerging Local Plan Submission Documents Reference: BP.01.



2.32. In respect of highways and transportation matters, the Officer Report states that:

“The Highway Authority, following extensive negotiations with the developer is now satisfied that a suitable access can be provided into the site. Furthermore, the Highway Authority considers that the proposal subject to the access details, amendments to the highway layout around the site, and enhancements to cycling and public transport infrastructure would not lead to unacceptable residual impacts on the highway network.”

2.33. In respect of landscape character, the Officer Report states that the overall character of the site and its surroundings:

“Would be substantially diminished by the proposal with consequent loss of countryside which weighs against the proposal, although to some extent the impacts over the longer term and seen from the wider area would be mitigated by the creation of substantial planting strips along the boundaries with Newark Road and Coxmoor Road.”

2.34. On trees and hedgerows, the Officer Report states that:

“The whole hedge along the site’s boundary with Newark Road along with 108m of hedge along the site’s boundary with Coxmoor Road nearest to the junction would be removed. This would have a significant impact on the character of the area in the short to medium term. However, it is recognised that the extensive tree planting over time would not only ameliorate this impact but provide betterment in the longer term.”

2.35. On design quality, the Officer Report states that:

“It is considered that a suitable scheme could come forward at reserved matters stage which provides a high-quality residential environment that would accord with Policy HG5(g) and (h) of the Local Plan Review and paragraph 135 of the NPPF.”

2.36. On flood risk, the Officer Report states that:

“Subject to the attached conditions it is considered that the proposal would be in accordance with the requirements of the NPPF and is therefore acceptable from a flood risk and drainage perspective.”

2.37. On ground contamination, the Officer Report states that:

“Having regard to the above it is considered that subject to the attached conditions, the proposal would be acceptable in respect to risks from ground contamination.”

2.38. On ecology and Biodiversity Net Gain (“BNG”), the Officer Report states that:

“It is considered that the information provided by the applicant adequately assesses the ecological value of the site, the impact of the proposal on that value and that a biodiversity net gain is achievable.”

2.39. On agricultural land quality, the Officer Report states that:

“The proposal would result in the loss of the Best and Most Versatile Agricultural Land. It would also not contribute or enhance the natural and local environment therefore the proposal is considered to be contrary to the requirements of paragraph 180 of the NPPF.”

2.40. On public open space provision, the Officer Report states that:

"The central green and LEAP and surrounding public open space measuring in total some 10.31ha which exceeds the 10% of the gross housing area required under Policy HG6 of the Local Plan. Whilst this is only based on an Illustrative Masterplan it does show that the on-site requirement for public open space can be met and exceeded."

2.41. On climate change, the Officer Report states that:

"As such, where appropriate the proposal is considered on balance to be in line with the general thrust of the Council's guidance on climate change and paragraph 159 of the NPPF."

2.42. Under the heading of the 'Planning Balance', the Officer Report highlights "significant concerns" in relation to the availability of housing land supply in the District. Under the same heading, the Officer Report reiterates its earlier findings in relation to the Emerging Local Plan, stating that:

"The provisions of the emerging plan [are] not considered by officers [to be] of sufficient weight to alter the conclusions reached that the harms resulting from the proposal, due to the tilted balance being incurred, are outweighed by the social, economic and environmental benefits of the proposal."

2.43. Drawing the above together, the Officer's Report recommended to the Planning Committee that the application be approved, and that planning permission be granted.

Planning Committee

2.44. At its meeting of 31st July 2024, it was moved and seconded by the Planning Committee that the application be deferred for the following reasons, as set out in the recorded minutes [CD 3.3]:

"Members sought clarification and reassurance with regard to the proposed drainage and contamination strategies which might give rise to the potential for contamination of the watercourse from previous landfill and or provided conflicting strategies. Further information was required as to the sustainability of the site particularly in relation to bus provision, routes and frequency and the accessibility and security of the station to cyclists and others given distance from facilities. Members were concerned that this would lead to a more severe impact on the highway and junctions in the vicinity and sought more detail. A better understanding was required as to the impact development would have on the best and most versatile land."

2.45. It is important to note that these minutes specifically define the areas on which it sought 'clarification' and 'reassurance'. There is no reference, expressly or otherwise, of concerns over the impact on the railway level crossing, or in respect of any landscape and visual concerns despite both these issues emerging as putative reasons for refusal. Secondly, the Planning Committee did not raise any concerns on ground contamination or drainage *per se*, and they did not request additional testing. Instead, they sought only 'clarification' and 'reassurance' with regard to the proposed drainage and contamination **strategies** which might give rise to the potential for contamination of the watercourse from previous landfill and or provided conflicting strategies.

- 2.46. The Appellant lodged an appeal on the grounds of non-determination on 21st August 2024.
- 2.47. The non-determination appeal was reported to the Planning Committee at its meeting of 23rd October 2024. The Officer Report summarised matters raised in the Appellant's Statement of Case before providing commentary on the earlier reasons for deferral [CD 3.2]. However, the Appellant had concerns over the level of detail offered in said commentary, and a letter dated 18th October 2024 was submitted by Pegasus to provide clarification [CD 12.27].
- 2.48. The recorded minutes [CD 3.4] confirmed that Members considered the item in private, presumably so as to deliberate on whether or not to contest the appeal. As such, it was not until the Appellant had sight of the Council's Statement of Case ("SoC") on the 30th October 2024, that the resolution, and thus the putative reasons for refusal, was made known. As set out in the Council's SoC, the Planning Committee resolved that, had the appeal not been made, they would have been minded to refuse the planning application for 5 reasons. The five putative reasons for refusal are:
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)."*
 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)."*
 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 the objectives of the National Planning Policy Framework (2023)."*
 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 180(c) and 189 of the National Planning Policy Framework (2023)."*
 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 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."*

The Main Issues

- 2.49. Following the Case Management Conference on 7th November 2024, the Inspector set out that, subject to caveats on the clarification of the LPA's position, the main issues in this case are:



- Whether the appeal site would be sustainably located for the development proposed;
- The effect of the proposal on the character and appearance of the surrounding area;
- The effect of the proposal on best and most versatile agricultural land;
- Whether the appeal site is suitable for the development proposed having regard to ground conditions and risks arising from contamination;
- The effect of the proposal on the safety and performance of the local highway network, with particular reference to the proximity of the Newark Road level crossing; and
- The nature and extent of any economic, social, and environmental benefits.

2.50. At the time of writing, it has been confirmed in writing from the Council that the LPA will be calling a consultant planning witness and an elected member of the Council, with no technical evidence being presented. In light of the above, my evidence will seek to address the following matters:

- The extent to which the most important policies for determining the appeal proposal are out of date, having regard to years of housing delivery failure in Ashfield District. How these policies have then been applied in respect of planning applications for residential development beyond the defined settlement limits, and then the weight to be applied to these policies having regard to the development, the NPPF and case law.
- The weight to be applied to other material considerations, notably the Emerging Local Plan and the recently published new NPPF.
- Consideration of the putative reasons for refusal having regard to planning policy and the weight to be applied to the benefits and disbenefits of the scheme.
- Consideration of third-party representations.
- I will then undertake a planning balance exercise in accordance with paragraph 11(d) of the NPPF to weigh the benefits and disbenefits of the scheme.



3. Statement of Common Ground

3.1. A draft Statement of Common Ground (“SoCG”) was submitted with the appeal on 21st August 2024.

3.2. A final, signed, version of the SoCG has subsequently been agreed between the Appellant and the Council on 28th November 2024. It should be noted this was agreed and signed in advance of the new NPPF being published and I have sought to highlight below where the agreed matters are impacted by the new NPPF. Within the final iteration of the SoCG, the following key issues are agreed:

- The site description, context and background to the appeal.
- The proposed development description.
- The planning history of the site.
- The relevant development plan policies.
- The most important development plan policies.
- The Housing Delivery Test indicates that the delivery of housing was substantially below (74% of) the housing requirement over the previous three years (the latest HDT for Ashfield is now 86%).
- The LPA is unable to identify a sufficient supply of available sites and that the ‘tilted balance’ as set out in the Framework’s presumption in favour of sustainable development at paragraph 11(d)(ii) is engaged.
- There is an affordable housing need.
- The attribution of limited weight to the Emerging Local Plan.
- The site is not a ‘valued landscape’ for the purposes of paragraph 174 of the Framework. The site is not subject to any national or local landscape designations. The site is not unique or remarkable for landscape purposes.
- The appeal site includes 19.2 hectares of subgrade 3a agricultural land and 0.6 hectares of subgrade 3b. That the loss of some best and most versatile agricultural land may be inevitable in allocating land within the borough for the provision of housing supply.
- The development would not result in harm to the significance of any designated, or non-designated heritage assets, through changes to their settings, or otherwise.
- There is no noise related basis for refusal.
- There is no air quality related basis for refusal.
- Overall, the impacts on the loss of trees and hedgerows will be relatively low, and compensatory planting is to be undertaken.

- As regards ground contamination, subject to the imposition of conditions, no technical objections were received.
- There is no highway or transport basis to refuse permission, other than the area of dispute in respect of the impact of development upon the nearby level crossing.
- The proposed development is able to deliver a high-quality design and layout, having regard to the Illustrative Masterplan and the Design and Access Statement.
- The site is capable of being developed with net gains for biodiversity.
- The site falls wholly within Flood Zone 1 and is at the lowest risk of flooding. The application is acceptable with respect to flooding and drainage considerations.
- Proposed planning conditions.
- S.106 heads of terms.

3.3. Key issues not agreed:

- The weight to be attributed to the out-of-date policies.
- Whether the LP policies are consistent with national policy.
- The robustness of the Council's housing land supply position.
- The weight to be ascribed to the provision of market and affordable housing.
- Whether the site is sufficiently accessible by public transport.
- The weight to be attributed to the loss of some best and most versatile agricultural land.
- Whether the proposed residential use would be suitable taking account of ground conditions and risks arising from potential contamination.
- The weight to be attributed to landscape and visual effects.
- The economic benefits of the scheme and the weight they should be afforded in the planning balance.
- The impact of the development on highway capacity as a consequence of the nearby level crossing, particularly at peak times.
- There is also disagreement over the extent of the planning obligations. The appellant and the Council disagree over whether the £900,000 requested for Public Open Space improvements satisfies the statutory tests. There is also disagreement as to the necessity of the £1,113,936 requested towards Secondary Education and a potential contribution towards improved cycle parking at Sutton Parkway Train Station has not yet been explained by the Council.

4. Housing Delivery Failure

- 4.1. There is growing recognition that Britain is enduring a housing crisis – what has been termed ‘the most acute housing crisis in living memory’⁵. Addressing the cause of the crisis, the Government has revealed ambitions to deliver some 1.5 million homes over the current parliament. Addressing the Housing, Communities and Local Government Committee on 20th November 2024, Housing Minister Matthew Pennycook stated that a lower target would be an ‘inadequate response to what is an acute and entrenched housing crisis in England.’⁶

Past Failure

- 4.2. Within the district of Ashfield there has been a chronic failure to deliver housing, the supply position having previously been described by Inspectors as ‘lamentable’ and ‘very serious’⁷. The Council’s Housing Land Monitoring Report (July 2024) [CD 12.1] set out that the Council’s position was 3.85 years supply. However, the Council’s Planning Application Committee Report of the same month [CD 3.1] states that the Council had a 2.56-year supply, which is also less than the previous Monitoring Report 2023 position of 2.93 years. The magnitude of the shortfall is a separate issue which my evidence addresses below. For the purposes of triggering the tilted balance, however, it matters only that the Council cannot demonstrate a five – year supply of housing land. The Court of Appeal, in *Oxton Farm v Harrogate BC*⁸, helped elucidate the binary approach that decision-makers must take:

“Whether the tilted balance is engaged because of a shortfall in the supply of deliverable sites for housing is a binary question, to be answered yes or no. Either there is a 5-year supply of housing land, or there is not. If there is a 5-year supply, then the tilted balance is not engaged on that basis. It does not matter, for this purpose, whether the supply exceeds 5 years by a little or a lot.”

- 4.3. There are myriad reasons for the Council’s persistent housing delivery failure, including, but not limited to, the policies in the Ashfield Local Plan Review 2002 being out of date, and the absence of an up-to-date development plan.
- 4.4. Since the publication of the 2020 annual measurement, the Council’s housing delivery has consistently failed to meet its annual requirement in each of the 6 years from 2017/18 to 2022/232, with the results set out below in Table 1:

⁵ Press Release, ‘Housing Targets Increased to Get Britain Building Again’, Ministry of Housing, Communities and Local Government, July 2024.

⁶ <https://parliamentlive.tv/event/index/5d8d5ba3-32a7-47d9-b1ae-fa186cf9856b>

⁷ Appeal Reference: APP/W3005/W/21/3272262 at [48].

⁸ [2020] EWCA Civ 805 at [32].

Monitoring Year	Number of Homes Required	Number of Homes Delivered	Oversupply/ Undersupply
2017/18	471	401	-70
2018/19	502	344	-158
2019/20	435	173	-262
2020/21	320	302	-18
2021/22	457	412	-45
2022/23	467	356	-111
Total Undersupply			-664

Table 1 – Housing delivery within the District.

4.5. Indeed, over the past 6 years, the total number of homes required stands at 2,652. Against this requirement, 1,988 homes were delivered. This equates to an under-delivery of some 664 homes.

4.6. As a consequence of its under-delivery the Council, amongst other things, is required by the NPPF paragraph 79(a) to publish an Action Plan. The action plan should assess the causes of under-delivery and identify actions to increase delivery in future years. The Council’s website still refers to the HDT results from 2020 and so the only iteration of the action plan is from July 2021 [CD 12.22]. Within the Council’s Housing Delivery Action Plan July 2021, the following conclusions are reached:

- The ‘saved’ policies of the ALPR 2002 identified housing land requirements and housing land allocations for the period 1991–2011. As such, the **housing land requirement set out in local planning policy is acknowledged as being insufficient to meet future anticipated needs** (paragraph 5.2).
- Delivery has fluctuated throughout the period 2002 – 2021, with overall cumulative completions falling below the cumulative requirement as the 2002 Local Plan allocations are built out, and settlements become constrained by policy. The District has a legacy of redundant coal mining areas and textile industries which have provided numerous brownfield sites in the past. However, these have now been successfully redeveloped, leaving **little scope for future development on brownfield/previously developed sites** (paragraph 5.5).
- There is a **significant under supply of housing land available to meet future need**. This is due to the **outdated status of the current Local Plan** and the fact that the majority of SHELAA sites would be contrary to ‘saved’ policies within that Plan (paragraph 5.10).

- The presumption against inappropriate development in the Green Belt and the need to demonstrate very special circumstances for larger scale residential development means that there is **limited scope to permit development to address under-delivery** in Ashfield (paragraph 4.3).
- The **settlement boundaries within the ALPR 2002 were defined to allow for sufficient growth to meet future land use needs for the plan period to 2011**. Many of the housing allocations under Policy HG1 have been developed, which substantially limits the opportunity for the existing ALPR to meet future housing needs (paragraph 4.1).

4.7. In order to inform the Council's Action Plan, the Council has sought to consult developers, housebuilders and agents to gain views on the main issues that may be slowing down housing delivery in the District. The following are described as the key barriers which have affected timely delivery:

- Planning Committee decisions based on **poor reasons for refusal**, leading to delays and costs associated with the appeal process (paragraph 6.3).
- Planning Committee making **decisions contrary to officer recommendations, delayed responses from statutory consultees, the absence of an up-to-date Local Plan and significant policy constraints** (i.e., Green Belt) (paragraph 6.3).

4.8. As identified by the Council itself (above), the settlement boundaries within the ALPR 2002 were defined in the context of the land needed to meet housing needs identified in the Nottinghamshire Structure Plan Review ("NSPR") and to allow for sufficient growth to meet future land use needs for the plan period to 2011. That plan period expired 13 years ago. Plainly, the settlement boundaries within the ALPR, which were adopted in 2002, no longer reflect the position on the ground and fail to take account of or allow the ability to meet an up-to-date assessment of need. Indeed, they have not done so for many years as demonstrated by the poor delivery of new homes.

4.9. Furthermore, the NSPR set a requirement of 8,550 dwellings across the district, between 1991 – 2011; equivalent to 427 dwellings per annum. Set against the standard method figure for 2024 (535 dwellings per annum) including the 5% buffer, the annual requirement is 562 dwellings per annum. Plainly, the NSPR requirement is out-of-date. More fundamentally, the ALPR 2002 only ever aimed to accommodate enough development (at that lower annual rate) to a point in time that was passed 13 years ago, and the boundaries of settlements were drawn to accommodate development on that basis.

4.10. As a direct result, development has, necessarily, taken place outside the defined settlement limits, such that the situation on the ground is materially different. Table 2 (below) provides context:

Site	Does the proposal engage Policies ST4, EV1 or EV2?	Application Reference	No. of Dwellings	Date Granted & Decision Maker
Land Off, Vere Avenue, Sutton in Ashfield	ST4 – Remainder of the District; and EV2 – Countryside	V/2018/0783 APP/W3005/W/21/3272262	206	05/11/2021 (Full Permission) Inspector on appeal
Land West Of, Beck Lane, Sutton in Ashfield	ST4 – Remainder of the District; and EV2 – Countryside	V/2016/0569 APP/W3005/W/18/3213342	322	23/08/2019 (Outline Consent) Inspector on appeal
Land On The North West Side Of, Brand Lane, Sutton In Ashfield	ST4 – Remainder of the District; and EV2 – Countryside	V/2016/0208	181	27/02/2017 (Outline Consent) Planning Committee
Land Between Pleasley Road and North Of, Mansfield Road, Sutton in Ashfield	ST4 – Remainder of the District; and EV2 – Countryside	V/2012/0556	37	17/12/2013 (Outline Consent) Inspector on appeal
Coxmoor Lodge Farm, Farm View Road, Kirkby in Ashfield	ST4 – Remainder of the District; and EV2 – Countryside	V/2020/0518	196	16/01/2024 (Full Permission) Planning Committee
Land Opposite 112, Church Hill, Kirkby in Ashfield	ST4 – Remainder of the District; and EV2 – Countryside	V/2020/0627	38	06/08/2024 (Full Permission) Planning Committee

Land Adjacent 109 Main Road, Jacksdale	ST4 –Remainder of the District; and EV1 – Green Belt	V/2022/0066	81	10/04/2024 (Full Permission) Planning Committee
Land West of Fisher Close, Sutton-in- Ashfield	ST4 – Remainder of the District; and EV2 – Countryside	V/2020/0784	84	29/04/2022 (Outline Consent) Planning Committee
Land off Ashland Road West, Sutton-in- Ashfield	ST4 – Remainder of the District; and EV2 – Countryside	V/2020/0184 APP/W3005/W/21/3274818	300	13/12/2021 (Outline Consent) Inspector on appeal
Land off 139 Chesterfield Road, Huthwaite	ST4 – Remainder of the District; and EV2 – Countryside	V/2015/0391	37	06/12/2016 (Outline Consent) Inspector on appeal
Total Number of Dwellings			1,482	

Table 2 – Permissions granted outside of the defined settlement limits.

- 4.11. The table above refers only to major residential developments⁹, outside of the defined settlement limits, that have been granted planning permission since the expiration of the 2002 based Local Plan period. In total, some 1,482 dwellings have been granted planning permission; equivalent to 114 dwellings per annum. Of those, 902 dwellings were allowed on appeal, and in nine of the ten cases, the development engaged the same policies as in the present case: Policies ST4 and EV2.
- 4.12. It is clear that, even within the Council’s 5-year housing land supply, reliance is placed on 778 dwellings which were allowed as a result of s.78 appeal decisions: 145 dwellings (from V/2020/O518), 168 dwellings (from V/2018/O783), 175 dwellings (from V/2021/O089), 290 (from V/2022/O262). Cumulatively, these permissions equate to approximately 1.45 years’ supply.
- 4.13. Looking back further, the Council has, historically, failed to deliver its annual housing requirement, regardless of whether one utilises the NSPR requirement or the standard method figure. Between 2011 – 2023, the total net completions for the District equates to 4,725 dwellings; an average of 394 dwellings per annum. Plainly, once the adopted plan period passed in 2011, the Council has been unable, year-on-year, to deliver sufficient housing; on average, net completions have been 33 dpa below the NSPR requirement, 141 dpa below the current standard method figure, and 168 dpa below the current standard method figure with the 5% buffer included.

TOTAL ASHFIELD

Year completed (1st April - 31st March)	New Build Small Sites	New Build Large Sites	Total Dwellings delivered on New Build Sites	Net Additions through Conversion/ Change of Use	Net additions through permitted development	Demolitions	Total Net Completions
2011 - 2012	43	356	399	15	n/a	2	412
2012 - 2013	37	386	423	13	n/a	2	434
2013 - 2014	34	404	438	17	n/a	1	454
2014 - 2015	41	407	448	19	n/a	42	425
2015 - 2016	103	437	540	23	n/a	5	558
2016 - 2017	57	453	510	34	n/a	0	544
2017 - 2018	35	313	348	48	4	3	397
2018 - 2019	63	205	268	28	5	1	300
2019 - 2020	39	126	165	9	2	3	173
2020 - 2021	27	211	238	23	8	4	265
2021 - 2022	66	290	356	55	1	0	412
2022 - 2023	85	231	316	28	8	1	351
2011 to 2023	630	3819	4449	312	28	64	4725
Average per year	53	318	371	26	5	5	394

Table 3 – Completions data for Ashfield District Council.

⁹ As defined by Article 1(2) of the Town and Country Planning (Development Management Procedure) (England) Order 2015.

Future Failure

- 4.14. Irrespective of the Council's past failures, housing delivery issues will persist into the future, in the absence of an up-to-date development plan. Within the Council's Housing Land Monitoring Report 2024 [CD 12.1], Table 3 illustrates Ashfield's housing land supply against a local housing need of 446 homes a year, calculated using the standard method, as of April 2024. The table incorporates dwellings on sites with planning permission deliverable in 5 years, known permitted development and residential institutions deliverable within 5 years, and any large SHELAA sites deemed deliverable in the first 5 years.
- 4.15. In accordance with the most recent NPPF, Ashfield's new Standard Method figure is 533 dwellings per annum, is subject to a 5 year requirement plus a 5% buffer giving a total 5-year requirement figure of 2,809 dwellings – or 562 dwellings per annum.
- 4.16. Against this requirement, the Council claim a total supply of 2,060 dwellings. I have highlighted alternative, lower housing land supply figures quoted in the planning application committee report, so the Council appears unsure what the actual supply position is. I have considered the purported supply as set out in the 2024 Housing Land Monitoring Report and query the deliverability credentials of a number of sites.
- 4.17. The purported supply includes some 244 dwellings on large sites without planning permission. Annex 2 of the NPPF is clear that, to be considered deliverable, sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years. In particular:
- a) Sites which do not involve major development and have planning permission, and all sites with detailed planning permission should be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered within 5 years.
 - b) Where a site has outline planning permission for major development, has been allocated in a development plan, has a grant of permission in principle, or is identified on a brownfield register, it should **only be considered deliverable where there is clear evidence that housing completions will begin on site within 5 years.**
- 4.18. Of these 244 dwellings, the Council has relied on the inclusion of 'Land adjacent No. 208 Mansfield Road' and 'Quantum Clothing North Street'. Together, these two sites account for 107 dwellings over the 5-year period. Neither site benefits from an extant permission and neither site is allocated under the current development plan. Accordingly, both sites fail to satisfy the qualifications provided for by criterion (b) above and should not be considered 'deliverable'. They should be removed from the Council's supply.
- 4.19. In addition, it is noted that within the 5-year period, the Council anticipates the delivery of 23 units in respect of 'The Pattern House' (V/2018/O212). Following the grant of outline consent in July 2020, an application has been submitted in respect of the reserved matters (V/2022/O878). However, that application has revised the quantum of development to 16 dwellings. This results in a net loss of 7 dwellings, which should be removed from the Council's supply.
- 4.20. Within the 5-year period, the Council is also reliant on the delivery of 69 dwellings at 'Land at Clare Road' (V/2020/O791). However, this detailed permission expired in August 2024. No

applications have been submitted for the approval of details reserved by conditions. It follows, therefore, that the 2021 permission cannot have been lawfully implemented. Accordingly, the Council is reliant on a site which is neither an allocation nor benefits from planning permission – 69 dwellings should be removed from the Council’s supply.

Site Address	Application Reference (if applicable)	Number of Homes to be Removed from Supply
Land adjacent No. 208 Mansfield Road	V/2022/0347	36
Quantum Clothing North Street	V/2015/0264	71
The Pattern House	V/2018/0212	7
Land at Clare Road	V/2020/0791	69
Total Dwellings to be Removed from Supply		183

Table 4 – Sites to be discounted from the Council’s 5YHLS.

- 4.21. By virtue of the above and without further investigation of other supply sites, the Council’s total amount of housing available and deliverable for the next 5–year period should be reduced to 1,877 dwellings. The new 5–year housing land supply requirement figure is now 2,809 dwellings (as set out at paragraph 4.15 above). As such, I am of the view that the council can at best only demonstrate **3.34** years’ supply of deliverable housing land – or an undersupply of 932 dwellings.
- 4.22. The bottom line is that the Council is significantly adrift of having an adequate supply of deliverable housing land, with the appeal site being able to make a material, positive contribution to housing delivery in the short term. This would contribute to and help alleviate the chronic and acute housing shortage that has existing in Ashfield District for some time and likely to continue into the future.
- 4.23. The Appeal Site is under contract, subject to planning, to a regional house builder, Harron Homes. Should outline planning permission be granted for the Appeal proposals in Q1 2025, then it is expected that development would commence on site in 2026, with a forecast of 30 market dwellings completed in 2027 and 36 per annum for the subsequent 4 years. With 10% affordable housing provision in addition to this, that would thus make a material contribution to the housing land supply shortfall over the next 5 years.
- 4.24. Whilst a draft local plan has been submitted for examination, there are significant objections raising fundamental soundness concerns to be addressed, as set out below. Little confidence can therefore be placed on the submission draft local plan being the remedy to the future housing failure concerns.

5. The Development Plan and the NPPF

- 5.1. Section 70(2) of the TCPA 1990 sets out that, in dealing with proposals for planning permission, regard must be had to the provisions of the development plan, so far as material to the application, and to any other material considerations.
- 5.2. Furthermore, section 38(6) of the Planning and Compulsory Purchase Act 2004 (“PCPA 2004”) states that, if regard is to be had to the development plan for the purpose of any determination, then that determination must be made in accordance with the plan unless material considerations indicate otherwise. Taking these sections together, a decision-maker must, therefore, consider the development plan, identify any provisions within it which are relevant, and then properly interpret them.
- 5.3. For the purposes of this appeal, the development plan comprises the saved policies of the Ashfield Local Plan Review 2002 (“ALPR 2002”). For the avoidance of doubt, there is no Neighbourhood Plan that applies to the appeal site.
- 5.4. The National Planning Policy Framework (“NPPF”) does not purport to change the statutory framework or displace the primacy of the development plan; rather, it is a material consideration for the purposes of sections 70(2) of the TCPA 1990 and section 38(6) of the PCPA 2004. The NPPF represents up-to-date government policy¹⁰ and is, therefore, an important material consideration that must be taken into account where it is relevant to a planning application/appeal. If decision takers choose not to follow the Framework, where it is a material consideration, clear and convincing reasons for doing so are needed.
- 5.5. At the heart of the NPPF is a presumption in favour of sustainable development, where Paragraph 11 sets out the policy for decision making. Paragraphs 11(c) and 11(d) set out how this should be done, with 11(d) referred to as the ‘tilted balance’. Before turning to the development plan, it is useful to note some key aspects of recent judgments on the approach to be taken.

The NPPF

- 5.6. As noted in paragraph 1.11 above, I have sought to address the most recent version of the NPPF in my evidence, but reserve the right to provide a supplemental/updated proof once I have had chance to fully digest the most recent changes.
- 5.7. The policy presumption in favour of sustainable development is promulgated between paragraphs 11 and 14 of the NPPF. At first instance, Holgate J provided a detailed analysis of the presumption and the circumstances in which it is engaged (see, *Monkhill Ltd v SSHCLG*¹¹). This analysis was accepted by the Court of Appeal¹².
- 5.8. Insofar as relevant, where a case does not fall within paragraph 11(c) (as is the case here), the next step is to consider whether paragraph 11(d) applies. In this case, this requires examining

¹⁰ Planning Practice Guidance, Paragraph 006 Reference ID: 21b-006-20190315.

¹¹ [2019] EWHC 1993 (Admin).

¹² [2021] EWCA Civ 74.

whether the most important development plan policies for determining the application are out-of-date.

- 5.9. If paragraph 11(d) does apply, then the next question is whether one or more Footnote 7 policies are relevant to the determination of the application or appeal (limb (i)). Footnote 7 policies are those that protect areas or assets of particular importance. In the present case, no Footnote 7 policies apply.

Footnote 8 Qualifications

- 5.10. As regards paragraph 11(d), Footnote 8 confirms that the presumption is triggered for applications involving the provision of housing where:
- a) The local planning authority cannot demonstrate a five-year supply of deliverable housing sites (with a buffer, if applicable, as set out in paragraph 78); **or**
 - b) Where the Housing Delivery Test indicates that the delivery of housing was below 75% of the housing requirement over the previous three years (emphasis added).
- 5.11. Footnote 8 qualifications are not contingent on one another; to engage the presumption, the satisfaction of one will suffice. However, it is accepted that under the recently published HDT results that the delivery is now 86%. In this respect however the change to the standard method (535 pa from 446) will soon erode the HDT results back to lower levels unless significant and urgent actions are taken to release new housing land.
- 5.12. As regards criterion (a), the revised NPPF removes the 4-year land supply measurement period and replaces it with a 5-year period. In accordance with paragraph 78 of the Framework, a buffer of 5% should be applied.
- 5.13. Nevertheless, the Council cannot demonstrate a four-year supply of deliverable housing land, at 3.34 years, let alone a 5-year supply.
- 5.14. Footnote 8a) qualification is therefore satisfied, engaging the tilted balance. This means:
- The most important policies are deemed out of date. The weight to be given to them is a matter of judgment for the decision taker, albeit noting the Supreme Court judgment in *Suffolk Coastal DC v Hopkins Homes Ltd*¹³ [CD 8.9] that if a planning authority that was in default of the requirement of a five-years' supply were to continue to apply its environmental and amenity policies with full rigor, the objective of the Framework could be frustrated¹⁴; and
 - That the decision taker should be disposed to grant planning permission unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits.

¹³ *Suffolk Coastal District Council v Hopkins Homes Ltd & Anor and Richborough Estates Partnership LLP & Anor v Cheshire East BC* [2017] UKSC 37.

¹⁴ *Ibid* [83].

Out of Date Development Plan Policies

- 5.15. Notwithstanding the above, the lack of housing land supply is not the only reason the policies can be found to be out-of-date. Policies which bear on the decision can be out-of-date irrespective of housing land supply or the Housing Delivery Test result, with the consequence that the tilted balance is triggered on a different basis.¹⁵
- 5.16. In *Gladman Developments Ltd v SSHCLG*¹⁶, [CD 8.10] Sir Keith Lindblom held that:
- “In paragraph 11 [of the NPPF] two main currents running through the NPPF converge: the Government’s commitment to the “plan-led” system and its support for “sustainable development [...] the provisions on “decision-taking” in the second part of paragraph 11 set out a policy to guide decision-makers on the performance of their statutory responsibilities under section 70(2) of the 1990 Act and section 38(6) of the 2004 Act, in the specific circumstances to which they relate.”¹⁷*
- 5.17. In *Peel Investments (North) Ltd v SSCLG & Anor*¹⁸ [CD 8.11] in his judgment with which Lord Justice Lewison and Sir Stephen Richards agreed, Lord Justice Barker expressly endorsed and adopted the ‘careful and precise’¹⁹ analysis of paragraph 14 of the 2012 NPPF by Justice Lindblom (as he then was) in the case of *Bloor Homes East Midlands Ltd v SSCLG & Anor*²⁰ [CD 8.5].
- 5.18. Mr Justice Lindblom was referring to paragraph 14 of the 2012 NPPF when at paragraph 45 of his judgment in *Bloor Homes* he held that:
- “If the plan does have relevant policies these may have been overtaken by things that have happened since it was adopted, either on the ground or in some change in national policy, or for some other reason, so that they are now “out-of-date.”*
- 5.19. In *Peel Investments*, Lord Justice Barker found that this analysis plainly applies to the revised terms of the presumption in favour of sustainable development in paragraph 11(d) of the NPPF. Indeed, he went on to find that:
- “If the policies which are most important for determining the planning application have been overtaken by things that have happened since the plan was adopted, either on the ground or through a change in national policy, or for some other reason, so that they are now out-of-date, the decision makers must apply the tilted balance expressed in the presumption in favour of sustainable development.”²¹*

¹⁵ *Oxton Farm v Harrogate BC* [2020] EWCA Civ 805 at [33].

¹⁶ [2021] EWCA Civ 104.

¹⁷ *Ibid* [48–49].

¹⁸ [2020] EWCA Civ 1175.

¹⁹ *Ibid* [66].

²⁰ [2014] EWHC 754 (Admin).

²¹ *Peel Investments (North) Ltd v SSCLG & Anor* [2020] EWCA Civ 1175 at [66].

5.20. The phrase, “the policies most important for determining the application”, has been the subject of judicial consideration. In *Wavendon Properties Ltd v SSHCLG*²² [CD 8.3], Dove J held that:

“In my view the plain words of the policy clearly require that having established which are the policies most important for determining the application, and having examined each of them in relation to the question of whether or not they are out of date applying the current framework [...] an overall judgement must be formed as to whether or not taken as a whole these policies are to be regarded as out-of-date for the purpose of the decision.”²³

5.21. In *Paul Newman New Homes Ltd v SSHCLG*²⁴, the Court of Appeal approved the analysis of Dove J in *Wavendon*. Indeed, at [44], Lady Justice Andrews held that:

“The first step in the exercise is to identify the policies that are the most important for determining the application; the second is to examine each of those policies to see if it is out-of-date; and the third is to stand back and assess whether, taken overall, those policies could be concluded to be out-of-date for the purposes of the decision.”

5.22. Having regard to these authorities, and for the purposes of this Appeal, it is agreed in the SoCG that the most important policies are ST1, ST4 and EV2 and that the appeal proposal conflicts with these. The appellant also attaches weight to Policy ST2 for the reasons set out below.

5.23. Within this proof of evidence, under the heading of ‘Housing Delivery Failure’, I have demonstrated the Council’s consistent failure(s) to deliver sufficient housing. These failures, in the absence of an up-to-date development plan, are set to persist into the future.

5.24. However, in addition the settlement boundaries within the ALPR 2002 were defined to allow for sufficient growth to meet future land use needs for the plan period to 2011. There are no undeveloped housing allocations under Policy HG1 of the ALPR 2002 remaining. The ‘saved’ policies of the ALPR 2002 identified housing land requirements and housing land allocations for the period 1991 – 2011. As such, the housing land requirement set out in local planning policy is insufficient to meet future needs. These are points conceded by the Council within their published action plan.

5.25. Furthermore, the Nottinghamshire Structure Plan Review (NSPR) set a requirement of 8,550 dwellings across the district, between 1991 – 2011; equivalent to 427 dwellings per annum; this was the requirement figure adopted in the ALPR 2002. Set against the standard method figure for 2024 (535 dwellings per annum) including the 5% buffer, the annual requirement is now 562 dwellings per annum. Plainly, the NSPR requirement is out-of-date. More fundamentally, the ALPR 2002 only ever aimed to accommodate enough development (at that lower annual rate) to a point in time that was passed 13 years ago, and the boundaries of settlements were drawn to accommodate development on that basis.

²² [2019] EWHC 1524 (Admin).

²³ *Ibid* [58].

²⁴ [2021] EWCA Civ 15.

- 5.26. As a direct result, development has, necessarily, taken place outside the defined settlement limits, such that the situation on the ground is materially different to that envisaged when the ALPR 2002 was adopted. The relevant planning permissions have been tabulated and provided within this Proof of Evidence. In total, some 1,482 dwellings on larger sites have been granted planning permission outside the defined settlement limits since the expiration of the plan period. Of those, 902 dwellings were allowed on appeal, and in nine of the ten cases, the development engaged the same policies as in the present case: Policies ST4 and EV2.
- 5.27. The Council's past failures in respect of housing delivery are also reflected in the annual measurements of the Housing Delivery Test. Over the past 6 years, the total number of homes required stands at 2,652. Against this requirement, 1,988 homes were delivered. This equates to an under-delivery of some 664 homes.
- 5.28. Looking back further, the Council has, historically, failed to deliver its annual housing requirement even when measured against the out-of-date NSPR requirement figure. Between 2011 – 2023, the total net completions for the District equates to 4,725 dwellings; an average of 394 dwellings per annum. Plainly, once the current plan period expired, the Council has been unable, year-on-year, to deliver sufficient housing; on average, the net completions have been 33 dpa below the low NSPR requirement figure.
- 5.29. For the reasons identified above and set out in more detail under the heading of 'Housing Delivery Failure', the policies most important for determining the application are out of date, due to being overtaken by things that have happened since adoption. The settlement boundary is out of date and not fit for purpose and it has been breached numerous times in recognition of this.
- 5.30. Separately, these policies must also be considered in the context of their consistency with the NPPF, which post-dates the adoption of the ALPR 2002.
- 5.31. Policy ST1 is an over-arching policy that restricts the consideration of development proposals; whilst it is a positively framed policy, it permits development in specifically identified circumstances, with the criteria identifying these circumstances being explicit and binary. The policy does not permit the weighing or consideration of the degree of any conflict with the defined criteria. Consequently, any development proposal would conflict with Policy ST1 if it:
- a) Conflicts with any other policies in this local plan,
 - b) Adversely affects the character, quality, amenity or safety of the environment in any way,
 - c) Adversely affects highway safety, or the capacity of the transport system in any way,
 - d) Prejudices the comprehensive development of an area in any way, or
 - e) Conflicts with an adjoining or nearby land use in any way.
- 5.32. This policy approach lacks the balancing exercise of harms and benefits that runs through the NPPF and is inconsistent with it.
- 5.33. Accordingly, limited weight should therefore be applied to Policy ST1.

- 5.34. Policies ST2 – ST4 are grouped under the sub-heading ‘General Location of Development’ and are thus the key spatial policies of the Development Plan. Paragraph 2.35 of the ALPR 2002 that precedes Policy ST2 states:
- “In general terms therefore the review has adopted a “sequential” approach to site identification in accordance with PPG3. This is based on Structure Plan Review policy of identifying land within urban areas as a priority, **followed by sites adjoining urban areas**, and finally, only when the first two options have been exhausted, to consider sites elsewhere”* (my emphasis).
- 5.35. Accordingly, the Plan’s development strategy is to concentrate development in and around the main urban areas, with ‘sites adjoining urban areas’ sequentially preferable.
- 5.36. Policy ST2 identifies that the Main Urban Areas of Hucknall, Kirkby-In-Ashfield and Sutton-In Ashfield as shown on the Proposals Map are the locations where development is to be concentrated. Whilst the extent of the Main Urban Areas as shown on the Proposals Map is considered out of date (see below in respect of Policy ST4 and throughout this Proof of Evidence), the principle of focusing the majority of growth to the most sustainable settlements is not considered out of date. The appeal site lies immediately adjacent to the largest settlement that makes up the Main Urban Areas, to the south and east, with a small section of the site, on the western side connecting to Sotheby Avenue, actually within the defined MUA.
- 5.37. The submission draft Ashfield Local Plan contains a similar spatial strategy at Strategic Policy S1 in so far as it targets growth in and adjoining the main urban areas ahead of other locations beyond the urban areas. Accordingly, Policy ST2 is important in so far as it provides a strategy for growth across the District that the appeal proposals accord with. It is also worth noting here that both the ALPR 2002 and the submission draft local plan include Green Belt allocations that should only be released in exceptional circumstances; under-scoring the acceptability in principle of this non-Green Belt site adjoining the main urban area.
- 5.38. Policy ST3 relates to named settlements and is not a relevant policy.
- 5.39. Policy ST4 applies to ‘The Remainder of the District’ and states that, outside the 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 the countryside as set out in Policies EV1 and EV2.
- 5.40. Like Policy ST1, Policy ST4 is explicit and only permits development in a very narrowly defined set of circumstances, with no balancing provided for, contrary to the NPPF. Further, the extent of land to which Policy ST4 (and thus Policy ST2) applies is also substantively out-of-date as a consequence of changes on the ground and the inability to meet development needs from land not covered by EV1 or EV2; only land inside the extent of the boundaries that define the Main Urban Areas and Named Settlements is acceptable in principle for housing development. Given the ALPR 2002 defined these settlement limits to accommodate the expected growth requirements in the District to 2011, in the absence of a replacement local plan decision makers have had to grant planning permissions for much needed housing development proposals on sites that conflict with these policies, i.e. on land outside of defined settlements and in conflict with Policy EV2. The relevant planning permissions have

been tabulated and provided within this Proof of Evidence, under the heading of ‘Housing Delivery Failure’. In total, some 1,482 dwellings have been granted planning permission outside the defined settlement limits since the expiration of the plan period. Of those, 902 dwellings were allowed on appeal, and in nine of the ten cases, the development engaged the same policies as in the present case: Policies ST4 and EV2.

5.41. Policy EV2 sits under the heading ‘Countryside’ and relates to all land outside of settlement boundaries that is not Green Belt (Policy EV1). Policy EV2 limits development in countryside locations to what it terms ‘appropriate’ development and then defines what constitutes appropriate development. This is an explicit and restrictive list. There is no opportunity within the terms of the policy to deviate at all or balance harms and benefits. Indeed, even in Green Belt there is the opportunity to argue for the existence of very special circumstances, yet that is absent from EV2, making it even more restrictive than Green Belt. Again, the lack of any balancing exercise renders the policy at odds with the NPPF.

5.42. The Framework’s approach is far less restrictive in relation to countryside. Paragraph 180(b) requires planning decisions to contribute to and enhance the natural and local environment by **recognizing** the intrinsic character and beauty of the countryside.

5.43. The inconsistency between Policy EV2 (ALPR 2002) and the NPPF has been highlighted in both appeal and LPA decisions across the District. In determining an appeal at Ashlands House (APP/W3005/W/21/3278394) [CD 7.1], the Inspector found at [16] that:

*“[...] The proposal would not accord with Policies ST4 and EV2 of the LP. However, I have concluded that these are out of date due to the Council’s current housing land supply position. **Moreover, their restrictive approach to location lacks consistency with the Framework, which applies a more balanced and nuanced approach. As such, this reduces the weight applied to the conflict with those policies**” (emphasis added).*

5.44. In the ‘Land to the North of Mansfield Road’ appeal decision [CD 7.27], the Inspector found that:

*“The Council is unable to demonstrate a five-year supply of deliverable housing sites. It is also clear that, in order to provide the five-year supply of housing sites required by the Framework, **it will be necessary for housing development to take place on sites which lie in the countryside** and which are subject to Policy EV2. Policies ST4 and EV2, which limit housing in the defined countryside, act to restrict the supply of housing. Consequently, I conclude that, in the terms set out in the Framework, those policies are “relevant policies for the supply of housing” and are out of date. The Council has argued that Policy EV2 is consistent with various parts of the Framework, but as it is out of date, **very little weight** can be attached to it” (emphasis added).*

5.45. A similar approach was taken in respect of ‘Land West of Beck Lane’ (see, APP/W3005/W/18/3213342) [CD 7.2]. At [4], the Inspector found that:

*“In this instance the LP policies relied upon by the Council as the most important are Policies ST4 and EV2. Policy ST4 is restrictive of development outside the main urban area and named settlements. In this regard **it lacks the balancing exercise required by the NPPF and is therefore inconsistent with it. Similarly, Policy EV2 is highly restrictive of development in the countryside, again lacking the balance required by the NPPF. Hence this policy too is inconsistent with the NPPF. The Appellant fairly concedes that***

the proposal conflicts with these policies, but because they are out of date and inconsistent with the NPPF that conflict is agreed to carry less weight” (emphasis added).

5.46. Previously, the Council themselves have relied on the findings of the ‘Beck Lane’ Inspector, quoting paragraph 4 nearly verbatim in recommending approval for 84 dwellings in the countryside on Land West of Fisher Close. As a result, the Committee Report [CD 12.23] attributed only limited weight to Policies ST4 and EV2. Under the heading of ‘Planning Balance and Overall Conclusions’, the Report states that:

*“The proposal is contrary to the ALPR policies ST1(a), ST2, ST4 and EV2 to the extent they seek to restrict development to within defined settlement boundaries. However, the ALPR was only intended to guide development up until 2011 and it is clear that these policies are not providing sufficient housing to meet the requirements of the District. **These policies also lack the balanced approach taken in the NPPF and are therefore considered to be out of date.** Though, that is not to say these should simply be disregarded within the planning balance, limited weight should be attached to this conflict for the reasons set out above” (emphasis added).*

5.47. The Committee Report for ‘Land off Ashland Road West’ made similar findings, before ultimately being rejected by the Planning Committee (and then allowed at appeal). Under the ‘Principle of Development’ heading, the Report [CD 12.24] sets out that:

*“As policies **ST2 – ST4 are restrictive of development outside the main urban areas and named settlements they lack the balancing exercise required by the NPPF.** These policies are therefore considered to **be inconsistent with the NPPF.** Policy EV2 has some consistency with the NPPF’s requirement to recognise the intrinsic beauty and character of the countryside. However, it is highly restrictive of development in the countryside, and again **lacks the balancing exercise required. It is also clear that these policies are not providing for sufficient housing for the district. The basket of policies for determining the application are therefore considered to be out-of-date.**”*

5.48. Indeed, the history of the application of countryside policies is capable of being material for planning purposes²⁵. In this instance, the rigidity of Policy EV2 is derived, in part, from its construction; development which does not fall within the exceptions criteria, is *ipso facto* inappropriate development. The exceptions criteria are set out between criteria (a) – (h) and form a closed list, such that a binary test applies.

5.49. Furthermore, the operation of Policy EV2 is not contingent on other variable(s) i.e., whether suitable mitigation has been incorporated. To read in such allowances would be to do violence to the language of the policy. There is, therefore, no capacity under Policy EV2 for other, relevant considerations to be taken into account; in this instance, the proximity of the site to the limits of the Main Urban Area, the suitability of the location and the incorporation of proposed mitigation measures.

5.50. It must be appreciated that the Framework does not include a “blanket protection” of the countryside for its own sake, such as existed in earlier national guidance. Regard must also be had to the other core planning principles favouring sustainable development.²⁶ Indeed,

²⁵ *Eastleigh BC v SSHCLG* [2019] EWHC 1862 (Admin) at [53].

²⁶ *Telford and Wrekin v SSCLG* [2016] EWHC 3073 (Admin) at [47].

the courts have recognised that, in the case of the 2018 NPPF, paragraph 170 (as it then was) adopts a much more nuanced approach. Instead of the blanket refusal of development subject to limited and specific exceptions, it requires that planning decisions should contribute to and enhance the natural and local environment by meeting a series of objectives.²⁷ In *Eastleigh*, the court held that the Inspector was fully entitled to conclude that reduced weight be attributed to the retained policies due to them lacking the flexibility enshrined in the NPPF.

5.51. The lack of an up-to-date strategy to deliver residential development creates considerable conflict with the NPPF and its presumption in favour of sustainable development. Furthermore, the harm arising by virtue of the adherence to policies within the ALPR 2002 runs contrary to the NPPF's objective of delivering a sufficient supply of homes.

5.52. I conclude that the agreed most important development plan policies for determining the appeal are thus out of date on three counts:

- 1) The policies within the ALPR 2002, in particular the settlement limits, have been overtaken by things that have happened on the ground, they are based on an historic assessment of need and were designed to address a time period and need long since expired and overtaken by events and are no longer fit for purpose.
- 2) The policies within the ALPR 2002 have been overtaken by things that have happened since they were adopted, through a change in national policy. The policies within the ALPR 2002 are inconsistent with the nuanced approach of the Framework.
- 3) Ashfield District Council is unable to demonstrate a five-year supply of deliverable housing sites against their identified local housing needs. In accordance with Footnote 8 of the Framework, this renders the most important policies automatically out-of-date.

5.53. For all of these reasons, conflict with the Development Plan must be attributed very little weight. Indeed, the weight to be given to a Development Plan will depend on the extent to which it is up to date. A plan which is based on outdated information, or which has expired without being replaced (as is the case), is likely to command little weight.²⁸

5.54. Returning to the principles expounded in *Monkhill* (above) it has been demonstrated that paragraph 11(d) applies; the most important development plan policies that the Appeal proposal is in conflict with are out-of-date. In light of this, and in the absence of any applicable Footnote 7 policies, the decision-taker must proceed to limb (ii) and determine the application accordingly. Planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.

Other Development Plan Policies

5.55. Other, relevant development plan policies are set out in the SoCG [CD 9.1] at paragraph 6.4. The Council's putative reasons for refusal only refer to Policy ST1 and their Statement of Case

²⁷ *Eastleigh BC v SSHCLG* [2019] EWHC 1862 (Admin) at [62].

²⁸ *Tewkesbury BC v SSCLG* [2013] EWHC 286 (Admin).

only references Policies ST4 and EV2 in addition to ST1, all of which I address above. There is thus no proposition from the Council that the appeal proposals are contrary to any other relevant development plan policy.

- 5.56. Notwithstanding that position, I seek to address compliance with other relevant development plan policies below when considering the main issues and putative reasons for refusal.
- 5.57. The SoCG notes disagreement between the main parties on some of the requested Section 106 contributions; I address the development plan policy aspects of those below.
- 5.58. Policy TR6 concerns developer contributions to transport improvements. Where a development places additional demands on transport infrastructure, planning obligations will be negotiated to allow a sum to be paid towards any of the listed improvements. As regards sites across the whole district these improvements are as follows:
- e) Improvements to public transport infrastructure including:
 - i. Bus priority measures.
 - ii. Bus stop facilities.
 - iii. Rail facilities.
 - iv. Associated highway infrastructure to support public transport modes.
 - f) Improvements to the cycling network.
 - g) Improvements to pedestrian facilities.
 - h) Park and ride sites.
- 5.59. The Appellant has confirmed that the requested contributions to public transport infrastructure are acceptable and are considered to adhere to the tripartite test prescribed by Regulation 122(2) of the Community Infrastructure Levy (“CIL”) Regulations 2010 (as amended). These contributions include £45,600 towards bus stop infrastructure, £220,000 towards the provision of bus service improvements and the use of reasonable endeavours to achieve Works B for the footway/cycleway as shown on Drawing No. ADC1580-DR-012 Rev P12. The appellant has also agreed to a request for improving cycle parking at Sutton Parkway Train Station.
- 5.60. These contributions satisfy the criteria within Policy TR6, the drafting of which imposes no further requirements – the Appellant has satisfied the policy as a whole. The Council through its putative reasons for refusal has not suggested otherwise, which is relevant given the claim in relation to bus accessibility.
- 5.61. As regards public open space, Policy HG6 sets out that residential development will only be permitted where open space is provided to meet the following requirements:
- a) On sites of two hectares and above, a minimum of 10% of the gross housing area will be provided as open space; or

- b) On sites of less than two hectares and more than five dwellings the amount of open space required will be assessed by taking into account the type of housing proposed and the extent of, and accessibility of the site to existing open space in the locality.

5.62. The Policy then makes clear that, **where it is not appropriate** to provide open space within a site boundary, a planning obligation will be negotiated to allow a sum to be paid towards:

- i. Existing open space provision to be improved, or
- ii. New open space to be provided elsewhere, or
- iii. Community woodland planting or appropriate natural habitat creation schemes to be undertaken (emphasis added).

5.63. Accordingly, the policy only seeks to pursue contributions in circumstance where it is not appropriate to provide public open space on site. To demonstrate compliance with criterion (a), the Appellant provided a Land Use Plan (EMS.2254_110 01 Rev D). This plan calculates the gross housing area as 10.45 hectares, whilst POS equates to 8.44 hectares. The alternate illustrative masterplan at **Appendix 2** provides for very similar levels of provision. Whilst these are illustrative masterplans and subject to a degree of change, it is clear that the scheme will far exceed the minimum requirement. This fact is acknowledged by the Officer Report to Planning Committee, which states that:

*“The central green and LEAP and surrounding public open space measuring in total some 10.31ha which exceeds the 10% of the gross housing area required under Policy HG6 of the Local Plan. Whilst this is only based on an illustrative **masterplan it does show that the on-site requirement for public open space can be met and exceeded.**”*

5.64. The illustrative masterplan provides for various forms of public open space, including:

- A Local Equipped Area for Play (LEAP)
- A mown grassed area suitable for kickabout
- A Central Green area
- Informal open space areas with running/dog walking tracks

5.65. To ensure the built scheme will deliver sufficient on-site public open space, the appellant is willing to accept a planning condition to ensure that a minimum of 7 hectares of public open space (excluding drainage features) is provided on site as part of the reserved matters details, to ensure the policy requirement will indeed be exceeded. I set this out in more detail in the Conditions Sections below.

5.66. Notwithstanding the officer report accepting that the on-site requirement for POS can be met and exceeded, a request for a further £900,000 towards undefined off-site works has also been received. However, there is no policy or contributions strategy identifying any shortfall in provision across the District and so it is not clear that there is a need for a contribution or on what it would be spent on. This matter is discussed further in Section 9 below, but the scheme clearly accords with the development plan in this respect.

5.67. In a recent appeal decision for housing off Lime Avenue, Huthwaite [CD 7.28], the Inspector considered the issue of Policy HG6 and the Council's requested financial contributions and found at paragraphs 39 & 40 that:

"Policy HG6 of the ALPR requires public open space to be provided on site, or a contribution to be paid where on-site provision is not possible to improve existing open space or create new off-site space. The appellants have challenged the level of the contribution. Despite the age of Policy HG6, its aims still accord with the Framework which stresses the importance of access to a network of high-quality open spaces and opportunities for sport and physical activity for the health and well-being of communities. Given new residents would add to the usage of such areas, a contribution is reasonable in principle. However, the Council has provided no information to justify the level of contribution sought. No methodology of cost has been provided, nor have details of existing demand or necessary improvements been advanced, and locations where the contribution would be spent are only given in general terms, with no specific improvements identified. As such, I am not satisfied that a contribution of £2,000 per dwelling is necessary to make the development acceptable in planning terms".

5.68. It should be noted that the Lime Avenue Scheme did not propose on site POS, unlike the appeal scheme.

5.69. Policy HG4 sets out that, on housing development sites of one hectare or more, or 25 dwellings or more, the Council will negotiate the provision of a proportion of affordable dwellings on the site to contribute towards the overall targets for the areas specified below:

- In the rest of the district: 6% of dwellings.

5.70. The appeal proposal seeks permission for 300 dwellings, of which 10% are proposed as affordable – equating to a total of 30 affordable homes. Plainly, the proposed development exceeds the requirements of adopted Policy HG4. Indeed, the Officer's Report to Planning Committee confirms that the proposal is acceptable in respect of affordable housing.

Conclusions on the Development Plan and the NPPF Paragraph 11

5.71. Apart from Policies ST1, ST4, and EV2, the appeal proposals are considered to accord with all other relevant and up-to-date policies of the ALPR 2002. I attribute very little weight to conflict with the most important policies as these are out of date on a number of counts.

5.72. As demonstrated above, in the present case, paragraph 11(d) of the NPPF applies. In light of this, and in the absence of any applicable Footnote 7 policies, the decision-taker must proceed to limb (ii) and determine the application accordingly. Planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in this Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination. I undertake that assessment in the 'Planning Balance' section below.

6. Other Material Considerations

The NPPF

- 6.1. In addition to paragraph 11 considerations as set out above, the NPPF is a material consideration. Section 5 is particularly material in ensuring the delivery of a sufficient supply of homes. I address relevant aspects of the NPPF in my consideration of the putative reasons for refusal and in my planning balance exercise below.
- 6.2. Having only just published a new version of the NPPF on 12th December 2024, I have sought to address the changes compared to the December 2023 NPPF version in my evidence, but reserve the right to respond further.
- 6.3. On 30th July 2024, the office of the Right Honourable Angela Rayner MP, Deputy Prime Minister and Secretary of State for Housing, Communities and Local Government, released a written statement entitled "Building the Homes we Need" [CD 12.25].

- 6.4. The statement confirms that:

"We are in the middle of the most acute housing crisis in living memory. Home ownership is out of reach for too many; the shortage of houses drives high rents; and too many are left without access to a safe and secure home. That is why today I have set out reforms to fix the foundations of our housing and planning system – taking the tough choices needed to improve affordability, turbocharge growth and build the 1.5 million homes we have committed to deliver over the next five years".

- 6.5. It continues:

"We are therefore updating the standard method and raising the overall level of these targets – from around 300,000 to approximately 370,000".

- 6.6. Alongside the publication of the NPPF on 12th December 2024, the Prime Minister Sir Kier Starmer MP and Deputy Prime Minister and Secretary of State for Housing, Communities and Local Government Angela Rayner MP issued a statement confirming that: *"Today's changes tackle the dire inheritance faced by the government, in which 1.3 million households are on social housing waiting lists and a record number of households – including 160,000 children – are living in temporary accommodation".*

Emerging Local Plan

- 6.7. Ashfield District Council submitted the Local Plan and supporting documents to the Secretary of State for independent examination on 29th April 2024. On 20th May 2024, the Secretary of State appointed two Planning Inspectors to conduct the independent examination.
- 6.8. Paragraph 49 of the NPPF sets out that local planning authorities may give weight to relevant policies in emerging plans according to:
- a) The stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given);

- b) The extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and
- c) The degree of consistency of the relevant policies in the emerging plan to the Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given).

- 6.9. Week 1 of the Local Plan Hearings opened on 12th November 2024 and concluded on the 14th November 2024. The appointed Inspectors have highlighted concerns about being able to find the exceptional circumstances needed to justify the significant Green Belt releases being proposed and the extent to which they can find the Local Plan's strategy to be appropriate or effective. These matters, the Inspectors advised verbally, will need "considerable thought". The Inspectors have confirmed that they will write to the Council between now and the continuation hearings in January 2025.
- 6.10. Within the Appellant's Statement of Case, fundamental flaws with the Submission Plan were raised which will need to be addressed before the Plan can be found sound and legally compliant. For instance, the Plan's strategic policies fail to meet the development needs of Ashfield over the plan period and fail to identify a strategy which is capable of meeting the housing needs of the district over this period.
- 6.11. The shortfall is caused by the Council's decision to a focus on dispersed development in the submitted draft Plan, also with a completely arbitrary threshold of only considering potential sites of up to 500 dwellings This followed objections following consultation on the inclusion of two new settlements in the Regulation 18 draft Plan.
- 6.12. There is no clear justification provided in the Pre-Submission Draft Local Plan, background papers, committee reports and minutes or Sustainability Appraisal for the new preferred 'dispersed strategy'. There is also no robust planning reason for rejecting the strategy options which include a sustainable urban extension to Sutton that included the Appeal Site.
- 6.13. The Appeal Site was considered both as part of a wider sustainable urban extension and as a smaller parcel in its own right as part of the site selection process for the draft Local Plan (SHELAA Reference: SA024 South of Newark Road). Background Paper 1: Spatial Strategy and Site Selection (October 2023)²⁹ sets out the reason the application site was rejected:
- "SA024: South of Newark Road. Although this site was assessed in the SHELAA as potentially developable, there are 2 outstanding planning applications dating from October 2017 and August 2022 respectively. The applications refer to outline approval for up to 300 dwellings, but currently have unresolved highways issues. As such, it has not been put forward for allocation due to the uncertainty of delivering development. This site has an estimated yield of 377 dwellings in the SHELAA"* (paragraph 8.18).
- 6.14. The highways issues referred to were resolved at the time the paper was written, with Nottinghamshire County Council confirming in a consultation response dated 3rd July 2019 that they did not have any objections to the development, subject to planning obligations,

²⁹ Submission Document Reference: BP.01.

and conditions. This is further confirmed by the lack of objection from the County Council in respect of the application the subject of this appeal.

6.15. The submission of a second planning application (the subject of this appeal) for the same scope of development was only necessary because the Council refused to determine the original application. There was, and continues to be, no uncertainty of delivering development and therefore the reasons for non-allocation of this non-Green Belt site are false.

6.16. The appeal site forms part of the rejected Options 4, 5 and 6 as a potential Sustainable Urban Extension adjacent to Sutton/Kirkby. The reason set out for rejecting the options with an urban extension to Sutton/Kirkby, despite scoring well against the sustainability criteria, is as follows (emphasis added):

*“The urban extension is located in the countryside on the Main Urban Area fringe. The site has been proposed for allocation in a number of draft Local Plans. **It has encountered substantial local opposition.** The site at Sutton Parkway was identified in the withdrawn local plan in 2018 for residential purposes”* (Table 5.5, pages 86–88).

6.17. Plainly, this justification does not present a clear **planning** reason for the rejection of these options and is therefore flawed. The level of objections and political acceptability are not planning reasons justifying the rejection of the spatial strategy option.

6.18. Options 4, 5 and 6 were assessed as having the same or more positive impacts against all the sustainability criteria as the preferred strategy, with the exception of landscape. All these options were assessed as having more positive impacts for Sustainability Objective 13 – Climate Change and Energy Efficiency and 14 – Travel and Accessibility (Table 5.4).

6.19. The lack of any sound planning justification for the selection of the preferred strategy or the rejection of strategy options 4, 5 and 6 raises a severe concern as to legal compliance.

6.20. The issue of rejecting options on non-Green Belt land and adjacent to the Main Urban Area due to local opposition rather than sound planning reasons is also seen in the site selection process. The Ashfield Local Plan Sustainability Appraisal Consultation Draft Local Plan (Regulation 18) published at the time of the Regulation 18 consultation set out the reason for rejection of the site from allocation in favour of significant release of Green Belt land in the Regulation 18 Draft Local Plan as follows (emphasis added):

*“The site has been proposed for allocation in a number of draft Local Plans. It has encountered substantial local opposition and **has not been politically acceptable for the site to be taken forward by the Council**”* (Appendix H page 28 onwards) [CD 12.12].

6.21. This is not a sufficiently justified reason to reject the site. At some point the Regulation 18 Sustainability Appraisal was amended by the Council and **Appendix 5** provides a comparison of the extract provided in the Appellant’s Regulation 18 representations taken from the SA published at the time of the consultation and the version of this SA on the Council’s website now.

6.22. Drawing the above together, this site could assist the Council in meeting its needs over the full 15-year plan period but has been rejected based on incorrect and out of date information that there is an outstanding highways objection and uncertainty of delivering development (BP.01, paragraph 8.18).



- 6.23. For all these reasons, and applying the approach in the NPPF, I attach only limited weight to the emerging plan. Indeed, this weighting is not contested by the Council, noting paragraph 6.8 of their Statement of Case [CD 9.3].

7. Main Issues

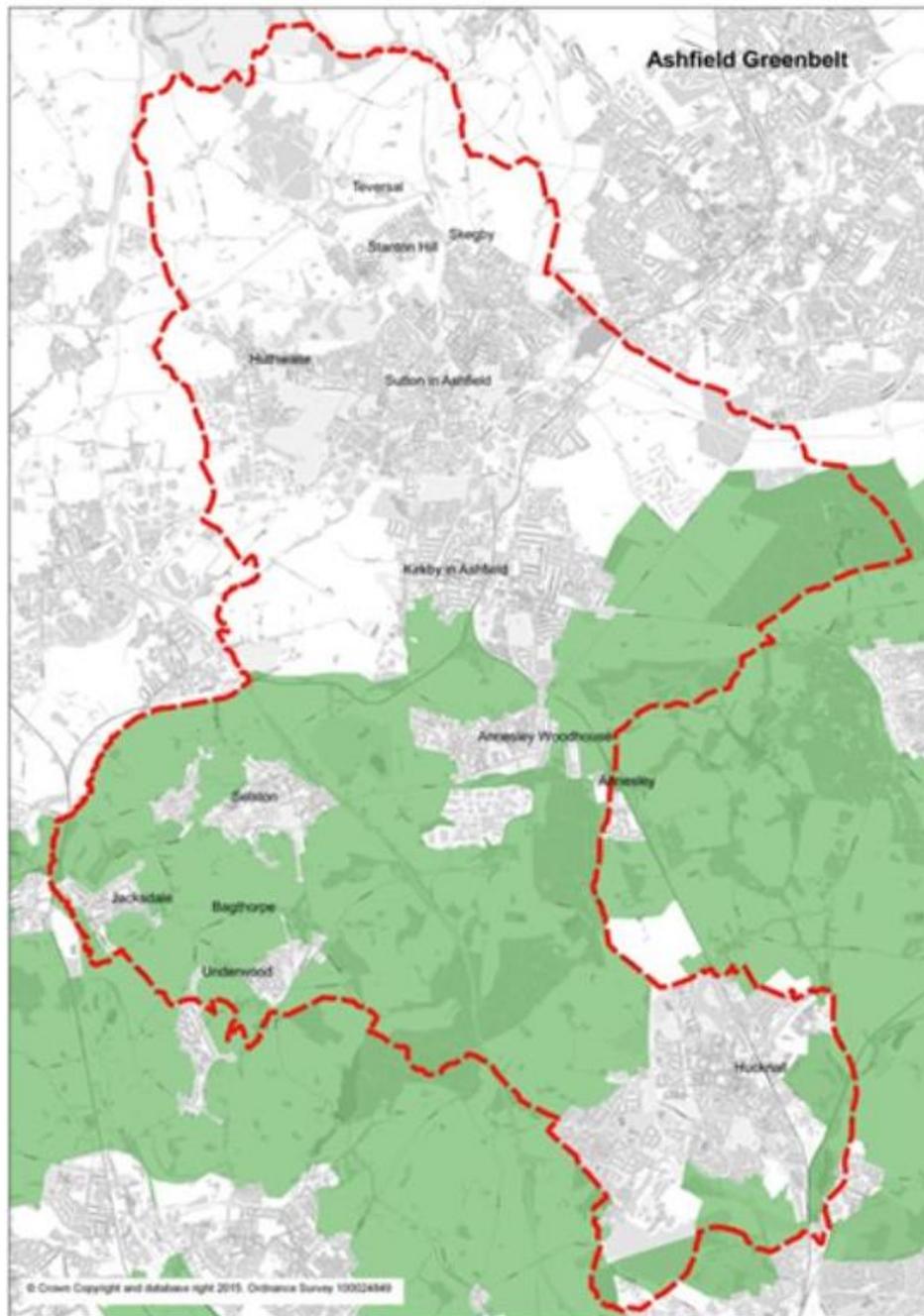
- 7.1. This section addresses the Main Issues identified by the Inspector alongside the putative reasons for refusal, including my views on the issue and the extent to which impact concerns can be addressed, compliance with relevant development plan and NPPF policies and the weight to be attached in the planning balance.
- 7.2. The Main Issues identified are:
- (i) Sustainability of location.
 - (ii) The effect on the character and appearance of the surrounding area (landscape and visual impact matters).
 - (iii) Effect on best and most versatile agricultural land.
 - (iv) Suitability of the appeal site for the development proposed having regard to ground conditions and risks arising from contamination.
 - (v) Effects on the safety and performance of the local highway network, with particular reference to the proximity of the Newark Road level crossing.
 - (vi) Nature and extent of economic, social and environmental benefits
- 7.3. I deal with Main Issues (i) and (v) alongside putative reasons for refusal 1 & 5 together as these are both transport related and addressed in the evidence of Mr Cummins.

Sustainability of Location

- 7.4. The NPPF at paragraph 109 sets out the transport issues to be considered with development proposals, including:
- Ensuring patterns of movement, streets, parking and other transport considerations are integral to the design of schemes, and contribute to making high quality place; and
 - Identifying and pursuing opportunities to promote walking, cycling and public transport use.
- 7.5. The NPPF at paragraph 110 identifies that significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes. Paragraph 115 then seeks to ensure that sustainable transport modes are prioritised taking account of the vision for the site.
- 7.6. Saved ALPR 2002 Policies TR2 TR3 and TR6 also seek to promote walking, cycling and public transport use.
- 7.7. It should be noted from the outset that the vision for the proposals has been to integrate with the adjoining residential area and promote the use of walking, cycling and public transport use for the future residents. Page 23 of the Design & Access Statement (DAS at CD 1.8) advises that a bus loop has been provided as part of the illustrative masterplan to

respond to the pre-application public consultation exercise. Section 4.2 of the DAS from page 26 highlights the Movement strategy for the proposals that facilitate and encourage non car trips, with particular emphasis on achieving excellent pedestrian permeability with the existing urban area. The alternate illustrative masterplan at **Appendix 2** retains these features.

- 7.8. The appeal site adjoins the largest settlement in the District and is one of three main towns (or Main Urban Areas MUAs) where ALPR 2002 Policy ST2 and draft Strategic Policy S1 both seek to direct development to. Indeed, the third objective to draft Policy S1 is *“Locating growth in sustainable and accessible locations through prioritising sites for development **within and adjoining the Main Urban Area**”*.
- 7.9. Locations adjoining the MUA are thus acknowledged by the Council to be an accepted and sustainable location for residential development. Background Paper 1 to the Regulation 19 Pre-Submission Draft Local Plan [CD 12.10] sets out the Council’s approach to their spatial strategy by stating (at the foot of page 17) that *“Housing development in the District will be brought forward through sites mainly **concentrated in and adjacent to the larger and more accessible towns** of Hucknall, Sutton-in-Ashfield and Kirkby-in-Ashfield”*.
- 7.10. As noted above, the emerging plan is failing to meet the required housing needs over the plan period, even with the inclusion of significant Green Belt releases. It is acknowledged that Ashfield is a quite constrained District, as the Council has explained it’s Background Paper 5, Analysis of Constraints for the District of Ashfield, to draft local plan examination [CD 11.2]. The purpose of this report is to highlight key constraints that limits the ability of the Council to bring forward housing sites and thus meet the housing needs; these include Green Belt, flood risk and agricultural land (ALC Grade 2).
- 7.11. All land adjoining Hucknall and to the south of Kirkby is constrained by Green Belt, as identified on the plan below:



7.12. Accordingly, of all options to accommodate growth adjoining the Main Urban Areas, only land to the west and north-east of Kirkby and around Sutton is unconstrained by Green Belt.

7.13. From paragraph 2.6 this paper identifies that:

2.6 Countryside not designated as Green Belt is predominantly located in the north and is located within a rural context characterised by open landscapes lying outside of the urban areas and smaller settlements, as set out in policy EV2 of the emerging Local Plan.

2.7 There is little scope to focus any development in the countryside areas north of Stanton Hill, which includes areas surrounding the smaller settlements of Fackley and Teversal, including a number of isolated dwellings north towards Stanley and to the west

*on Wild Hill towards Tibshelf, which is located in the neighbouring county of Derbyshire. **These areas have no access to local shops, schooling or health facilities within walking distance and as such are dependent on visits to areas to the south of the district or further afield for everyday services. The transport network is similarly constrained with most roads being rural lanes unsuitable for heavy or frequent vehicle usage. Public transport is similarly constrained with no railway stations and a limited bus service which does not reach further north than Fackley.***

2.8 A high proportion of these countryside areas are also affected by other constraints outlined elsewhere within this analysis. This includes substantial areas of nature conservation value located across the district and heritage value, which includes areas of Stanley affected by the setting of Grade I Hardwick Hall to the north.

*2.9 Where countryside has been allocated for future development within the emerging Local Plan **the strategy has been to concentrate this close to urban areas which have good access to existing services and infrastructure. This would create the most sustainable developments whilst preserving the intrinsic beauty and character of the countryside and its wider benefits in accordance with paragraph of 174b of the NPPF.***

- 7.14. Accordingly, northern parts of the District are quite rural and relatively unsustainable, with the southern parts constrained by Green Belt. Indeed, the impact of all the key constraints is helpfully set out on the plan below that is in the Conclusions section of the Analysis of Constraints report. The appeal site is one of the very few locations left that adjoin the MUA, acknowledged by the Council in adopted and emerging policy to be the most sustainable location outside of the MUA to locate development, and is not subject to a key constraint.

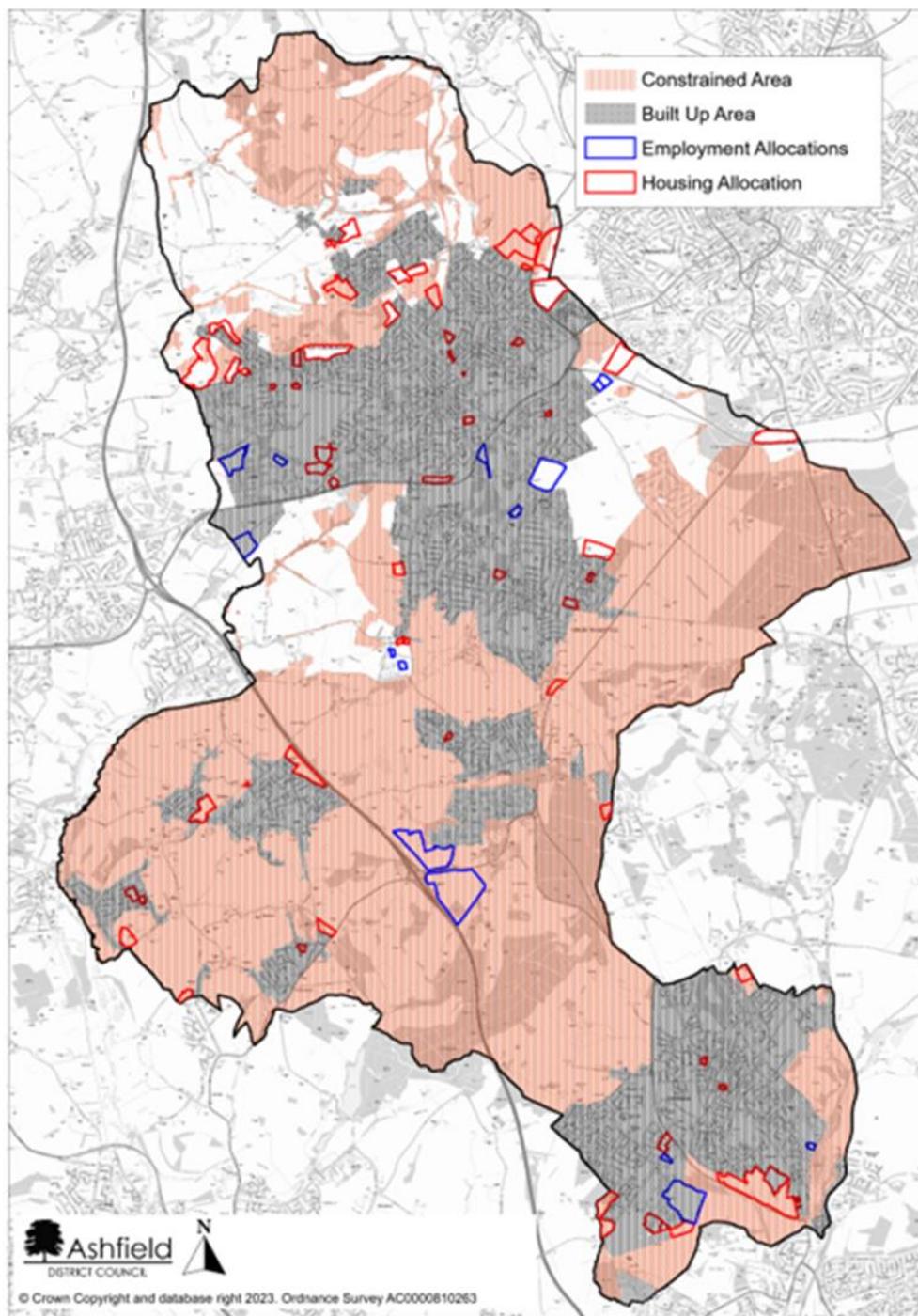


Figure 7: Combined constraints, site allocations and built up areas

7.15. Whether a site is suitable and sustainable for residential development is to some extent informed by the relative merits of other available, suitable and deliverable sites and locations to meet the overall housing needs. The Sustainability Appraisal (SA) at CD 12.16 that accompanies the submission draft Local Plan provides a helpful checklist of the criteria the LPA took into account when considering sites for potential allocation. The appeal site (ref: SA024) has a green + scoring on SA Objective 14 (SA Appendix H, CD 12.19) which is a minor

positive effect. Appendix L [CD 12.20] sets out the SA site scoring framework, noting that Objective 14 seeks to improve travel choice and accessibility, reduce the need for travel by car and shorten the length and duration of journeys. As previously noted, the appeal site has been a proposed allocation by the Council on two recent occasions and the reasons for not allocating or de-allocating the site have never been due to concerns over accessibility.

- 7.16. ALPR 2002 has specific policies to improve cycle access (Policy TR2) and pedestrian access (Policy TR3), but no specific policy to improve bus accessibility. However, Policy TR6 provides for developer contributions to improve accessibility, including improvements to public transport infrastructure.
- 7.17. With regard to pedestrian movements, the evidence of Mr Cummins confirms that there will be numerous employment, education, health, retail, and leisure facilities within walking distance of the development. There is already an excellent continuous network of pedestrian provisions to enable walking journeys to those destinations, along good quality footways that have street lighting and appropriate crossing facilities, built up over years within the mature urban environment. The development will enhance those provisions, with new footways and crossings. The proposed works will adequately cater for the demand created by the development, and will also benefit existing highway users. The development will be very well located for pedestrian movement, at the top of the hierarchy for sustainable transport.
- 7.18. For cycling, Mr Cummins notes that there will be very many destinations within cycling distance of the development. They include the employment, education, health, retail, and leisure facilities in Sutton and Kirkby, the two largest settlements in the District, and the town centre of Mansfield, the largest settlement in the neighbouring Borough. There are good cycle facilities within that catchment to provide for the longer distance journeys, including various off-road routes along the heavily trafficked corridors. The development proposes significant cycle infrastructure to directly connect to, and fill the gaps in, that network of routes. The new infrastructure will adequately cater for the cycle demand created by the development, and be a benefit to other cyclists. The development will be very well located for cycle movement.
- 7.19. Sutton Parkway train station is within walking distance of the development and there will be a continuous footway network linking both. There is a signal controlled pedestrian crossing over Low Moor Road that links to the station car park and hence the platforms on both sides of the tracks. The station is also within cycling distance, and with the proposed works there will be a continuous off-road cycle link between the station and the development. There is secure cycle parking at the station and the development will deliver additional secure and sheltered cycle parking.
- 7.20. Trains run between Nottingham and Worksop via Mansfield. From Sutton Parkway there are hourly departures from early to late, increasing to half-hourly during peak times and for most of Saturday. There are thus excellent opportunities for rail travel as part of a multi-modal journey. The development will be very well located for train travel.
- 7.21. On bus accessibility, the appellant will contribute the funds requested by NCC to allow buses to reroute closer to the site. There are options as agreed with NCC for how that may be achieved, which depend on the strategic framework and funding at the time. NCC's role is to take a holistic view of services to ensure an appropriate network of services, stepping in where necessary to supplement purely commercial services, or to help pump prime them. Thus, the development will be accessible by bus.

- 7.22. I agree with Mr Cummins that the location would be sustainable and the development's residents would be able to take up the opportunities to travel by sustainable modes of transport.
- 7.23. Having regard to the relevant development plan and the NPPF policies, I consider the scheme proposals accord with ALPR 2002 Policies TR2, TR3 and TR6 and the NPPF at paragraphs 109, 110 and 115.

The Level Crossing

- 7.24. The evidence of Mr Cummins has demonstrated that the appeal proposals will not materially affect the operation of the level crossing and that measures are in place to ensure its safe future operation. As noted in the planning history section of the Statement of Common Ground, NCC raised no objections subject to obligations and conditions. In considering the application, lengthy discussions took place with NCC that fully tested all the assumptions, calculations, and impact testing. That impact testing included the Newark Road/Kirkby Folly Road mini-roundabout, the level crossing and the interactions between the two. It included the wider highway network beyond them. In concluding that they had no objection, they were also convinced that there would not be an unacceptable impact on highway safety, or a severe on the capacity of the road network.
- 7.25. Paragraph 116 of the NPPF states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would, following mitigation, be severe. The evidence of Mr Cummins has demonstrated that there will be no unacceptable impact on highway safety and that the impact on the road network will not be severe.
- 7.26. In respect of ALPR 2002 Policy ST1, this states that "*development be permitted where... c) it will not adversely affect highway safety, or the capacity of the transport system*". The inference is that permission that will be refused if development does result in an adverse impact. As noted above, Policy ST1 does not accord with the NPPF and paragraph 116 in particular. I therefore attach very little weight to that policy conflict.

The Effect on the Character and Appearance of the Surrounding Area

- 7.27. As set out in the Development Plan section of my proof above, the ALPR 2002 Policies ST1 and EV2 are both completely inflexible and thus at odds with the NPPF in how to approach the consideration of landscape and visual impacts. NPPF paragraph 187(b) requires a recognition of the intrinsic character and beauty of the countryside. This requires a consideration of the site and its local landscape character; the submitted Landscape and Visual impact Assessment (LVIA) [CD 1.38] 'recognises' the intrinsic character of the local landscape context and responds appropriately through design to avoid or minimise impacts on those key characteristics.
- 7.28. The appeal site is not designated, nor within an area designated in respect of landscape and visual matters.
- 7.29. The evidence of Mr Atkin identifies the relationship of the appeal site in its context, noting that the site is located immediately adjacent to the existing settlement edge of Sutton-in-

Ashfield and influenced by the existing residential and nearby commercial and industrial land uses which characterise this edge of the town.

- 7.30. Notwithstanding some localised undulations on the appeal site, the topography of the site and the local landscape context form an overall profile which presents west and north-facing slopes orienting back toward and across the existing settlement, rather than being more outward facing to the wider countryside.
- 7.31. Mr Atkin has confirmed that the conclusions of the submitted LVIA hold true in that the proposed development will result in some limited impact at a localised level. The scale and form of proposed development is likely to result in impacts which are limited to the site area and its immediate context only. Such proposals are seen in the context of the existing settlement edge. Furthermore, the proposals for green infrastructure and landscaping will deliver some enhancements in terms of the physical landscape resources.
- 7.32. Overall, Mr Atkin considers that the appeal site (and proposed development) has a limited visual envelope, which restricts the appreciated local landscape context to the appeal site.
- 7.33. That the proposed development will form a consistent part of the existing settlement pattern, and that the approach to the design evolution of the proposed development has addressed the local landscape context including recognition of the relevant landscape characteristics.
- 7.34. The appeal proposals represent a positive response to the landscape and visual constraints via a high-quality design solution in terms of how it incorporates mitigation to avoid, and reduce potential impacts, whilst creating a framework of green infrastructure that respects characteristics and sets parameters for a high-quality development.
- 7.35. In light of this detailed assessment and professional evidence, I agree with Mr Atkin's conclusions that the proposals will result in only limited impacts at a local level, with the proposals for green infrastructure and landscaping delivering some enhancements to the physical landscape resource in the longer term.
- 7.36. Due to the binary nature of ALPR 2002 Policy ST1, even the limited adverse impact on the proposed development, as summarised above and in the evidence of Mr Atkin, results in a conflict with Policy ST1. However, as also explained above, Policy ST1 is out of date for several reasons, such that continued application of the policy is at odds with the NPPF. I thus prescribe very little weight to this policy conflict in the planning balance.

Effect on Best and Most Versatile Agricultural Land

- 7.37. There is no disagreement that the appeal proposal will result in the loss of 19.2 Hectares of ALC Grade 3a agricultural land, but this has to be considered in light of the relative loss and the **recognition** of the economic and other benefits as required by paragraph 187(b) of the NPPF.
- 7.38. The evidence of Mr Kernon identifies that the economic benefits of BMV land on this site are modest. In particular the economic benefit of the appeal land with only moderate yields being achievable is only a marginal improvement on the economic benefit of non BMV land.
- 7.39. Having considered the two farming enterprises that presently use the appeal site, Mr Kernon is also able to conclude that the proposed development will not have any adverse effects on

either farm business, nor will it result in any other agricultural land in the wider area being affected or becoming unfarmable. Other land can continue to be managed as it is now.

- 7.40. Evidence from the emerging local plan is that agricultural land quality was not a significant factor in determining which sites to allocate, Background Paper 5 [CD 11.2] highlighting that the Council did not consider ALC 3a as a constraint on allocating land for development – it only considered ALC grade 2 (see Section 7). Notwithstanding the identification of this as a constraint, the draft local plan includes several proposed allocations on land that they have identified as being Grade 2 BMV land. It can reasonably be concluded therefore that poorer quality agricultural land in sustainable locations is unlikely to be available.
- 7.41. The use of land potentially of BMV quality will be inevitable should development take place to the north, east or south of Sutton. The evidence indicates that the land quality of the Appeal Site is likely to be some of the poorest available.
- 7.42. The Council's SoC notes that the decision taker must recognise the economic and other benefits of BMV land. The Council does not set out any evidence on this matter, nor does it ascribe any weight to the benefits, or ascribe any weight to the harm.
- 7.43. In recognising the very limited economic agricultural benefits of this site, Mr Kernon is able to conclude that its loss as a consequence of this appeal results in only limited harm. I agree; it is a factor to be weighed in the balance as required by the NPPF, but it does not in itself cause a conflict with it.

Suitability of the Appeal Site for the Development Proposed Having Regard to Ground Conditions and Risks Arising from Contamination

- 7.44. Notwithstanding the agricultural use of the appeal site, the northern portion covering circa 4.54 hectares has been the subject of historic extraction and landfill that has raised concerns over the suitability of the site for residential use. So, whilst the site is not brownfield, it has a history of sand excavation and licenced landfilling of inert construction and demolition waste.
- 7.45. In that context, it is important to recognize the government's positive policy approach towards development on such sites; the NPPF at paragraph 125 stating that "*planning policies and decisions should...*
- c) give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs, and **support appropriate opportunities to remediate despoiled, degraded, derelict, contaminated or unstable land**" (my emphasis).*
- 7.46. Paragraph 187 of the NPPF goes to state: "*planning policies and decisions should contribute to and enhance the natural and local environment by...*
- e) 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. Development should, wherever possible, help to improve local environmental conditions such as air and water quality, taking into account relevant information such as river basin management plans; and*

f) remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate."

7.47. The PPG has a section on Land Affected by Contamination. This states at Paragraph: 007 Reference ID: 33-007-20190722: *"If there is a reason to believe contamination could be an issue, applicants should provide **proportionate but sufficient site investigation information** (a risk assessment) prepared by a competent person to determine the existence or otherwise of contamination, its nature and extent, the risks it may pose and to whom/what (the 'receptors') so that these risks can be assessed and satisfactorily reduced to an acceptable level".*

7.48. It is contended that proportionate and sufficient SI information has been undertaken by competent persons in accordance with this advice.

7.49. The next section is headed 'Does an outline application require less information?' and states that: *"the information sought should be proportionate to the decision at the outline stage, but before granting outline planning permission a local planning authority will, among other matters, need to be satisfied that:*

- *it understands the contaminated condition of the site;*
- *the proposed development is appropriate as a means of remediating it; and*
- *it has sufficient information to be confident that it will be able to grant permission in full at a later stage bearing in mind the need for the necessary remediation to be viable and practicable".* Paragraph: 008 Reference ID: 33-008-20190722. It is contended that the necessary remediation is both viable and practicable.

7.50. In answering the question 'Should planning permission be refused if there are concerns about land contamination?' the PPG advises that the *"Responsibility for securing a safe development rests with the developer and/or landowner. However, local planning authorities should be satisfied that a proposed development will be appropriate for its location and not pose an unacceptable risk. Local planning authorities should work with applicants to find acceptable ways forward if there are concerns about land contamination. **For example, establishing or retaining areas of green infrastructure may serve to limit harmful disturbance of the ground. To help secure necessary mitigation, planning permission can be granted subject to conditions"** (my emphasis). Paragraph: 009 Reference ID: 33-009-20190722.*

7.51. In this policy context the evidence of Mr Kitson-Boyce sets out the site investigation work that has been undertaken on the site and I summarise his conclusions as follows:

No Asbestos Containing Materials (ACM), domestic waste or putrescible materials were identified within the Made Ground. No visual evidence of significant contamination was identified in any of the ground investigations.

Sporadic elevated concentrations of contaminations were identified, when compared to adopted values, but these were all noted to be at a depth that would present a low risk to human health. Nevertheless, a clean cover system will be installed to mitigate the risk.

No significant concentrations of contaminants have been encountered that indicate a risk to groundwater. Moreover, the proposed development will provide betterment in this

regard due to a 33% reduction in rainwater infiltration. It is therefore considered that the low risk to groundwater will only be reduced as a result of the development. No further mitigation is deemed necessary.

There is not considered to be any mechanism by which rainwater can migrate through made ground material and re-emerge to impact surface water.

The proposed mitigation measures will be set out in a remediation strategy and can be controlled through condition, as suggested by both the ADC Contaminated Land Officer and the Environment Agency.

- 7.52. I would also highlight that the alternative illustrative layout referred to at paragraph 1.10 above (**Appendix 2**) is provided so as to avoid completely any potential requirement to excavate into the inert landfill material to form surface water attenuation basins. Indeed, I set out an additional proposed condition on behalf of the appellant in Section 9 below to ensure that future reserved matters applications do not provide any surface water attenuation basins on previously landfilled areas of the site (see plan at **Appendix 7**).
- 7.53. This additional measure reflects the PPG advice at paragraph 009 Reference ID: 33-009-20190722 and referenced above at 7.39.
- 7.54. In summary, following proposed mitigation to be secured via condition there will be no residual unacceptable risks in accordance with the NPPF. Also, in accordance with the NPPF, the proposed development and mitigation measures can help secure betterment in respect of risks to groundwater.

Nature and Extent of Economic, Social and Environmental Benefits

- 7.55. I set out my consideration of these benefits in the Planning Balance section of my evidence below. The economic benefits of the appeal proposals are quantified in the Economic Infographic at **Appendix 3** to my proof. These are summarised as follows:

Construction Benefits

- 7.56. **Temporary employment:** Over the expected 8-year build timeframe, an estimated 104 temporary jobs could be supported per annum. This includes on-site jobs and employment supported in the wider economy via supply chain effects.
- 7.57. **Contribution to economic output:** The 8-year build phase could generate around £47.1 million (present value³⁰) in gross value added.

³⁰ Where future benefits are calculated, they have been discounted to produce a present value. This is the discounted value of a stream of either future costs or benefits. A standard discount rate is used to convert all costs and benefits to present values. Using the Treasury's Green Book, the recommended discount rate is 3.5%.



Operational Benefits

- 7.58. **Attracting economically active people to Ashfield:** It is estimated that 321 economically active and employed residents could live in the new homes. Based on the current profile of working age residents in Ashfield, around 37% could be working in higher value occupations.
- 7.59. **Household spend in Ashfield local planning authority:** Once the scheme is built and fully occupied, spending by new residents on convenience and comparison goods, plus leisure activities is expected to result in £2.2million being retained in the Ashfield economy per annum.
- 7.60. **'First occupation' spend:** Research published in 2014 suggests that the average homeowner spends approximately £5,000 to make their house 'feel like home' within 18 months of moving in³¹. Taking into account inflation, this figure is estimated to be around £6,000 as of 2022. Applying this to the 300 dwellings gives an estimated £1.8million in first occupation spend.
- 7.61. **Council Tax revenue:** Once built and fully occupied, the scheme is estimated to generate an estimated £716,571 on an annual basis in Council Tax payments at 2024/25 rates³².
- 7.62. **Improving energy efficiency:** The potential energy bill savings are estimated to be around £594,531 per annum.
- 7.63. **Supporting the Climate Change Agenda:** Once the scheme is built and fully operational it is estimated that the carbon emissions savings could amount to 687 tonnes per year.
- 7.64. There are thus considerable economic benefits arising from the development proposals.

³¹https://www.hbf.co.uk/documents/7876/The_Economic_Footprint_of_UK_House_Building_July_2018_LR.pdf

³² Based on average Council Tax for Band D properties in Ashfield of £2,388.57 in 2024/25. Figure sourced from: <https://www.ashfield.gov.uk/benefits-council-tax/council-tax/what-your-council-tax-pays-for/2024-2025-council-tax-by-band-and-area/>

8. Matters Raised by Third Parties

- 8.1. Over several periods of consultation, representations have been received from local residents. Four additional representations have been received as part of the appeal.
- 8.2. I have read and considered the submissions made by local residents and understand the concerns that they hold. I am though confident that all valid issues raised have been appropriately addressed through the robust and comprehensive planning application submission, the careful consideration of various technical issues by statutory consultees and in the evidence presented to this inquiry on behalf of the appellant. There are no residual issues raised in my view that constitute a planning reason for refusal.

9. S.106 Obligations and Conditions

- 9.1. A draft Section 106 agreement will be submitted to the inquiry.
- 9.2. The agreement will reflect the obligations as set out in Section 10 of the agreed Statement of Common Ground [CD 9.1].
- 9.3. The S106 will confirm that, if the Inspector decided to allow the appeal, then the obligations identified would be necessary to make the development acceptable in planning terms.
- 9.4. Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 sets out the limitations on the use of Planning Obligations and confirms that a planning obligation may only constitute a reason for granting planning permission for the development if the obligation is:
 - a) Necessary to make the development acceptable in planning terms;
 - b) Directly related to the development; and
 - c) Fairly and reasonably related in scale and kind to the development.
- 9.5. To be lawful, planning contributions must comply with these legal tests. The basis for seeking an obligation can be underpinned by policy which once tested, adopted and applied correctly is likely to indicate a material degree of compliance with these tests, as set out below.
- 9.6. An alternative means of contributing towards infrastructure is provided through the Community Infrastructure Levy ("CIL") regime. This provides an ability for a charge to be levied on new development to fund infrastructure. The Council here do not have and are not promoting a CIL approach.
- 9.7. National Planning Policy Guidance makes clear at paragraph 23b-004-20190901 that **policies** for planning obligations should be set out in plans and examined in public. "*Policy requirements should be clear so that they can be accurately accounted for in the price paid for land. Such policies should be informed by evidence of infrastructure and affordable housing need, and a proportionate assessment of viability*". The PPG goes on to identify that "*Plans should set out policies for the contributions expected from development to enable fair and open testing of the policies at examination*" (Paragraph 23b-013-2019031).
- 9.8. Further, caselaw establishes principles in relation to the proper application of the legal tests in regulation 122. This includes the following, which are apposite in this instance.
- 9.9. Following *R. (University Hospitals of Leicester NHS Trust) v Harborough DC [2023] EWHC 263 (Admin)*, ("the Harborough Decision") it is unlikely—absent specific justification—that a planning obligation requiring payment to a local NHS trust for the delivery of health care services to the residents of a new housing development will satisfy the tests in reg.122 of the Community Infrastructure Levy Regulations 2010. This is because the NHS trust is unlikely to be able to demonstrate a gap in funding that a developer should be required to meet, under the normal approach to the funding of NHS trusts.

- 9.10. In the case of *R. (Midcounties Co-operative Ltd) v Forest of Dean District Council (2015 EWHC 1251)*, planning permission was quashed on the basis that the officers' report did not identify sufficiently, the impacts of the development, and did not explain why the 106 benefits were necessary to make the development acceptable.
- 9.11. I am yet to have sight of the Council's CIL compliance statement, (due on 28th November 2024), but based on the information presently available I am of the view that the obligations within the draft agreement meet the tests in Regulation 122(2) of the CIL Regulations 2010, but with two exceptions:
- The request for Secondary school contributions; and
 - The request for Off-site POS contributions.

Secondary Education

- 9.12. In respect of the request for contributions to expand secondary schools, there is no development plan policy or supplementary planning document that prescribes the requirement for contributions. NCC has a Developer Contributions Strategy (April 2024) and whilst it is approved by the Council, it is not adopted as a Supplementary Planning Document.
- 9.13. I refer to the statement prepared by Mr Hunter, an Education Consultant at EFM – a specialist consultancy providing advice on education matters – enclosed as **Appendix 1** to my evidence. This confirms what is already accepted by Nottinghamshire County Council as Education Authority that forecast surplus of secondary school places within the Sutton-Kirkby Planning Area and the impact of this proposal alone would not result in a deficit of provision.
- 9.14. Mr Hunter goes on to evidence why there is also a surplus of secondary school places when account is taken of the cumulative impact of existing commitments.
- 9.15. Even when account is taken of the impact of secondary school places arising from other planning applications presently in the system (which I contend the appellant is not required to satisfy to accord with CIL Reg 122(2)) there is also spare capacity with the appeal proposals included.
- 9.16. It is only when NCC factor in the increase in pupils that would arise from the draft local plan sites that a deficit in places arises.
- 9.17. The NCC Developer Contributions Strategy provides guidance on Education contributions in Section 4 and states at paragraph 4.7: *“When assessing the impact of new development on school places, the County Council will take into consideration the cumulative impact of development, including any outstanding applications that remain to be determined at the point the application is received. Where one application does not justify obligations owing to projected spare capacity in the planning area, but a further application would result in capacity being exceeded, the County Council will seek to ensure that obligations are requested and shared between all eligible applications”.*
- 9.18. This approach in itself is not considered to accord with CIL Reg 122(2) as taking account of all outstanding planning applications in the system would over estimate the impact of development – planning applications will be refused, withdrawn and not implemented and

thus requests made on this basis would unlikely be necessary and would not be fairly and reasonably related in scale and kind to the development.

- 9.19. But the NCC consultation response to the appeal application then factors in sites in a local plan that is in draft and is presently undergoing examination with significant soundness concerns being raised. The NCC Education request is therefore at odds with its own Developer Contributions Strategy and is most certainly contrary to CIL Reg 122(2) on all counts.
- 9.20. The request is also somewhat surprising when regard is had to the Infrastructure Delivery Plan Update of October 2024, submitted in support of the submission draft local plan as SEC36.1 [CD 12.26 to this inquiry]. This report sets out the anticipated infrastructure requirements arising from the local plan growth and includes an assessment of education requirements at Section 7, notably from paragraph 7.13. This states with regards to the Kirkby/Sutton Secondary Planning Area – *“There is forecast to be sufficient places to meet future needs”*.
- 9.21. The report does identify a shortfall in places in the Hucknall Secondary Planning Area, identifying that all allocations within Hucknall will be required to make contributions. The appeal site is not within the Hucknall area.
- 9.22. As a consequence of the above, I am firmly of the view that the request for secondary school contributions fails the CIL Reg 122(2) test as it is not necessary to make the development acceptable in planning terms and is also not fairly and reasonably related in scale and kind to the development.

Public Open Space

- 9.23. I set out above from paragraph 5.62, the policy aspect of the requested £900,000 off site POS contribution, concluding that the delivery of 7 hectares of various forms of POS on site, secured by condition and S106 agreement, meets Policy HG6 requirements and does not trigger the requirement for off-site contributions.
- 9.24. In the absence of a CIL compliance statement and despite numerous requests for further information, the LPA case officer has simply asked for a contribution of £3000 per dwelling, which equates to £900,000 for 300 dwellings. No explanation is provided on how this sum has been arrived at, how it relates to the appeal scheme or on what the money will be spent. There is also no policy basis for the requested contribution, either in an adopted plan or as Supplementary Planning Guidance. No information has been provided to demonstrate that there is a need to improve existing facilities as a consequence of the development proposals.
- 9.25. The Inspector determining the Limes Avenue, Huthwaite appeal [CD 7.28] found at paragraph 40: *“However, the Council has provided no information to justify the level of contribution sought. No methodology of cost has been provided, nor have details of existing demand or necessary improvements been advanced, and locations where the contribution would be spent are only given in general terms, with no specific improvements identified. As such, I am not satisfied that a contribution of £2,000 per dwelling is necessary to make the development acceptable in planning terms.”*
- 9.26. In the absence of any further information or justification I have to conclude, as did the Lime Avenue appeal Inspector [CD 7.28], that the request fails the CIL Reg 122(2) test as it is not necessary.

Cycle Improvements

- 9.27. Whilst I did have concerns over the ambiguous request for contributions (not quantified) to improve cycle parking at Sutton Parkway Train Station, the appellant has agreed to make a £10,000 contribution for a specific improvement in the form of additional secure cycle parking for 8 cyclists arising from the development.
- 9.28. This suggested contribution is based on the evidence in the Transport Assessment which identified a journey to work percentage for cycling of 2.8%, which equates to a peak hour demand for 8 cycle trips and a train modal share of 1.0%, which equates to 3 peak hour trips. Not all cycle trips would be to the train station and some residents might drive or walk to the train station, so it is considered reasonable to identify a need for 8 additional secure cycle parking spaces.
- 9.29. There are a range of different ways of providing cycle parking – see for example Bike Enclosures & Compounds ([bikedocksolutions.com](https://www.bikedocksolutions.com)). However, a basic shelter for 8 cycles is £3,439 + VAT. <https://www.bikedocksolutions.com/secure-cycle-compound>. On the basis that any cycle parking would need to be in line with government on Cycle Infrastructure Design (LTN 1/20) and there may be maintenance costs associated with it, we suggest a contribution of £10,000, would be reasonable. On this basis I am comfortable that the contribution would be CIL Regulation 122(2) compliant.

Planning Conditions

- 9.30. Section 10 of the Statement of Common Ground [CD 9.1] details draft conditions which are agreed between the Appellant and the Council to be necessary, relevant, enforceable, precise and reasonable in all other respects, should the Inspector be minded to allow this appeal.
- 9.31. In addition, two further conditions are proposed by the appellant as mentioned above in my evidence.
- 9.32. First is a condition to secure a significant level of POS on site to exceed to ALPR 2002 Policy HG6 requirement by three times. The proposed wording is:

“Reserved matters pursuant to condition 1 shall include details of landscaping to provide a minimum of 7 hectares of open space for public use. For the avoidance of doubt, this area shall exclude surface water attenuation basins .”
- 9.33. Second is a condition to prevent the construction of surface water attenuation basins in those parts of the site that have been subject to landfill:

“Reserved matters pursuant to condition 1 shall exclude any surface water attenuation basins on those parts of the site subject to former landfill and as identified on Drawing Number: EMS2254_120 O1 Rev D.”
- 9.34. Drawing Number EMS2254_120 O2 Rev D is enclosed as **Appendix 7** to my evidence.

10. Planning Balance and Conclusion

- 10.1. Decision makers have a statutory duty to determine applications or appeals in accordance with the development plan unless material considerations indicate otherwise. The NPPF is an important material consideration, and in paragraph 11 the Government has set out its policy to guide decision makers in the performance of their statutory duty. As policy, paragraph 11 cannot displace the primacy of the development plan and functions within the statutory arrangements for decision taking but can act as a weighty material consideration to justify not following the development plan and should here.
- 10.2. The development plan relevant to the appeal are the saved policies of the ALPR 2002 and the most important policies are agreed as ST1, ST4 and EV2. These policies are out of date on several grounds.
- 10.3. It is common ground that the presumption in favour of sustainable development in paragraph 11 (d) from the NPPF, the tilted balance, is engaged in this appeal by virtue of the Council's inability to demonstrate a five-year housing land supply. Footnote 8 thus deems the policies most important for determining the appeal out-of-date. In addition, the housing requirement set out in the ALPR 2002 is out-of-date and inconsistent with the NPPF.
- 10.4. In the absence of any applicable Footnote 7 policies, the decision-taker must proceed to limb (ii) of NPPF paragraph 11(d) and determine the application accordingly. This states that planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination. Footnote 9 notes that this further detail in paragraph 11(d) relates to those in paragraphs 66 and 84 of chapter 5; 91 of chapter 7; 110 and 115 of chapter 9; 129 of chapter 11 ; and 135 and 139 of chapter 12. I seek to have regard to these policies in undertaking the planning balance below.
- 10.5. In order to assess the benefits of the development, and any harm that would arise, it is useful to conduct this exercise in the context of the Government's approach to achieving sustainable development and the three overarching objectives of the planning system, set out in paragraph 8 of the NPPF.

Benefits of the Development

- 10.6. The Framework is clear that sustainable development comprises three pillars: social, economic and environmental.

Economic Objective

- 10.7. The appellant has quantified a number of economic benefits that will flow from the proposals, as set out from paragraph 7.51 above and on the Infographic at **Appendix 3**, and to which I give **moderate positive weight**.

Social Objective

Market Housing

- 10.8. As set out in this proof, the Council has been unable to demonstrate a five-year supply of housing on numerous occasions in the recent past, and there remains a persistent cumulative shortfall in the provision of housing to date against the requirements. In contributing to meeting the social objective of ensuring a sufficient number and range of homes can be provided and in the context of persistent under-delivery and the government's objectives of significantly boosting the supply of housing, I attach **significant positive weight** to the benefit of delivering 300 dwellings on the appeal site.

Affordable Housing

- 10.9. The evidence of Mr Stacey demonstrates that there is a significant and increasing affordable housing need in Ashfield – 399 affordable homes per year over the 18-year period between 2023/24 and 2040/41. In contrast delivery between 2012/12 and 2022/23 was just 588 gross dwellings were affordable tenures, equivalent to just 59 per annum. Accounting for Right to Buy losses, the net supply reduces to just 152 affordable dwellings in total or only 15 per annum.
- 10.10. On 31 March 2024 there were 4,404 households on the Council's Housing Register.
- 10.11. The 2020 HNA identifies an objectively assessed need for 319 net affordable homes per annum between 2020/21 and 2037/38. Over the 18 –year period this equates to a total need for 5,742 net affordable homes.
- 10.12. Since the start of the 2020/21 monitoring period, the Council have overseen the delivery of 78 affordable homes (net of Right to Buy) against a need of 957 net new affordable homes, which has resulted in a shortfall of –882 affordable homes.
- 10.13. When the shortfall is factored into the 2020 HNA identified need of 319 affordable homes per annum for the period 2020 and 2038, the number of affordable homes the Council will need to complete increases by 55% to 495 net affordable homes per annum over the period.
- 10.14. The Council needs to deliver 2,475 net affordable homes over the next five years to address backlog needs and for the needs thereafter to return to 319 per annum to 2037/38. Whilst this level of delivery is clearly unrealistic, it shows the sheer scale of the problem facing those households in need of assistance with their housing.
- 10.15. Since the start of the 2020 HNA period in 2020/21 gross affordable housing delivery has averaged 19% of total completions. If the prevailing rate of gross affordable housing delivery since the start of the 2020 HNA of 19% be applied to the five-year housing supply likely to be eligible to contribute towards affordable housing provision (2,060 dwellings) there is a future supply of 391 affordable dwellings over the five-year period between 1 April 2023 to 31 March 2028. This equates to just 78 gross affordable dwellings per annum.
- 10.16. Should losses to Right to Buy be accounted for the prevailing rate of loss this would result in a future affordable housing supply of just 165 affordable dwellings over the five-year period between 1 April 2023 to 31 March 2028. This equates to just 33 dwellings (net of Right to Buy) per annum which is a more realistic outcome.

- 10.17. Both figures derived from the analysis fall substantially short of the 495 per annum figure required when back log needs are addressed in the next five years in line with the Sedgefield approach.
- 10.18. The proposed quantum and mix of affordable housing is considered to meet the identified local needs in accordance with NPPF paragraph 66, and will be agreed in the final details approved at RM stage.
- 10.19. In light of Mr Stacey's key findings and the acute need for affordable housing within Ashfield District, I agree with his conclusion that **substantial positive weight** should be attributed to the delivery of 30 affordable homes through the appeal scheme.

Environmental Objective

- 10.20. The proposal would generate a host of environmental benefits, notably through delivering housing in a sustainable location. In the context of national planning policy, and notably in respect of paragraphs 110 and 115, the site's location adjacent to the main urban area (where both the historic and emerging spatial strategy seek to direct significant growth), is clearly one that offers a genuine choice of transport modes, where proposals have been formulated to encourage non car mode trips. Sustainable transport modes have been prioritized from the outset in the design evolution of the scheme, and safe and suitable access to the site can be achieved for all users. The sustainable location of the site and accordance with the NPPF weighs in favour of the scheme and should attract **moderate positive weight**.
- 10.21. The proposed development seeks to make the most efficient use of this greenfield site whilst providing environmental benefits. The site is capable of being developed with suitable ecological mitigation and enhancement, resulting in significant net gains for biodiversity. The Biodiversity Statement at **Appendix 6** includes a BNG Metric headline results, identifying the potential for just over a 11% net gain in habitats and a just over a 19% net gain in hedgerows.
- 10.22. The proposed development will therefore provide considerable benefits to biodiversity. In the present case, as a matter of fact, the statutory requirement for Biodiversity Net Gain does not apply. As such, and having regard to paragraph 180 of the Framework, the requirement for a 'net gain' is not quantified – the requirement is only that there is a 'positive' gain. Accordingly, any measure of BNG should be attributed positive weight. I attach **moderate positive weight** to this BNG.
- 10.23. The proposed development also delivers new areas of open space for informal recreation, as highlighted in the illustrative layout plan [CD 1.11] and as proposed to be secured via condition, at least 30% of the total site area will be landscaped for public recreational access; the policy requirement is for 10% of the site area to be laid out as public open space. These additional recreational areas and walking paths constitute a benefit serving the wider community and should attract **moderate positive weight**.
- 10.24. With regard to paragraphs 129, 135 and 139 of the NPPF, the DAS [CD 1.8], the scheme design has had due regard to the context and the National Design Guide's 10 characteristics in setting a framework to achieve high quality design (as agreed in principle in the SoCG at paragraph 8.61). The density reflects the site's context of suburban detached and semi-detached housing alongside the achievement of BNG and significant areas of POS to reflect local character and ensure healthy lifestyles are promoted. Setting a framework to achieve high quality design is considered a **minor benefit** in the planning balance.

- 10.25. In respect of any potential risks arising from contamination, the evidence has demonstrated that the site can be successfully developed with appropriate future mitigation to be secured via planning conditions. The evidence identifies a potential betterment in respect of impacts on groundwater quality and is thus considered a **minor benefit** in the planning balance.

Disbenefits of the Development

- 10.26. As set out in the Landscape and Visual Impact Evidence of Mr Atkin, minor to moderate impacts will occur that are very localised, concluding that this level of impact does not constitute significant harm and that the predicted degree of landscape and visual impact is acceptable in landscape and visual terms. There are also some long term benefits flowing from the green infrastructure and landscaping proposals that will deliver some enhancements in terms of the physical landscape resources. I find on the basis of evidence that there is some limited, localised adverse effects arising from the landscape and visual impacts of the appeal to which I attach **limited negative weight**.
- 10.27. The appeal proposals are contrary to saved policies of the ALPR 2002 policies ST1, ST4 and EV2. These policies are not only procedurally out of date as a consequence of a 4 year housing land supply shortfall³³, they are also out of date due to their age and events that have happened on the ground since their adoption, in particular the fact that settlement limits were drawn to accommodate housing needs up to 2011, where those housing needs were lower than present needs. My evidence has shown that is necessary for housing development to take place on land that is subject to these policy designations in the out-of-date ALPR 2002. This need is also an urgent one. To continue to frustrate the delivery of much needed housing and affordable housing by the strict application of these policies is to undermine the Government's housing delivery objectives and the NPPF. I thus attach **limited negative weight** to conflict with these out-of-date policies.
- 10.28. The development would also result in the loss of some Best and Most Versatile agricultural land; 19.2 hectares of the site has been classified as ALC Grade 3a. However, as identified within this Proof of Evidence, there are limited economic impacts arising from this loss and there are unlikely alternative sites of lower agricultural quality to meet the housing needs of the District. I thus attach **limited negative weight** to this impact.

Overall Conclusion

- 10.29. The appeal proposal adjoins the settlement boundary of Sutton-in-Ashfield, an accepted sustainable location for new housing growth and a location where existing and emerging spatial policy seeks to focus growth.
- 10.30. We are in an acknowledged housing crisis where needs are far outstripping supply, nationally and in Ashfield. In addition to helping to meet those acute and urgent needs, the appeal proposals deliver additional significant economic, social and environmental benefits of the scheme, with limited, localised adverse impacts.
- 10.31. In the circumstances of this appeal, paragraph 11 (d) of the NPPF is engaged. I believe that the appeal proposal represents sustainable development in accordance with the NPPF as a whole,

³³ NPPF paragraph 11d



having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, where the limited adverse impacts identified fall substantially short of significantly and demonstrably outweighing the benefits of the scheme when assessed against the policies of the NPPF and the development plan.

- 10.32. The most important policies of the development are out of date and are to be afforded limited weight.
- 10.33. It is respectfully requested that the appeal is allowed subject to conditions and the completion of the Section 106 Agreement.



Appendix 1

Report on Secondary Education Requirements (Mr Hunger, EFM Ltd)

TOWN AND COUNTRY PLANNING ACT 1990
(as amended)

Section 78 Appeal by Hallam Land Management

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

EDUCATION MATTERS
Education Provision in Sutton in Ashfield, Nottinghamshire

Nottinghamshire County Council

EDUCATION STATEMENT OF CASE

Ben James Hunter

BA DipMS

PINS Reference: APP/W3005/W/24/3350529

LPA Ref: V/2022/0629

Date: 10th December 2024

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1 Background

- 1.1 My name is Ben James Hunter. I hold a Bachelor of Arts and Diploma in Management Studies. I have been an Education Consultant for Education Facilities Management Ltd (EFM) since September 2017, and Associate Director of EFM since April 2022. Prior to this I was a Development Management Project Manager for Northamptonshire County Council (as was) from 2012, responsible for negotiating and securing Section 106 planning obligations for Education. Prior to this I was responsible for negotiating, securing and managing Section 106 planning obligations, predominantly Education-related, in an Officer role between 2008 and 2012. The majority of my professional career has been related to the provision of development infrastructure, with a focus on Education.
- 1.2 I am experienced in giving evidence for Planning Inquiries including Local Plan Inquiries and Public Examinations. I am therefore aware of the application of the planning system in relation to these matters from both a developer and local authority perspective. I confirm that I understand that notwithstanding my instructions my primary duty is to give an objective, unbiased opinion on matters within my expertise.
- 1.3 I am instructed to act for Hallam Land Management (**“the Appellant”**) in respect of this Appeal.
- 1.4 If called to give evidence, I can confirm that I will confirm that the opinions expressed are my true and professional opinions.
- 1.5 EFM was instructed by the Appellant in August 2024. I was appointed to review the Education landscape in order to establish whether harm was likely to be caused by this development proceeding, whether the existing facilities were able to accommodate the expected number of children that will be resident in the new housing proposed as part of the appeal scheme, or whether there was the need for new infrastructure to accommodate the children within those dwellings within Sutton in Ashfield.
- 1.6 I was subsequently instructed by the Appellant to prepare this written Statement of Case to assist the Inspector in determining whether harm was likely to arise in



Sutton in Ashfield, from an Education perspective, if this development was to receive a positive determination.

- 1.7 Nottinghamshire County Council (“NCC”) have not Objected to this development. Furthermore, Education itself is not a Reason for Refusal. The purpose, therefore, of this Statement is to assist the Inspector in establishing whether planning obligations are necessary to make the development acceptable in planning terms.
- 1.8 This document will demonstrate the following: a) there is no justification for Secondary School planning obligations based on the existing spare capacity, and forecast falling rolls in the system, and b) there is no Education related reason why this development should not progress.

2 Introduction

2.1 This Appeal relates to an outline planning application (with all matters reserved except access) for a residential development of up to 300 dwellings with associated infrastructure and landscaping at the development site on Land at Newark Road, Coxmoor Road, Sutton in Ashfield, Nottinghamshire.

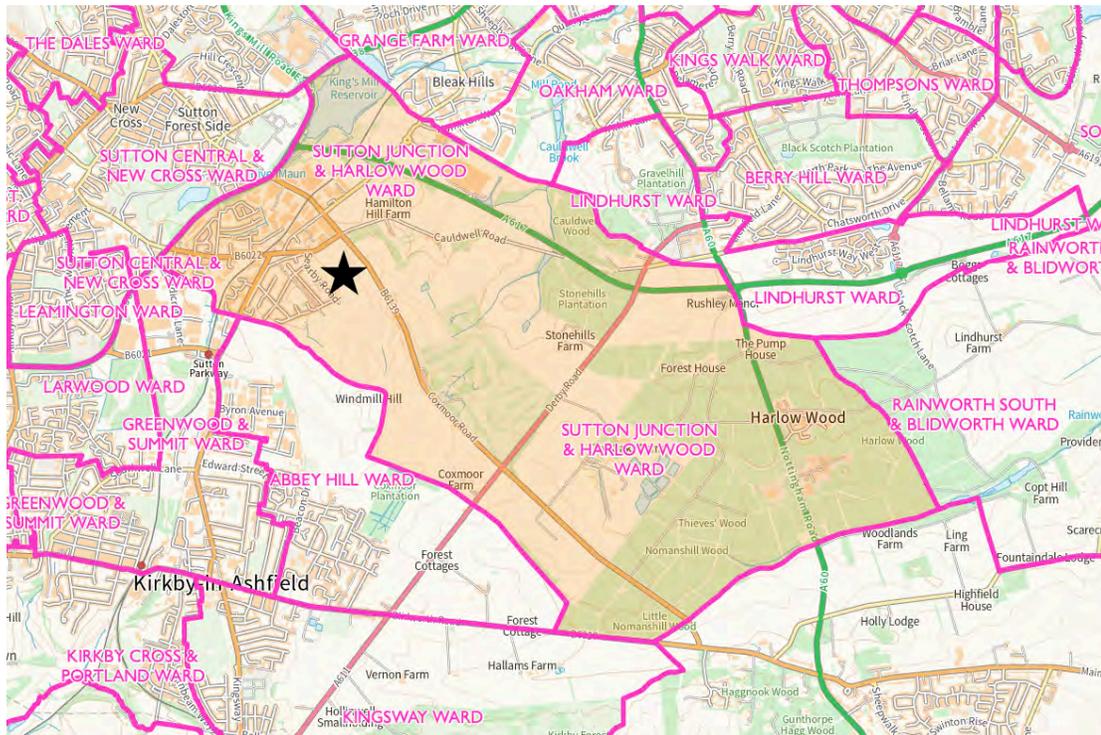
2.2 The approximate outline of the development site can be seen below in Map 1:



Map 1: Approximate Site Boundary of Land at Newark Road, Sutton in Ashfield

2.3 The development is located within the Ashfield District Council ("**ADC**") Planning Area. NCC is the Education Authority. The development is located entirely within the Sutton Junction and Harlow Wood Ward ("the Ward") as shown in the Map below:

NEWARK ROAD, SUTTON IN ASHFIELD EDUCATION STATEMENT OF CASE



Map 2: Ward Boundary and the Development's Location within the Ward

- 2.4 The planning application for the proposed development was validated on 23rd August 2022. This Appeal is being undertaken on the basis of non-determination of the application. On 23rd October 2024, ADC's Planning Committee considered that, had the Appeal not been made, they would have been minded to refuse the planning application for five reasons, none of which relate to Education.
- 2.5 ADC's Statement of Case in relation to this Appeal does not discuss Education, as it is a matter for NCC, as Education Authority.
- 2.6 In relation to Education, NCC has stated the following in their latest consultation response to this development dated 14th March 2024, for which there is no argument between the Appellant and NCC:
 - i. There is no requirement for a Primary School planning obligation due to the projected surplus of places in schools that would serve the development;

- ii. There is no requirement for a Sixth Form/Post 16 planning obligation due to the projected surplus of places in schools that would serve the development; and
- iii. The development will accommodate 2 children with Special Education Needs and Disabilities (“SEND”) on site once built out, for which a contribution towards additional places is justified due to a lack of forecast capacity in specialist accommodation.

2.7 This leaves one area of the consultation response for which the Appellant and NCC are not in agreement, and that is in relation to the need for Secondary School planning obligations. This Statement of Case will therefore focus on this one area of dispute.

2.8 The consultation response of 14th March 2024 states the following in paragraph three of page 2:

Secondary

*The pupil projections data below displays a forecast **surplus** of school places within the Sutton-Kirkby Planning Area and the **impact of this proposal alone would not result in a deficit of provision.** [Emphasis added]*

2.9 This sentence is pertinent to the crux of this Statement of Case, and is the predominant reason (amongst others) that planning obligations are not demonstrably necessary to make the development acceptable in planning terms. NCC state, clearly and correctly, that there is sufficient capacity in the school system to accommodate the entirety of this development’s child yield. This is the starting point.

2.10 The consultation response continues:

However, the County Council has been consulted on numerous planning applications within the planning area that remain to be determined and which would cumulatively result in a deficit in school places. It is therefore necessary to ensure that the cost of

the additional places required is shared between sites, such that the requested contribution is fairly and reasonably related in scale to the development.

2.11 NCC’s evidence does not demonstrate this. On that contrary, the Table provided in the consultation response, which is replicated below, shows a surplus of 179 spare places in the schools closest to the development site, which far exceeds the 48 pupils that this development is forecast to generate when fully built out. On that basis, planning obligations cannot be said to be necessary to make the development acceptable in planning terms:

Planning area	DfE no	School	District	Net capacity	Pupil projected	Housing commitments, 7 yrs	Projected places available
Kirkby/Sutton	4009	Ashfield School	ASHFIELD	2053	2015	23	+15
Kirkby/Sutton	4027	Outwood Academy Kirkby	ASHFIELD	678	597	6	+75
Kirkby/Sutton	4068	Quarrydale Academy	ASHFIELD	1411	1175	68	+168
Kirkby/Sutton	4015	Sutton Community Academy	ASHFIELD	735	790	24	-79
Kirkby/Sutton	0012	PLANNING AREA TOTAL ASHFIELD		4877	4578	121	+179

Table 1: NCC Consultation Response Table

2.12 The consultation response continues:

*The County Council has worked with the District Council to produce an Education Technical Paper to support the Ashfield Infrastructure Delivery Plan. The IDP 2023 identifies the need for three additional forms of entry in Sutton-Kirkby Planning Area (450 places), based on the cumulative growth proposed through **the draft Ashfield Local Plan**. It is proposed that the cost of this infrastructure is divided pro-rata between sites so that each sites makes a proportionate contribution to education provision (my emphasis).*

2.13 The CIL Regulation 122 compliance of this approach is dealt with in Gary Lees’ Proof of Evidence.

2.14 The consultation response continues:

In total, there are 3767 dwellings to be delivered on allocated sites within the planning area (many of which are subject to planning applications) and there is presently a further 695 dwellings subject to planning applications on windfall sites, including this site at Newark Road, Sutton in Ashfield. Taking account of the pupil demand that is already included within the pupil projection data arising from existing housing commitments, the net growth in housing delivery is estimated to be 3932 dwellings, which would generate 630 secondary aged pupils. As shown in the data above, there is currently forecast to be capacity for 179 pupils and thus the residual number of places required would be 451.

- 2.15 The appropriates of this approach is dealt with by Gary Lees in his Proof of Evidence.
- 2.16 The consultation response includes the following Table:

	Dwellings	Places
Pupil Demand from Local Plan	+3767	+605
Less Existing Housing Commitments	-530	-86
Net Growth from Local Plan	=3237	=519
Plus Demand from Windfall Sites	+695	+111
Total Additional Demand	=3932	=630
Less Forecast Surplus Places (2023)		-179
Residual Places Required		=451

Table 2: NCC Consultation Response Table

- 2.17 The inclusion of “Pupil Demand from Local Plan” clearly demonstrates the point that the Appellant is being asked to contribute to a need that may never arise, and pay for infrastructure that is not directly related to the impact the site is making at the point of the decision. This Local Plan housing may never come forward, and when it does, it will have to mitigate its impact based on the best evidence at the time it comes forward.
- 2.18 The consultation response continues:

The cost of delivering the required capacity is estimated to be £12,383,100 (450 x £27,518). This should be divided between the total number of dwellings (3932), which equates to £3,149 per dwelling.

2.19 The Appellant does not take issue with the child yield, nor the cost per pupil place. What is not agreed is the mechanism in which this planning obligation is established.

2.20 The consultation response continues:

The County Council seeks a proportionate secondary education contribution from this site of £944,700 (300 dwellings x £3,149) to be used towards improving, remodelling, enhancing, or expanding facilities to provide additional permanent capacity within the Sutton-Kirkby planning area, to accommodate pupil growth from the development. To ensure that the obligation provides for the actual costs of infrastructure, the contribution value should be index-linked from the date of this response.

2.21 Generating school aged children may require the addition of new school places. The Capacity of a school is published differently depending upon its type. The Admission Number is the number of places for each age group. For a maintained school (maintained by the local education and children's services authority) it is the Net Capacity, and for an Academy/Free School it is set out in the Funding Agreement with the Education Secretary of State. "Improving" or "enhancing" educational facilities is not an appropriate use of planning obligations. Pre-existing deficits, upgrades and maintenance issues are funded from different sources.

2.22 As will be discussed in Section 4 of this Statement of Case, there is no justification for planning obligations from this development based on the current Education landscape, and the forecast future landscape.

3 Statutory & Policy Matters

- 3.1 There is a covenant between the State and its populace that has had statutory force for 154 years.¹ Namely that; wherever <my emphasis> a child shall live, who is not otherwise provided for, the State will provide a school in accordance with the statutory arrangements.² The covenant is not caveated by considerations of transience, fixed or temporary abode, nationality, residential status or home education authority and means that however children arrive within an area or are housed within an area, the local authority's statutory duty has to be met and is not a function of planning permission criteria.
- 3.2 **The Education Act 1996 (as amended) ("EA96"):** The primary Act relating to education is the Education Act 1996, which is; (a) a consolidating Act and (b) an Act amended from time to time by subsequent legislation. Unless otherwise indicated in this Statement of Case as applying to education, all references are to the Education Act 1996 (as amended).
- 3.3 EA96 (at section 14(1)) states,
- A local education authority³ shall secure that sufficient schools for providing – (a) primary education and (b) secondary education... are available for their area.*
- 3.4 Sections 14(2) to 14(6) go on to explain what is meant by sufficient schools and that it includes implicitly that the requirement is for sufficient appropriate school places.

¹ The Elementary Education Act 1870 (section 5) thereafter Education Act 1921 (section 17), Education Act 1944 (section 8), Education Act 1996 (section 14)

² The Act actually says, "5. *There shall be provided for every school district a sufficient amount of accommodation in public elementary schools (as hereinafter defined) available for all the children resident in such district for whose elementary education efficient and suitable provision is not otherwise made, and where there is an insufficient amount of such accommodation, in this Act referred to as "public school accommodation," the deficiency shall be supplied in a manner provided by this Act*".

³ The local education authority has since 2010 been somewhat confusingly renamed 'local authority' to take account of the authority incorporating the duties of the children's services authority. For the purposes of clarity throughout this Statement of Case the term 'education authority' is used as the generic title to keep a clear separation from the planning authority.

- 3.5 EA96 (at Section 7) imposes a duty on *“every parent of every child of compulsory school age to cause him to receive efficient full-time education either by regular attendance at school or otherwise”*.
- 3.6 Section 14(1), together with s7, derives directly from s5 Education Act 1870 via s17 Education Act 1921 and s8 Education Act 1944. There have been no material changes over time, merely consolidating legislation, changes to school leaving ages and changes to terminology from time to time. It is, thus, a longstanding duty for the Council as successor to the local school boards.
- 3.7 EA 96 Section 11 requires the Education Secretary of State (i.e. the State) to exercise their powers in respect of those bodies in receipt of public funds which carry responsibility for securing school provision for promoting school education. The duty of the education authority (to secure sufficiency of provision) is to enable the State to discharge its responsibilities within the covenant. Thus, the original premise still holds true: for all children of statutory school age, who are not otherwise provided for, **the State provides a school**, <my emphasis> in accordance with the prevailing statutory provisions.
- 3.8 EA96 Section 14 Subsection 3A is a more recent modification to its duty through a requirement for the education authority to exercise its functions under this section with a view to increasing: (a) diversity in the provision of schools, and (b) increasing opportunities for parental choice, and was inserted into Section 14 by Section 2 Education and Inspections Act 2006 with effect from 25th May 2007.
- 3.9 Thus, the duty of the education authority is to enable the State to discharge its responsibilities within the covenant: but, with sufficient headroom to allow for the discharge of its S14 (3A) duties.
- 3.10 The Education Secretary of State has determined that those ‘otherwise provided for’ include those whom provision is made via a Section 106 agreement or the Community Infrastructure Levy. This makes it legitimate for planning obligations to fund or provide additional school places in principle. That is, of course, dependent on compliance with other legislation.
- 3.11 In securing sufficient schools for its area, an Education Authority assesses existing capacity and pupil numbers, data on births and migration, and how parental

preferences are manifested. It forecasts (usually with a reasonable degree of accuracy) the need for additional capacity in each school planning area for the ensuing five years for primary schools and seven years for secondary schools.

- 3.12 The Education Authority then passes this information to the State [currently the Education and Skills Funding Agency (“ESFA”) being the school’s operational arm of the Department for Education (“DfE”)] by way of the School Capacity Returns (“SCAP”). The State then allocates additional school places as and where shown to be necessary. Each additional school place is accompanied by formula driven capital funding associated with that place. This is known as Basic Need funding. Basic Need allocations to an education authority are aggregated into a single capital sum to be dispensed by the education authority to each project according to its needs. In calculating a Basic Need requirement, the ESFA allows a 2% headroom across the School Planning Area to allow for within year incidental movement of pupils.
- 3.13 Basic Need funding on a per-pupil-place basis covers increases in pupil numbers forecast, by the Education Authority, beyond existing and planned capacity, to arise because of rising birth rates, rising survival rates, rising inward migration rates and new housing (except when covered by Section 106 agreements or CIL).
- 3.14 The Basic Need pupil place funding system recognises, that whether or not a Section 106 agreement or a CIL charge has been applied by an LPA to a planning permission, is a matter purely for the LPA. It recognises the duty of the LPA to secure sufficient housing for its population and its growth agenda. The State holds that the ability or not of a planned housing scheme to fund school places necessary should not sway the determination of that application by the LPA. The disapplication of Basic Need provision where there is a Section 106 agreement or CIL charge is simply to avoid double-funding.
- 3.15 **Securing developer contributions for education (April 2019, updated August 2023):**
- 3.16 In order to provide further clarity to education authorities, the DfE produced and published a Guidance document related to delivering schools to support housing growth under the Education Act 1996. This is a non-statutory guidance document for local authorities planning for education to support housing growth and seeking associated developer contributions known as securing developer contributions for education. This document states at paragraph 3 the following:

It is important that the impacts of development are adequately mitigated, requiring an understanding of:

- *The education needs arising from development, based on an up-to-date pupil yield factor;*
- *The capacity of existing schools that will serve development, taking account of pupil migration across planning areas and local authority boundaries;*
- *Available sources of funding to increase capacity where required; and*
- *The extent to which developer contributions are required and the degree of certainty that these will be secured at the appropriate time.*

3.17 The Education and CIL Guidance, when looked at collectively, discuss an Education Authority's statutory responsibilities, and how they should carry out those statutory duties.

3.18 National Planning Policy Guidance makes clear that policies for planning obligations should be set out in plans and examined in public. "*Plans should set out policies for the contributions expected from development to enable fair and open testing of the policies at examination*⁴".

3.19 **Local Authority Policies:**

3.20 NCC's Developer Contributions Strategy, which is dated April 2024, covers Education in Section 4, page 14 onwards. This document states at paragraph 4.7:

When assessing the impact of new development on school places, the County Council will take into consideration the cumulative impact of development, including any outstanding applications that remain to be determined at the point the application is received. Where one application does not justify obligations owing to projected spare capacity in the planning area, but a further application would result in capacity being

⁴ ID 23b-004-20190901

exceeded, the County Council will seek to ensure that obligations are requested and shared between all eligible applications.

3.21 An important point regarding this paragraph is it does not discuss developments that have not even been submitted as Planning Applications, which is exactly what NCC is doing in relation to “Pupil Demand from Local Plan”.

3.22 The Strategy includes the following child yields and costs:

Education Phase	Places generated per 100 dwellings	Cost per place		
		Temporary Expansion	Permanent Expansion	New School Build
Primary	21	£10,405	£22,008	£31,054
Secondary	16	£11,681	£30,270	£37,621
Post 16	3	£11,681	£30,270	£37,621

Table 3: NCC Child Yields and Cost Multipliers

3.23 It is through utilisation of the above yield that a Secondary School yield of a maximum of 48 Secondary School aged children is expected from a development of 300 dwellings. This number is used throughout the remainder of this Statement of Case. The word “maximum” is utilised because this is an outline application, and there may be dwellings that do not generate children. NCC’s Strategy states at paragraph 4.6:

However, the County Council will not seek contributions where the development proposed is solely for apartment developments which are unsuitable for families (i.e. one bedroom), or specialist units, such as those that will be restricted to occupation by aged 55 or over.

3.24 The pro-rata approach does not take account, at least not in the consultation response, of the fact that some of these dwellings will not generate children. This is minor point overall but still one that demonstrates the inappropriateness of the approach.

4 Secondary School Provision

4.1 Schools should be operationally full to meet the financial audit requirement for best value from public assets. This is demonstrative of a properly functioning school system. School funding is predicated on the number of pupils that are on a school’s roll, so it is in the best interest of schools to maximise intake within their capacity. Accordingly, many schools take from a wide catchment area and some enrol over capacity.



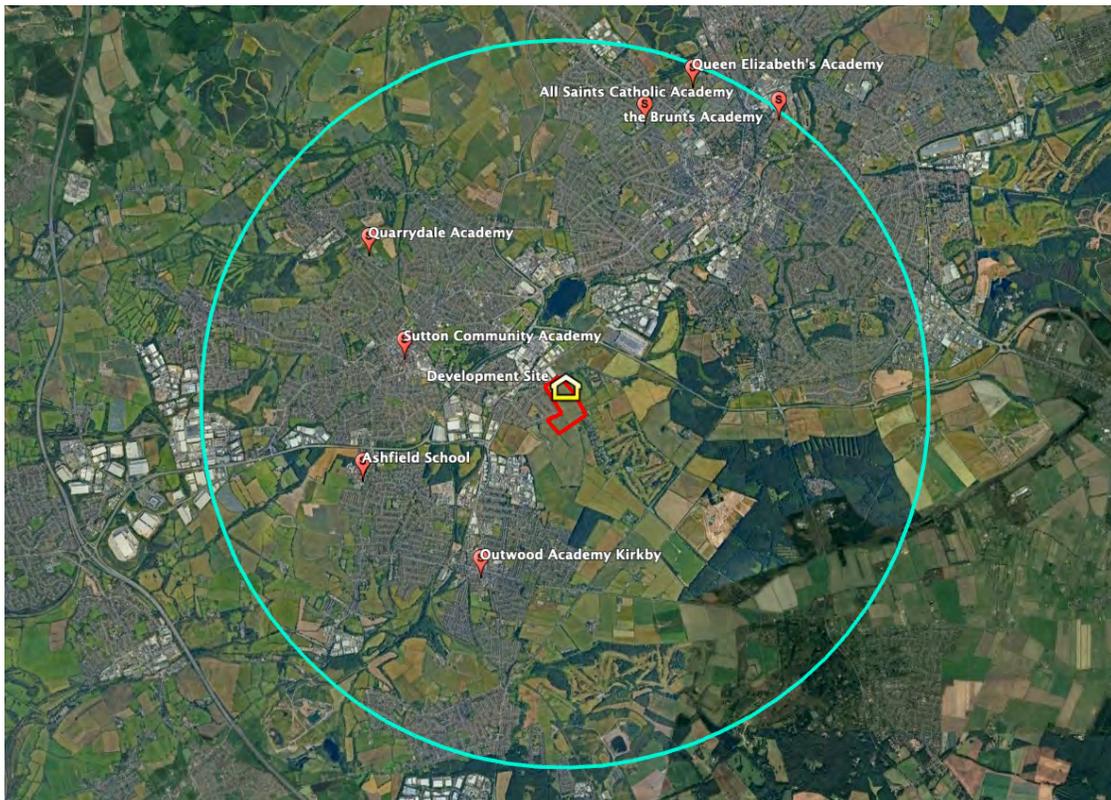
Map 3: Three-mile radius around the development site

4.2 The statutory rules on enrolment are that whilst schools may have a catchment area and ordered criteria for admissions, the rules only apply if the school is oversubscribed. Otherwise, whoever applies is admitted irrespective of where they

live. This is known as 'More Open Enrolment'. It fosters the expression of parental preferences for schools that are not necessarily those closest to home.

- 4.3 NCC operates under a statutory duty (S14 Education Act 1996) 'to secure sufficient schools'. The term 'sufficient' is not defined and thus reliance is placed on the dictionary definition – enough – adequate – not too little and not too much. Thus, as set out above, the normal state for a school is that it is operationally full.
- 4.4 Because of the statutory requirement (S444 EA 96) to fund or provide transport to and from school when the nearest available school is beyond the statutory walking distance, the standard assessment is to consider all Secondary Schools that lie within a three-mile walking distance of the development (see Map 3). The three-mile criteria is the distance prescribed in the Education Act beyond which local authorities are required to provide/fund transport where the nearest available school is further away.
- 4.5 There are at least seven state funded schools accommodating Secondary School aged children within a three-mile radius of the proposed new dwellings. All of these schools are within the NCC administrative area, and are organised in two separate Secondary Planning Areas. Of the seven schools, four are within a three-mile statutory walking distance from the proposed new houses.
- 4.6 The location of the schools in relation to the development site can be seen below in Map 4:

NEWARK ROAD, SUTTON IN ASHFIELD
EDUCATION STATEMENT OF CASE



Map 4: Secondary Schools in relation to the development site

4.7 The latest school roll data in the public domain (2023/24 academic year – the previous academic year) for these schools can be seen below in Table 4:

Secondary School Name	Postcode	LA Name	Distance (miles)	Capacity	PAN	NoR 7-11	Yr 7	Yr 8	Yr 9	Yr 10	Yr 11	Post 16
Sutton Community Academy	NG17 1EE	Nottinghamshire	1.6	900	170	779	169	173	153	132	152	63
Quarrydale Academy	NG17 2DU	Nottinghamshire	2.1	1,550	240	1,189	239	266	230	230	224	128
Outwood Academy Kirkby	NG17 7DH	Nottinghamshire	2.2	809	150	529	128	143	96	91	71	0
Ashfield School	NG17 8HP	Nottinghamshire	2.3	2,745	405	2,052	410	413	417	400	412	547
TOTAL				6,004	965	4,549	946	995	896	853	859	738
Surplus							19	-30	69	112	106	
Available Surplus %							2%	-3%	7%	12%	11%	

Table 4: School Roll (January 2024)

PAN = Planned Admission Number; NoR = Number on Roll

4.8 What should be highlighted from the outset is that NCC states that there are “179 surplus places (2023)” in their consultation response. However, there were, as of the 2023/24 academic year, 276 spare places in the four closest schools to the development site. This far exceeds the 48 children that this development is expected to accommodate. It is unclear where the figure of 179 spare places was established, as it looks like an understatement of the position.

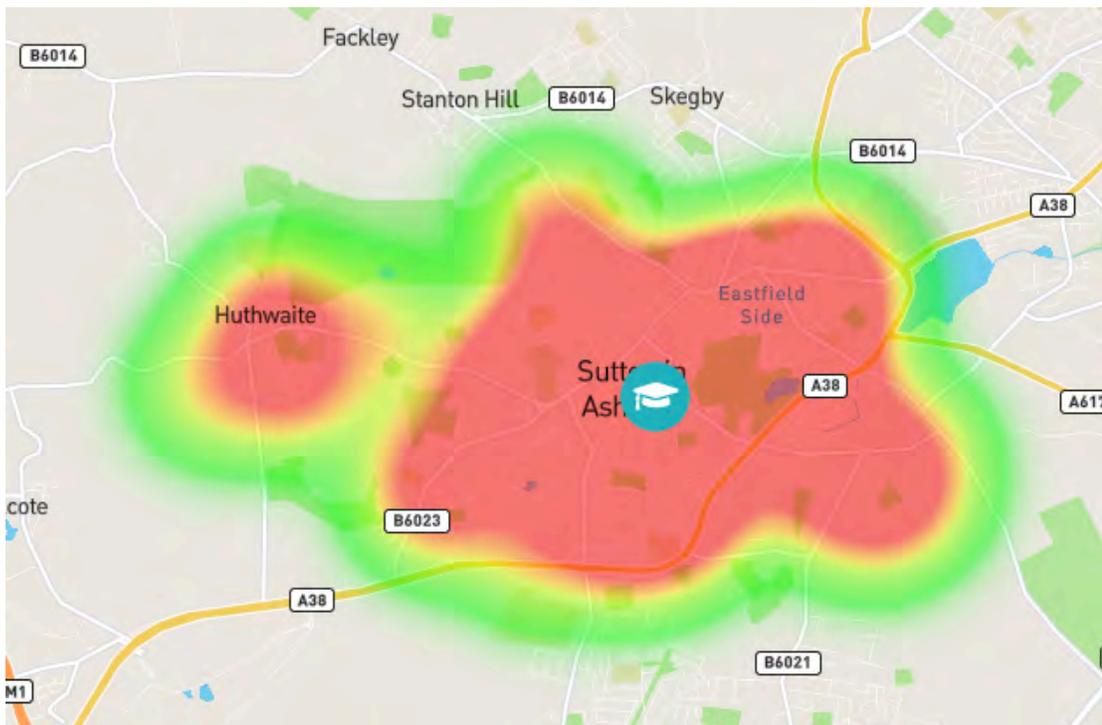
4.9 The closest school to the development site, which is 1.6-miles west of the proposed new dwellings, is Sutton Community Academy. This is a 5.7FE Secondary School, that as of the previous academic year was operating at 92% of its available capacity with 71 spare places. This development, as discussed previously, is expected to accommodate a maximum of 48 pupils when fully built out.

4.10 It should be note that NCC reported that in the current academic year (2024/25) the school only allocated 150 pupils in to Year 7 against its capacity of 170, demonstrating that the school remains under capacity. The last place that was allocated was a child who lived 10.89 miles from the school, whereas this development is only 1.6 miles walking distance:



Table 5: Sutton Community Academy 2024/25 Allocations (via NCC)

4.11 The school accommodates pupils from across Sutton-in-Ashfield, and west to Huthwaite, as shown in the Map below:



Map 5: Sutton Community Academy Catchment Area Heat Map (via schoolguide.co.uk)

- 4.12 The second closest school to the proposed new dwellings is Quarrydale Academy. This is an 8FE Secondary School, approximately 2.1 miles walking distance to the North West of the development boundary. The school, as of the previous academic year, was operating close to its capacity with 11 spare places.
- 4.13 What should be noted, however, is that in the current academic year, the school only allocated 206 pupils into Year 7 against its capacity of 240, which is 86% of its capacity. The furthest place allocated was 7.67 miles, compared to the 2.1 miles walking distance that these children on this site will be located from the school.

Allocation data

Admission number ⓘ	240
Number of applications ⓘ	375
Places allocated ⓘ	206
Refused ⓘ	0
Alternative Offer ⓘ	3
Not required ⓘ	169
Distance last place allocated ⓘ	7.67
Education health and care plan (EHCP) ⓘ	0
Special circumstances ⓘ	

Places allocated and refused at a glance

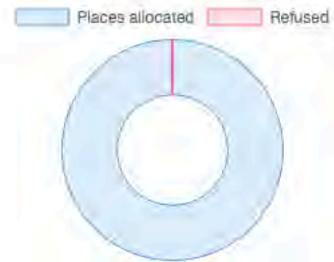
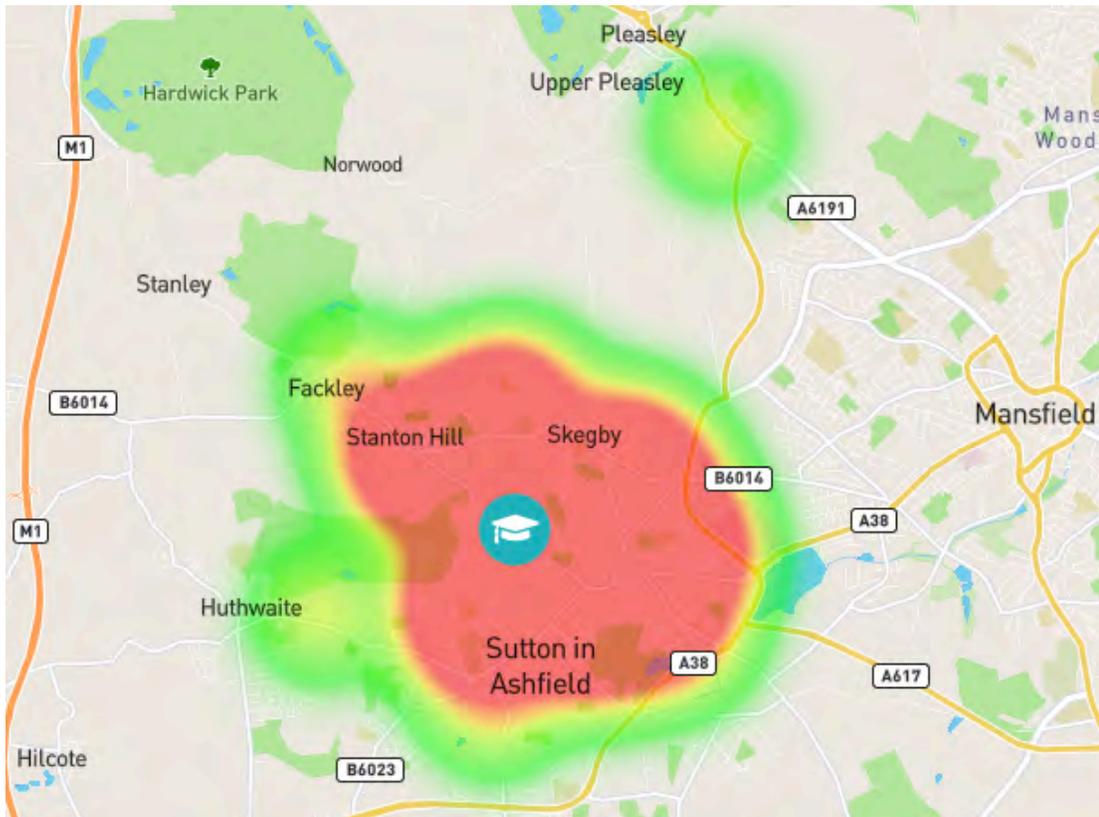


Table 6: Quarrydale Academy 2024/25 Allocations (via NCC)

4.14 The school accommodates pupils from across Sutton-in-Ashfield, as shown in the Map below:



Map 6: Quarrydale Academy Catchment Area Heat Map

- 4.15 The third closest school to the proposed new dwellings is Outwood Academy Kirkby. This is a 5FE Secondary School approximately 2.2 miles walking distance from the proposed new dwellings. The school, as of the previous academic year, was operating at 71% of its capacity with 221 spare places. As discussed previously, this development is only expected to accommodate 48 pupils on site when fully built out.
- 4.16 The school only allocated 116 places out of 150 in the current academic year, which is 77% of its capacity:

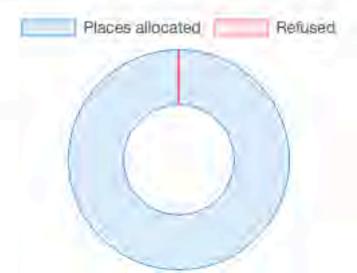
Allocation data		Places allocated and refused at a glance
Admission number ⓘ	150	
Number of applications ⓘ	188	
Places allocated ⓘ	116	
Refused ⓘ	0	
Alternative Offer ⓘ	14	
Not required ⓘ	72	
Distance last place allocated ⓘ	2.15	
Education health and care plan (EHCP) ⓘ	0	
Special circumstances ⓘ		

Table 7: Outwood Academy Kirkby 2024/25 Allocations (via NCC)

- 4.17 There is no Heat Map data available for this school as it has recently converted to Academy status.
- 4.18 The final school reviewed for capacity data is Ashfield School. This is a very large school at 13.5FE, and is 2.3 miles walking distance from the proposed new dwellings. The school, as of the previous academic year, was full.
- 4.19 This is the only school in the vicinity of the development that allocated 100% of the places, as it is a more popular school.

Allocation data

Admission number ⓘ	405
Number of applications ⓘ	818
Places allocated ⓘ	405
Refused ⓘ	90
Alternative Offer ⓘ	0
Not required ⓘ	323
Distance last place allocated ⓘ	1.29
Education health and care plan (EHCP) ⓘ	0
Special circumstances ⓘ	

Places allocated and refused at a glance

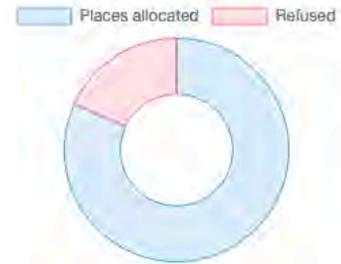
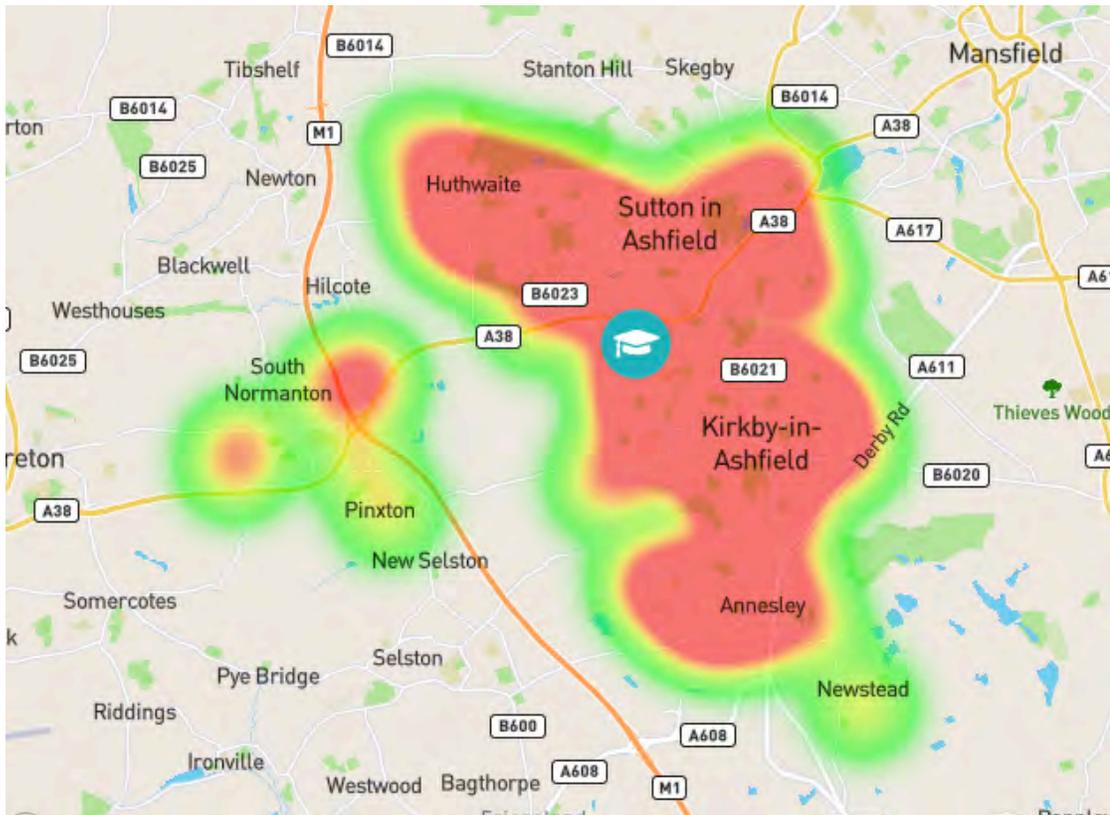


Table 8: Ashfield School 2024/25 Allocations (via NCC)

4.20 Due to the size of the school it accommodates pupils from a wide geographical area including Annesley to the south, and South Normanton to the west, which is over five miles from the school.

NEWARK ROAD, SUTTON IN ASHFIELD
EDUCATION STATEMENT OF CASE



Map 7: Ashfield School Catchment Area Heat Map

4.21 To summarise the above: there were 276 spare places in the four closest schools to the development site. This far exceeds the 48 children that this development is expected to accommodate. This also far exceeds the 179 spare places reported by NCC in the consultation response. This is 6% surplus capacity, which is three times the operating surplus capacity recommended by the Department of Education and discussed in paragraph 82 of the DfE’s best practice guidance.

4.22 There are four schools in the Kirkby/Sutton Secondary Planning Area (the four schools outlined for capacity in this Statement of Case). The schools have a combined capacity of 6,004 pupil places, which includes Sixth Form places:

Secondary Planning Area	School Name	Time Period	Primary Capacity	Secondary Capacity
8910012	Quarrydale Academy	202122	0	1550
8910012	Ashfield Comprehensive School	202122	0	2745
8910012	Kirkby College	202122	0	809
8910012	Sutton Community Academy	202122	0	900

Table 9: Kirkby/Sutton Secondary Planning Area Schools

4.23 By the 2029/30 academic year, the schools are expected to have 522 spare places, which is 9% surplus capacity. This far exceeds the 2% operating surplus capacity that NCC aims for in their adopted Strategy:

LA name	Year	Planning Area Code	Planning Area Name	Planning Area Phase	nc Year Group	Pupil Foreca...
Nottinghamshire	202223	8910012	Kirkby/Sutton Secondary	Secondary	Secondary total	5227
Nottinghamshire	202324	8910012	Kirkby/Sutton Secondary	Secondary	Secondary total	5467
Nottinghamshire	202425	8910012	Kirkby/Sutton Secondary	Secondary	Secondary total	5594
Nottinghamshire	202526	8910012	Kirkby/Sutton Secondary	Secondary	Secondary total	5702
Nottinghamshire	202627	8910012	Kirkby/Sutton Secondary	Secondary	Secondary total	5689
Nottinghamshire	202728	8910012	Kirkby/Sutton Secondary	Secondary	Secondary total	5682
Nottinghamshire	202829	8910012	Kirkby/Sutton Secondary	Secondary	Secondary total	5614
Nottinghamshire	202930	8910012	Kirkby/Sutton Secondary	Secondary	Secondary total	5482

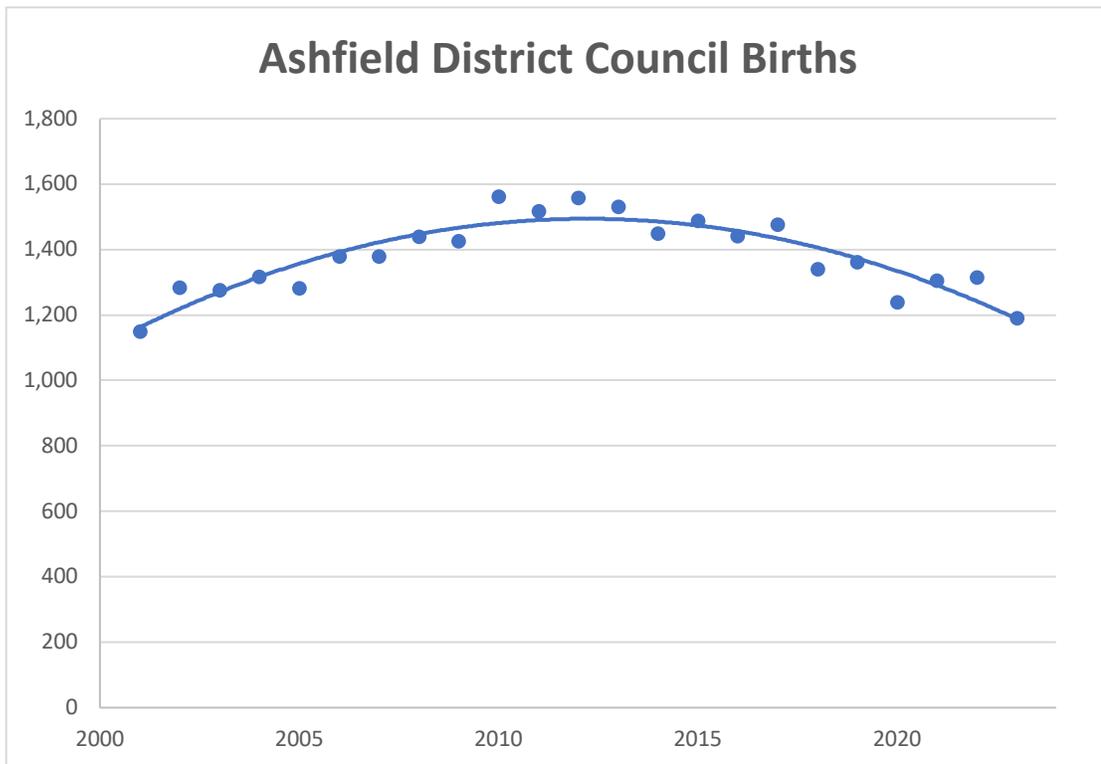
Table 10: NCC SCAP Forecasts (All Ages)

4.24 What is interesting is that while there is a small increase in pupils forecast across the seven years groups as outlined above (including Sixth Form), the number of Year 7 pupils is expected to fall from 995 in the 2022/23 academic year, to 837 in the 2029/30 academic year. There are 965 available places in Year 7, meaning that by the end of the decade there is expected to be 128 spare places, or over 4FE:

LA name	Year	Planning Area Code	Planning Area Name	Planning Area Phase	nc Year Group	Pupil Foreca...
Nottinghamshire	202223	8910012	Kirkby/Sutton Secondary	Secondary	Year 07	995
Nottinghamshire	202324	8910012	Kirkby/Sutton Secondary	Secondary	Year 07	976
Nottinghamshire	202425	8910012	Kirkby/Sutton Secondary	Secondary	Year 07	955
Nottinghamshire	202526	8910012	Kirkby/Sutton Secondary	Secondary	Year 07	958
Nottinghamshire	202627	8910012	Kirkby/Sutton Secondary	Secondary	Year 07	905
Nottinghamshire	202728	8910012	Kirkby/Sutton Secondary	Secondary	Year 07	953
Nottinghamshire	202829	8910012	Kirkby/Sutton Secondary	Secondary	Year 07	903
Nottinghamshire	202930	8910012	Kirkby/Sutton Secondary	Secondary	Year 07	837

Table 11: NCC SCAP Forecasts (Year 7)

4.25 The fall in the number of Year 7 pupils is not surprising. NCC has not requested Primary School contributions from this development because of spare capacity and falling pupil numbers. This is due to the falling birth numbers across Ashfield District Council, as shown in the Graph below. According to the Office for National Statistics (“ONS”) births were the lowest they had been in 2023 since 2001, and were down 24% from the peak in 2010:



Graph 1: Ashfield District Council Births

- 4.26 On the basis of the spare capacity far exceeding child yield of this development, it is evident that planning obligations towards additional Secondary School infrastructure cannot be justified under the tests of CIL Reg 122 (2), as explained by Gary Lees in his Proof of Evidence.
- 4.27 As discussed previously, NCC has stated that pupil demand from Local Plan developments should be included in calculations. However, this is not appropriate. The CIL Regulation 122 compliance of this approach is dealt with by Gary Lees in his Proof of Evidence.
- 4.28 On the basis that spare capacity currently, and forecast in the future, exceeds the child yield of this development, planning obligations cannot be said to make the development acceptable in planning terms.

5 Summary and Conclusion

- 5.1 I was instructed by the Appellant to prepare this written Statement of Case to assist the Inspector in determining whether planning obligations towards Secondary and SEND infrastructure are justified under the tests of CIL Reg 122 (2). It is the outcome of my scrutiny that while SEND contributions do fulfil the required tests due to a lack of available capacity, it is demonstrably clear that there is no justification for Secondary School planning obligations.
- 5.2 Spare capacity in existing Secondary Schools far exceeds the child yield of this development, and the demand for Year 7 places is expected to fall considerably by the end of the decade. There were 276 spare places in the four closest schools to the development site. This far exceeds the 48 children that this development is expected to accommodate. This also far exceeds the 179 spare places reported by NCC in the consultation response. This is 6% surplus capacity, which is three times the operating surplus capacity recommended by the Department of Education and discussed in paragraph 82 of the DfE's best practice guidance. On that basis, it cannot be said that planning obligations are necessary to make the development acceptable in planning terms. It is only when you add in "potential" Local Plan developments – which may never come forward – that a deficit in available places is demonstrated.
- 5.3 What is evident is that there is no justification for planning obligations, nor is there any Education related reason why this development cannot progress.



Appendix 2

Illustrative Masterplan (EMS.2254_120 01 Rev D)



Appendix 3

Economics Infographic

Economic Benefits

Land South of Newark Road

Construction of 300 residential dwellings

Construction Benefits

£63.6million

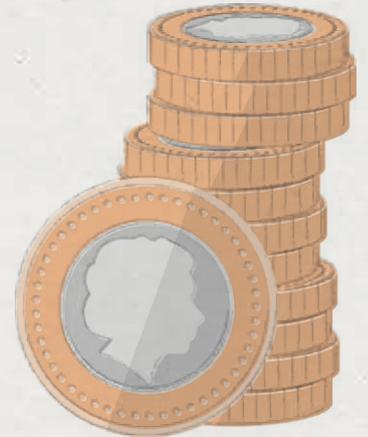
Estimated construction investment over eight-year build programme ¹

104

Direct construction roles and indirect/induced jobs supported during build phase

£47.1million GVA ²

Economic output contribution from jobs supported by activities at the site over eight-years (present value) ³



Operational Benefits

321

Economically active and employed residents estimated to live in the new housing

£1.8million

Estimated first occupation expenditure (Spending to make a house feel like a 'home') ⁴



£594,531

Estimated energy cost savings per annum from the Proposed Development

10%

Affordable housing to be delivered on-site



£716,571

Estimated annual increase in Council Tax revenue ⁵

687

Less carbon emitted by the dwellings at the Proposed Development

£2.2million

Annual household spend on convenience and comparison goods, plus leisure activities retained within Ashfield



¹ The construction cost has been estimated using the BCIS Online tool and is exclusive of external works, contingencies, supporting infrastructure fees, VAT, finance charges etc. (Accessed 09/12/2024)
² GVA, or gross value added, is the measure of the value of goods and services produced in an area, sector or industry.
³ Where future benefits are calculated, they have been discounted to produce a present value.

⁴ Research suggests that the average homeowner spends approximately £5,000 to make their house 'feel like home' within 18-months of moving in (available here: https://www.hbf.co.uk/documents/7876/The_Economic_Footprint_of_UK_House_Building_July_2018LR.pdf). This has been uplifted to £6,000 to account for inflation using the Bank of England Deflator calculator.
⁵ Based on average Council Tax for band D properties in Ashfield of £2,388.57 in 2024/25.



Appendix 4

Draft Housing Allocation SKA3e

Residential Development Brief - Land at Newark Road, Sutton-in-Ashfield (SKA3e)

Introduction

This development brief provides additional guidance for the development of land at Newark Road / Coxmoor Road, Sutton-in-Ashfield (site SKA3e). Coupled with the policies within the Local Plan and relevant Supplementary Planning Documents (SPDs), it should be used to help guide the design of future development.

The Site and Surrounding Area



A greenfield site located to the west of Coxmoor Road, comprising a large area of arable farmland with no internal field boundaries.

The site is undulating, sloping down towards Searby Road. Boundaries largely comprise of hedgerows, some of which would benefit from enhancement. The south east corner of the



Appendix 5

Extract Comparison from Ashfield DLP (Reg. 18) SA

Appendix F – Extract Comparison from Ashfield Consultation Draft Local Plan (Regulation 18) Sustainability Appraisal Report

Extract from Ashfield Local Plan Sustainability Appraisal Appendix H as published at the time of the Regulation 18 consultation on the Local Plan in 2021:

Site Ref:	Use	Status at Reg 18	Allocation Ref	Site Address:	Justification for Selection / Rejection
SA024	Housing	Reasonable alternative		South of Newark Road, Sutton-In-Ashfield	Not Selected - Located in the countryside on the Main Urban Area fringe. The site has been proposed for allocation in a number of draft Local Plans. It has encountered substantial local opposition and has not been politically acceptable for the site to be taken forward by the Council.

Extract from Ashfield Local Plan Sustainability Appraisal Appendix H as available on the Council's website now, dated September 2021:

Site Ref:	Use	Status at Reg 18	Allocation Ref	Site Address:	Justification for Selection / Rejection
SA024	Housing	Reasonable alternative		South of Newark Road, Sutton-In-Ashfield	Not Selected - Located in the countryside on the Main Urban Area fringe. The site has been proposed for allocation in a number of draft Local Plans without being adopted. The site formed part of a number of spatial strategy options but was not taken forward for the reasons out lined in the SA of alternative spatial strategies. A planning application was submitted in 2017 but has not been determined to date.

Site Ref:	Use	Status at Reg 18	Allocation Ref	Site Address:	Justification for Selection / Rejection
KA027	Housing	Reasonable alternative		East of Lowmoor Road, Kirkby-In-Ashfield	Not Selected - Located in the countryside on the Main Urban Area fringe. The site has been proposed for allocation in a number of draft Local Plans. It has encountered substantial local opposition and has not been politically acceptable for the site to be taken forward by the Council.
KA035	Housing	Reasonable alternative		Land east of Sutton Parkway Station, Kirkby-In-Ashfield	Not Selected - Located in the countryside on the Main Urban Area fringe. The site has been proposed for allocation in a number of draft local Plans. It has encountered substantial Local opposition and has not been politically acceptable for the site to be taken forward by the Council.
SA001	Housing	Reasonable alternative		Sutton Parkway (Newark Road & Lowmoor Road), Sutton-In-Ashfield	Not Selected - Located in the countryside on the Main Urban Area fringe. The site has been proposed for allocation in a number of draft Local Plans. It has encountered substantial local opposition and has not been politically acceptable for the site to be taken forward by the Council.
SA024	Housing	Reasonable alternative		South of Newark Road, Sutton-In-Ashfield	Not Selected - Located in the countryside on the Main Urban Area fringe. The site has been proposed for allocation in a number of draft Local Plans. It has encountered substantial local opposition and has not been politically acceptable for the site to be taken forward by the Council.

Source: Ashfield Local Plan Sustainability Appraisal Appendix H Page 28 as shown in our representations to the Regulation 18 consultation.

Site Ref:	Use	Status at Reg 18	Allocation Ref	Site Address:	Justification for Selection / Rejection
SA024	Housing	Reasonable alternative		South of Newark Road, Sutton-In-Ashfield	Not Selected - Located in the countryside on the Main Urban Area fringe. The site has been proposed for allocation in a number of draft Local Plans without being adopted. The site formed part of a number of spatial strategy options but was not taken forward for the reasons out lined in the SA of alternative spatial strategies. A planning application was submitted in 2017 but has not been determined to date.

Source: Ashfield Local Plan Sustainability Appraisal Appendix H Page 28 onwards as available on the Council's website now, dated September 2021.



Appendix 6

Statement of Evidence on Ecology



NEWARK ROAD, SUTTON IN ASHFIELD

STATEMENT OF EVIDENCE /BIODIVERSITY

Oliver Ramm BSc, MCIEEM

Director, RammSanderson Ecology Ltd.

Appeal (Ref: APP/W3005/W/24/3350529)

Planning Application (Ref: V/2022/0629).



RELEVANT QUALIFICATIONS

I am Oliver Ramm, a Director at RammSanderson Ecology Ltd, with responsibility for a team of 92 environmental professionals and support staff. The Practice is registered under the Chartered Institute of Ecology & Environmental Management's Registered Practice scheme, effectively a quality mark for our profession.

I have 19 years' experience in the field of Ecological Consulting and my relevant qualifications and professional memberships are summarised as follows:

- BSc (Hons) Degree in Environmental Biology
- Full Member of the Chartered Institution of Ecology & Environmental Management (MCIEEM)

I have been a consultant ecologist working on housing developments for the duration of my career to date, in addition, I have been involved in projects in the renewables, utilities, infrastructure, commercial and industrial sectors and worked in all corners of the UK. I have also been involved in a number of conservation and estate management schemes. I have worked on a number of schemes in Ashfield's demise, including projects on behalf of Ashfield District Council and completed the surveys of this site myself so as to be as familiar as possible with the conditions of the site, which is the subject of this case.

DOCUMENTATION

RammSanderson completed the Preliminary Ecological Appraisal for this site in 2022 (CD1.36), which recommended a number of targeted species-specific surveys be completed. Those surveys were subsequently completed, and an Ecological Impact Assessment then issued in August 2023 (CD1.37). Alongside this, Wardell Armstrong were then appointed to complete a preliminary Biodiversity Impact Assessment (CD1.35), the means of assessing a project's Biodiversity Net Gain (or Loss), using the current version of the DEFRA metric available at the time of the application.

Our report and its recommendations, alongside the work WA completed for the application then fed into the design and development of the masterplan and illustrative landscape design.

The planning application remains pending, and has been appealed by Hallam Land Management for non-determination. There are no suggested ecological/biodiversity reasons for refusal.

I have reviewed the ecological documentation submitted with the outline planning application and stand by the findings of the reports, which can be generally summarised as the Site is of low ecological value, with no proven presence of protected species, and the opportunity for a policy compliant scheme, capable of delivering 10%+ Biodiversity Net Gain.

Any ecological survey is however a snapshot in time and several consultee responses mention birds and deer using the site in particular. I therefore revisited the site in December 2024 to ensure site conditions remain consistent with the submitted documentation, and to investigate the use of the site by birds and deer. In summary, I can confirm that the site conditions are consistent with those set out in the submitted report, which remains an accurate assessment of the ecology of this site, and can stand by its findings.

Furthermore, we have re-assessed the updated masterplan and Illustrative Landscape Masterplan design (CD1.10) against the most up to date DEFRA Metric (the Statutory Metric), which has resulted in a Biodiversity Net Gain of 11.81% in habitat terms, and 19.01% in hedgerows. There are no watercourses on site, so the assessment does not include impact on watercourses, or to require a gain in watercourse units.

ECOLOGY CONSULTATION

Ashfield District Council's (ADC) ecology consultee response (CD2.13) concurred with the findings of our Ecological Impact Assessment, and found that it was "... likely that 10% biodiversity net gain of habitat units and hedgerow units can be achieved on site. The finalised layout for the reserved matters should be informed by the need to provide the required net gain and, as such, should be secured by a planning condition".

Natural England were also consulted during the planning process and had No Objection to the proposals (CD2.14 & 2.15).

THIRD PARTY REPRESENTATIONS

I have read the responses of the public, elected members, and third party representations.

In response to the ecology comments within the third party representations, I have the following comments:

1. The main field compartments are intensive arable land without any field margins of note. The land has received regular inputs of fertilisers, herbicides and pesticides and been driven over and compacted by agricultural machinery to the point where the site is a highly managed environment and uniform in its lack of diversity. Ecological interest is present in the surrounding landscape, which includes pockets of woodland, which increase in abundance and diversity moving east towards Harlow and Thieves Wood, via Coxmoor Golf Club.
2. The site is bounded on three sides by hedgerows which are in poor condition and under intensive mechanical flail annual management. Additional hedgerows will be planted between the edge of development and landscaping areas. Assessing this change formally using the DEFRA Statutory Metric shows a 19.01% increase in hedgerows at the site. It should be noted that this calculation will need to be updated to reflect the final layout with a Reserved Matters Application at a later date.
3. The site was revisited in December 2024, with the survey commencing on site at 7.30am and concluding around 12pm. The objectives were two-fold, to confirm site conditions as previously assessed remained accurate, and to assess whether any bird species of note were present at all. No wildfowl (such as geese, ducks or wading birds) were recorded at all. The only bird species recorded on site were Woodpigeon, Buzzard, Blackbird, Chaffinch, Robin, Blue Tit and Carrion Crow.
4. The proposals include a substantial area of landscaping which will mature into a species rich grassland with significant scrub, tree and hedgerow planting. This is a long term benefit to local wildlife on a site which is relatively devoid of ecological interest presently.
5. Two roe deer were recorded on site during the update walkover. Roe deer are native species and not protected by legislation, save for acts of cruelty (such as bloodsports). This finding does not influence or change the assessment within the submitted ecological report.

I trust the information provided here is satisfactory at this time, should you have any queries, or require any clarifications, please do not hesitate to call me directly.

Yours sincerely,

Oliver Ramm MCIEEM

For and on behalf of RammSanderson Ecology Ltd.

Enclosures:

Appendix 1: BNG Metric (Headline Results. Submitted as an .XLS file).

Appendix 2: Plans

Appendix 1: BNG Metric headline results

FINAL RESULTS		
Total net unit change <small>(Including all on-site & off-site habitat retention, creation & enhancement)</small>	<i>Habitat units</i>	5.73
	<i>Hedgerow units</i>	1.53
	<i>Watercourse units</i>	0.00
Total net % change <small>(Including all on-site & off-site habitat retention, creation & enhancement)</small>	<i>Habitat units</i>	11.81%
	<i>Hedgerow units</i>	19.01%
	<i>Watercourse units</i>	0.00%
Trading rules satisfied?	Yes ✓	

-  ECOLOGY
-  FLOOD RISK
-  ARBORICULTURE
-  HABITATS

Appendix 2: Plans



- Key**
- Site Boundary
 - Bracken
 - Bramble scrub
 - Cereal crops
 - Modified grassland
 - Ruderal/Ephemeral
 - Native hedgerow
 - Line of trees
 - Existing Medium Rural Tree



- Key**
- Site Boundary
 - Baseline Habitat Condition**
 - Moderate
 - Condition Assessment N/A
 - Baseline Hedgerow Condition**
 - Moderate
 - Condition Assessment N/A
 - Baseline Individual Tree Condition**
 - Moderate

Title: BIA Baseline Conditions Habitat Plan		
Project: Newark Road, Sutton in Ashfield		
Client: Hallam Land Management Limited		
Date: 13/12/2024	Fig:	Author: LG
A4 Scale: 1:3750	ID: RSE_6136_BIAB_1224_V4R3	
EPSG:27700 OSGB36 / British National Grid		



- Key**
- Site Boundary
 - Bracken
 - Bramble scrub
 - Developed land; sealed surface
 - Introduced shrub
 - Mixed scrub
 - Modified grassland
 - Other neutral grassland
 - Sustainable drainage system
 - Developed land (70%): Vegetated garden (30%)
 - Non-native and ornamental hedgerow
 - Line of trees
 - Native hedgerow
 - Native hedgerow with trees
 - Proposed Small Urban Tree

RammSanderson

Title: BIA Proposed Habitat Plan		
Project: Newark Road, Sutton in Ashfield		
Client: Hallam Land Management Limited		
Date: 13/12/2024	Fig:	Author: LG
A4 Scale: 1:3750	ID: RSE_6136_BIAP_1224_V4R3	

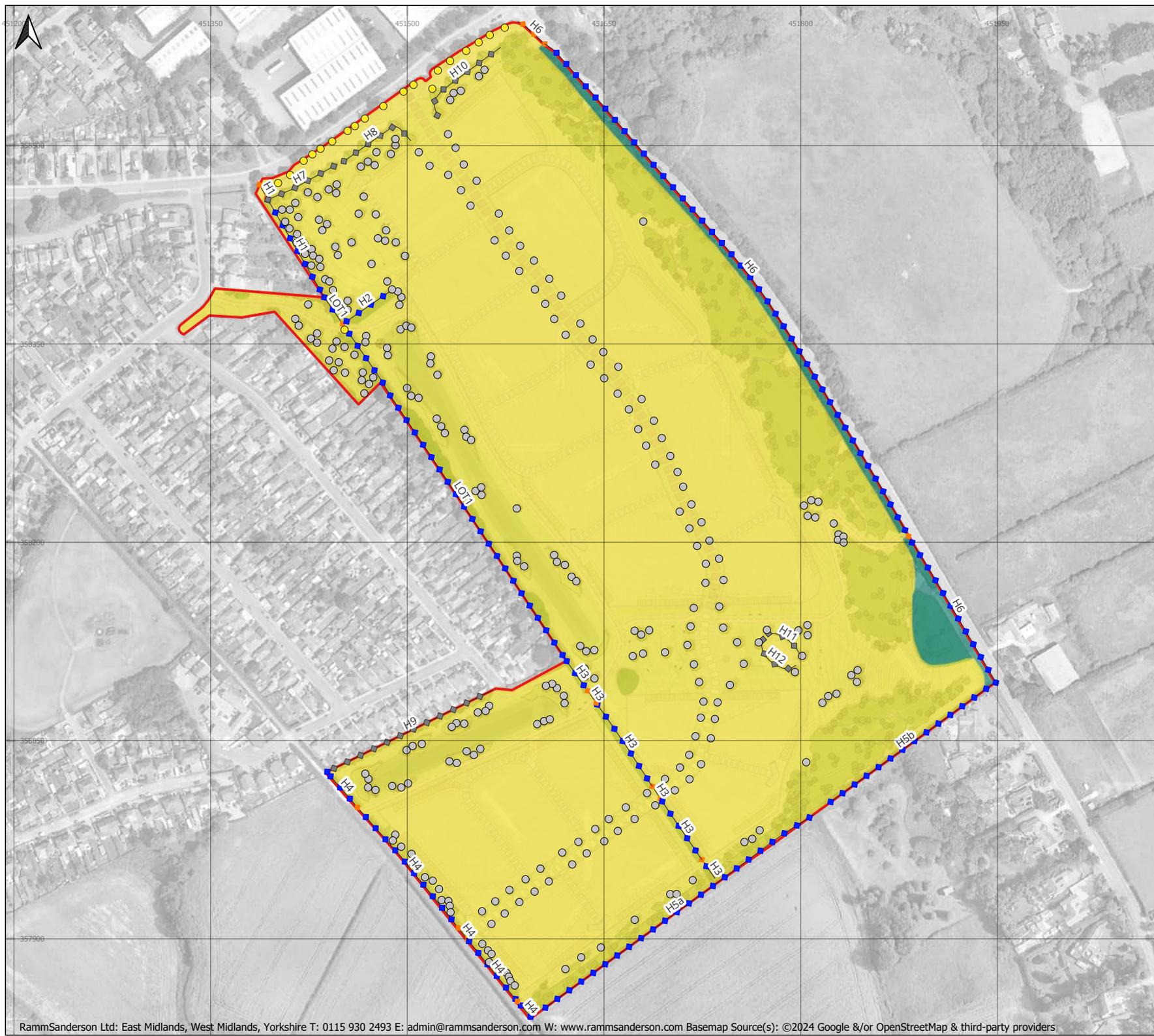
EPSG:27700 OSGB36 / British National Grid



Key

- Site Boundary
- Proposed Habitats Condition**
 - Moderate
 - Poor
 - N/A - Other
 - Condition Assessment N/A
- Proposed Hedgerow Condition**
 - Moderate
 - Poor
- Proposed Individual Tree Condition**
 - Poor
 - Moderate

Title: BIA Proposed Conditions Habitat Plan		
Project: Newark Road, Sutton in Ashfield		
Client: Hallam Land Management Limited		
Date: 13/12/2024	Fig:	Author: LG
A4 Scale: 1:3750	ID: RSE_6136_BIAP_1224_V4R3	



- Key**
- Site Boundary
 - Habitats Retention**
 - Retained
 - Lost
 - Hedgerow Retention**
 - Created
 - Retained
 - Lost
 - Individual Tree Retention**
 - Created
 - Lost

Title: BIA Retention Habitat Plan		
Project: Newark Road, Sutton in Ashfield		
Client: Hallam Land Management Limited		
Date: 13/12/2024	Fig:	Author: LG
A4 Scale: 1:3750	ID: RSE_6136_BIAR_1224_V4R3	
EPSG:27700 OSGB36 / British National Grid		



Appendix 7

EMS2254_120_D_02 – Illustrative Masterplan – Former Landfill Area

Town & Country Planning Act 1990 (as amended)
Planning and Compulsory Purchase Act 2004

East Midlands

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Derbyshire, DE74 2SL
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E EastMidlands@pegasusgroup.co.uk
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