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For and on behalf of
Bellway Homes Ltd


Town and Country Planning Act 1990 (Section 78)

PROOF OF EVIDENCE (PLANNING)

**Address: Ashland Road West, Sutton-in-Ashfield
Appeal Reference: APP/W3005/W/21/3274818
Date of Inquiry: 21-24 & 28-29 September 2021
Local Planning Authority: Ashfield District Council**

**Prepared by
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DLP Planning Ltd
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August 2021

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1.0 QUALIFICATIONS AND EXPERIENCE

- 1.1 My name is Jim Lomas and I hold a BA (Hons) Degree in Town Planning. I am a Member of the Royal Town Planning Institute (Elected 1990).
- 1.2 I am a shareholding Director of DLP Planning Limited.
- 1.3 I am the Regional Director based in the Sheffield Office, Ground Floor, V1 Velocity Village, Tenter Street, Sheffield S1 4BY. I oversee the strategic management of the Sheffield, Leeds and Nottingham Offices, ensuring the high standards of work and the corporate objectives of the company are maintained.
- 1.4 I have over 32 years' experience as a planning consultant and Local Authority Planning Officer.
- 1.5 I currently advise a broad range of clients throughout England and handle a diverse workload, including Public Inquiries, Informal Hearings, site promotion through Development Plan allocations, promoting development through planning applications, enforcement appeals, site appraisals and other associated development projects.
- 1.6 I joined DLP Planning Limited in 2002 as an Associate Director. I previously held the post of Assistant Team Leader (City Centre and South West) at Sheffield City Council's Department of Planning. This role involved the processing of planning applications, undertaking appeals, Public Inquiries, Planning Committees and liaising with members of the public, politicians, agents, and applicants.
- 1.7 Prior to this, I was employed at Manchester City Council, again working within the Planning Department. Work involved processing planning applications for both the City Council and the Central Manchester Development Corporation (CMDC).
- 1.8 My other work experience includes working with Leicestershire Council in the Strategic Planning and Policy Department.
- 1.9 The evidence I have prepared and provide for this appeal in this proof is true, having been prepared and is given in accordance with the guidance of my professional institution, the RTPI. I confirm that the opinions expressed are my true and professional opinions

2.0 SCOPE AND STRUCTURE

2.1 My Proof of Evidence is structured as follows:

- Section 3: The site and its surroundings;
- Section 4: Relevant planning history;
- Section 5: Background to this appeal;
- Section 6: Development Plan Policy;
- Section 7: National Planning Policy and all other material considerations;
- Section 8: Other technical considerations;
- Section 9: Third Party comments and response; and
- Section 10: The “Planning Balance” and conclusions.

3.0 APPEAL SITE AND SURROUNDINGS

3.1 Full details of the appeal site and its context can be found at Section 2 of the Statement of Common Ground (SoGC).

4.0 RELEVANT PLANNING HISTORY

- 4.1 Full details of the relevant planning history and pre-application advice can be found at Section 3 of the SoCG.

5.0 THE APPEAL SCHEME & BACKGROUND

- 5.1 Full details of the proposed development, scope of planning application submission can be found at Section 4 of the SoCG.

6.0 DEVELOPMENT PLAN POLICY

- 6.1 Section 38 (6) of the Planning and Compulsory Purchase Act 2004 requires all planning decisions to be made in accordance with the Development Plan unless material considerations indicate otherwise.
- 6.2 This section focusses on the relevant Development planning policy considerations in context of the reason for refusal, other relevant planning policies applicable to the appeal and provides an “Assessment” of the policies in context of the proposal.

The Development Plan

- 6.3 The Development Plan for Ashfield District Council currently consists of the ‘saved’ policies of the Ashfield Local Plan Review 2002.
- 6.4 A new Local Plan was previously being assembled by the Council to replace the ‘saved’ policies of the Ashfield Local Plan Review 2002. It had progressed through to submission to Secretary of State on 24 February 2017 with Examinations held in October 2017. However, the Council subsequently resolved at a meeting on 6 September 2018 to withdraw the emerging Local Plan and restart the process.
- 6.5 It is considered appropriate to note that the application site was identified as a proposed residential allocation in the withdrawn Local Plan for approximately 235 dwellings (site ref. SKA3c). Whilst this holds no weight, the evidence base supporting the withdrawn Plan demonstrates that the site was considered by the Council to be a sustainable option for housing development.
- 6.6 The Council has now started work on a new Local Plan. The Council held a Call for Sites consultation in March 2019, and a submission for the application site was submitted by Bellway Homes as part of this process. The emerging Plan is at a very early stage, and there are currently no published timescales for consultation. As such, the subject appeal will be considered solely against the saved Policies of the Ashfield Local Plan Review. In accordance with paragraph 219 of the National Planning Policy Framework (NPPF), due weight should be given to these policies according to their degree of consistency with the NPPF. The NPPF, Planning Practice Guidance (PPG) and relevant Supplementary Planning

Guidance are material considerations.

6.7 The sole reason for refusal has referred to the following policies only:

- **Policy ST1 (a, b and e)** (Development) - expresses the Council's approach in overall terms to the future physical form of the District. The policy states that development will be permitted where it does not conflict with other policies in the Local Plan (part a) and would not adversely affect the environment in which it is located (part b). Further to this, the policy seeks to prevent development which would adversely affect highway safety (part c) and will not conflict with an adjoining or nearby land use (part e).
- **Policy ST2** (Main Urban Areas) states that development will be concentrated within the main urban areas of Hucknall, Kirkby in Ashfield and Sutton in Ashfield
- **Policy ST3** (Named Settlements) - This allows for limited development within named settlements
- **Policy ST4** (The Remainder of the District) – This confirms outside the main urban areas and named settlements, permission will only be granted for sites allocated for development or development appropriate to the green belt or countryside as set out in Policies EV1 and EV2
- **Policy EV2** (The Countryside) – This states that in the countryside, permission will only be given for appropriate development. A definition of what comprises appropriate development is listed at parts a) to h) of the policy. Major housing development does not fall within the Council's definition of appropriate development in the countryside

6.8 It can safely be assumed that no other policies are breached because the Council's reasons for refusal were obliged to *"state clearly and precisely their full reasons for the refusal, specifying all policies and proposals in the development plan which are relevant"* - Article 35 (1)(b) of the Town and Country Planning (Development Management Procedure) (England) Order 2015.

6.9 Other Policies which are applicable to the appeal include the following:

- 6.10 **Policy HG3 (Housing Density)** - Policy HG3 seeks to control the density of housing developments on sites of 0.4ha and greater through the proximity of the development to District shopping centres, Robin Hood line stations or Nottingham Express Transit rail stops. The Policy sets out a minimum net density requirement of 30 dwellings per hectare for a site in this location. Net density is measured as the individual dwelling units per hectare of land developed specifically for housing and directly associated uses
- 6.11 **Policy HG4 (Affordable Housing)** - In the West Notts. Sub Area, Policy HG4 seeks 6% affordable housing on housing development of 25 dwellings or more.
- 6.12 **Policy HG5 (New Residential Development)** - In order to establish that new residential development is designed to a high standard, Policy HG5 provides a number of broad guidelines for residential proposals to meet which, upon meeting all guidelines, would result in gaining planning permission. The policy states that residential development will be permitted where:
- a) *The amenity of neighbouring properties is protected,*
 - b) *The design and layout of dwellings minimises potential overlooking and provides a reasonable degree of privacy and security,*
 - c) *Adequate private garden space is provided,*
 - d) *Boundary treatment provides an acceptable standard of privacy and visual amenity,*
 - e) *Access for vehicles, pedestrians and cyclists and public transport where appropriate, is safe and convenient and integrated with existing provision,*
 - f) *Parking facilities are provided in accordance with Council standards, as outlined in Appendix 7 (of the Ashfield Local Plan Review),*
 - g) *Its design is acceptable in terms of appearance, scale and siting, and*
 - h) *Landscaping complements and enhances its appearance.*
- 6.13 **Policy HG6 (Public Open Space in New Residential Developments)** - This directs the Public Open Space (POS) requirements for new residential developments on sites of two

hectares and above, where 10% of gross housing area is to be provided as POS. It also states that where it is not appropriate to provide open space within a site boundary, a planning obligation will be negotiated.

- 6.14 **Policy EV4 (Mature Landscaped Areas)** - This states that development which does not adversely affect the character and quality of Mature Landscape Areas (MLA) will be permitted.
- 6.15 **Policy EV5 (Sites of Special Scientific Interest)** - This states that proposals likely to affect Sites of Special Scientific Interest (SSSI) will be subject to special scrutiny and where such development may have an adverse effect, directly or indirectly will not be permitted unless the reasons for development clearly outweigh the nature conservation value of the site.
- 6.16 **Policy EV6 (Local Nature Reserves and Sites of Importance for Nature Conservation and Geological Significance)** - This states that development which adversely affects local nature reserves or sites of importance for nature conservation or geological significance will only be permitted where (a) provision is made within the development for the protection of features of nature conservation or geological significance, or (b) the development cannot be located elsewhere. In the case of nature conservation features, adequate provision is made for the creation of similar habitats, where feasible, preferably in the locality, negotiated and secured by a planning condition or planning obligation.
- 6.17 **Policy EV8 (Trees and Woodlands)** - This states that development which adversely affects trees worthy of retention, including woodland and individual trees, will not be permitted. Where trees are lost as a result of development, replacement or mitigating planting will be required
- 6.18 **Policy TR2 (Cycling Provision in New Developments)** - This sets out that development proposals where cyclists would expect to have access should include (a) safe and convenient cycle access, (b) links with existing and proposed cycle routes where appropriate and (c) cycle parking facilities in accordance with provision identified in Appendix 7.
- 6.19 **Policy TR6 (Developer Contributions to Transport Improvements)** - This highlights that where development places additional demands on transport infrastructure, planning obligations will be negotiated, including improvements to public transport infrastructure, the

cycling network pedestrian facilities and park and ride sites.

Assessment of Development Plan Policy

- 6.20 As noted above, Section 38(6) of The Planning and Compulsory Purchase Act 2004 requires applications to be determined in accordance with the Development Plan, unless material considerations indicate otherwise. Whilst it does not displace Section 38(6) of the 2004 Act, the NPPF paragraph 11 is a key material consideration, as it sets out the Government's intention that planning decisions should apply a presumption in favour of sustainable development and provides guidance on how planning decisions should be made. A key consideration when applying paragraph 11 is whether the Development Plan in question is up to date.
- 6.21 In this case, the Development Plan consists of the Ashfield Local Plan Review, adopted in November 2002 and intended to guide development in the District up to 2011. It is not disputed that the proposals, which are for major residential development at a site identified as countryside, do not accord with the Ashfield Local Plan, specifically Policies ST2 – ST4 and EV2 which define the site as countryside.
- 6.22 However, the Local Plan is clearly out of date with regards to the matters of housing land supply because it is time expired and settlement boundaries were drawn to reflect a housing need for the period up to 2011. **Policies ST2 – ST4** are restrictive of development outside the main urban areas and named settlements, lacking 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 by the NPPF. It is also clear, that these policies are not providing for sufficient housing for the District. The basket of policies for determining the appeal are therefore considered to be out of date.
- 6.23 Further, it is the Council's position that it cannot demonstrate a five year housing land supply, as required by the NPPF. The Council's Committee Report confirms that the District can demonstrate a housing land supply of 2.21 years, which is a significant undersupply of housing. The Housing Delivery Test (published August 2020) also indicates the delivery of housing in Ashfield is substantially below the housing requirements over the past three years.

The Council's 2019 Housing Land Monitoring Report stated a supply of 2.67 years (as 1 April 2019), and the previous year's figure (as 1 April 2018) was 3.92 years.

- 6.24 For applications involving the provision of housing and where local planning authorities cannot demonstrate a five year supply of deliverable housing sites, footnote 8 to the NPPF is clear that relevant Development Plan policies should be regarded as out of date.
- 6.25 The application should therefore be determined in accordance with paragraph 11(d) of the NPPF and permission should be granted, unless:
- i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
 - ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.
- 6.26 An appeal in respect of an outline planning application (with all matters reserved except access) for up to 322 dwellings at land west of Beck Lane, Skegby, Nottinghamshire (Ashfield District Council) (appeal ref. APP/W3005/W/18/3213342) was allowed by the Inspector on 23 August 2019 (referred to as 'the Skegby appeal') (Appendix C of the Statement of Case). At this time, it was agreed by the appellant (Lovel (East Midlands) Ltd) and the Council that it was not possible to demonstrate a five year housing land supply. On this basis, the Inspector concluded that the most important policies are rendered out of date and weight to any conflict with those policies is reduced (para. 3). Indeed, the Inspector also confirmed that Policies ST4 and EV2 are inconsistent with the NPPF, thus reducing the weight afforded to these policies and that the application should be determined in accordance with the *titled balance* (para. 4). Ultimately, the Inspector concluded that the adverse impacts of the proposal fall very far short of significantly and demonstrably outweighing the considerable benefits which the scheme offers (para. 46).
- 6.27 In relation to this current appeal at Ashland Road, Limb i) of paragraph 11(d) is not satisfied and may not be relied upon to dismiss this appeal as there are no areas or assets of particular importance in close proximity to the appeal site. The decision maker should therefore apply limb ii) (referred to as "*the tilted balance*") in the determination of this appeal and consider whether any adverse impacts of granting planning permission would significantly and

demonstrably outweigh the benefits of the proposals, when assessed against the policies in the Framework taken as a whole.

- 6.28 The appeal proposal has the potential to deliver up to 300 homes. This is a significant benefit to be weighed in favour of the application, particularly given the Council's substantial housing shortfall. As set out above and in the SoCG, the Council can only demonstrate a 2.21 year supply of housing; a position which has been worsening over the last three years. It would be the appellant's intention to prepare and submit a reserved matters application within approximately one month from receiving outline consent and to commence on site as soon as practically possible. From this regard, detailed proposals had already been progressed in anticipation of a positive decision at the recent planning committee meeting.
- 6.29 With reference to the Skegby appeal, the Inspector gave the provision of housing considerable weight in favour of the proposal. Further, in an appeal at Nantwich, East Cheshire by Muller Property Group (ref. APP/R0660/A/13/2197532 and 2197529), the Inspector confirmed that even though the Council was able to demonstrate a greater than 5 year housing land supply, significant weight should be given to the provision of significant numbers of market housing (189 dwellings) as this would contribute to the Government's objective of significantly boosting the supply of housing.
- 6.30 The Government has a clear objective to "significantly boost" the supply of homes (NPPF, paragraph 60). At present, the Council cannot demonstrate a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement (NPPF, paragraph 74). The appeal scheme would make a significant contribution towards the Council's significant housing shortfall in a sustainable location, with minimal adverse impacts, including the provision of affordable housing. The Inspector in respect of the Skegby appeal gave the provision of affordable housing significant weight in favour of the proposals.
- 6.31 It is material that the appeal site is located in the main urban area of Sutton-in-Ashfield, which the Local Plan supporting text states *is "where services are concentrated and access to facilities is best."* Whilst the supporting text does specify that proposals should not conflict with other land use designations, it has already been established that **Policies ST2 – ST4 and EV2 are out of date** because of the Council's housing land supply shortfall and the fact

they are inconsistent with the NPPF; a matter confirmed by the Skegby appeal decision. Furthermore, the Council's housing needs cannot be met within its out of date settlement boundaries, meaning greenfield sites will need to be released to address strategic housing requirements.

6.32 The site is a logical extension to the town and is well contained on three sides by the existing urban area and at Brierley Forest Park on its northern side. The Council's own evidence also concludes that the site is suitable for residential development. The Strategic Housing Land Availability Assessment (SHLAA) for Sutton-in-Ashfield was published in November 2016 and included a desktop appraisal for all sites submitted to the Council through the SHLAA process. The appraisal of each site included an analysis of the potential capacity for residential development and deliverability over a 15- year period. The appeal site was assessed as part of this appraisal. The SHLAA assessment concluded that the site could be considered:

- **Suitable:** in terms of character, land use and location; access to services being within 10 minutes walking distance to a range of basic services, within 30 minutes travel by public transport to a greater range of everyday facilities, and with immediate access to natural and public open space; in terms of physical constraints subject to a further flood risk assessment albeit the site lies within flood zone 1 being at low risk of flooding; and in terms of its impact on landscape and bio-diversity.
- **Available:** with no ownership constraints, confirmed as available by the landowner within 5 years.
- **Achievable:** the site is considered to be viable through the Nationwide CIL Services Viability Assessment, December 2013.

6.33 The Council's evidence base on the suitability of sites for housing underpinned the withdrawn Ashfield Local Plan (Publication Version, September 2016). Whilst the withdrawn plan holds no weight in the determination of the appeal, it is material to note that the appeal site was considered by the Council to represent a sustainable option for housing development and was a proposed housing allocation for approximately 235 dwellings (site ref. SKA3c). The supporting text described the site as follows:

“This site is located adjacent to the main urban area of Sutton and is well contained by residential development on three sides and Brierley Forest Park to the north. The site is identified in the Ashfield Strategic Flood Risk Assessment as a potential flood risk area due to the adequacy of the existing drainage system, however a flood risk assessment has identified that this can be mitigated. A local Wildlife Site lies adjacent to the boundary and any development would need to include mitigation of any negative impact on this. The site has been assessed as deliverable in the SHLAA (ref.S55) and is considered to be deliverable within 5 years (Publication Local Plan, paragraph 5.50).”

6.34 Ultimately, the development would result in a number of positive benefits which can be summarised as follows:

Economic

- Significant and positive contributions to building a strong, responsive and competitive economy through the creation of temporary construction employment and expenditure. This economic benefit carries **significant weight**.
- Ongoing contribution and additional expenditure to the local economy both in terms of employment, spending and service usage from the creation of 300 additional households, boosting vitality and viability. This economic benefit carries **moderate weight**.
- Council Tax and New Homes Bonus money for the Local Authority which can potentially be reinvested into the local economy (to note, whilst this is not a material consideration, it is a limited benefit of the scheme).

Social

- Boosting significantly housing supply including affordable provision to meet needs both locally and contributing to wider District requirements. The social benefits through the creation of new housing carries **significant weight**.
- The site is accessible to a range of services, facilities and public transport opportunities. The highly sustainable nature of this site carries **significant weight**.

- Financial contributions towards the provision and enhancement of local social infrastructure. This carries **limited weight**.
- Creating a high-quality environment that would complement and be compatible with neighbouring residential development. The social benefits through the creation of a high-quality environment carries **significant weight**.

Environmental

- The appeal site is well placed to encourage more sustainable patterns of travel and reduced reliance on the private car, consistent with the sustainable principles set out in the NPPF. The highly sustainable nature of this site carries **significant weight**.
- No insurmountable technical issues have been identified in respect of flooding, drainage, transport, noise, air quality, archaeological or heritage impacts (see below). This carries **significant weight**.
- 10% biodiversity net gain via a combination of onsite mitigation methods and a financial contribution which affords **significant weight**.

6.35 As demonstrated by Mr Goodman and Mr Holliday in their respective Proofs of Evidence, it is accepted that by changing the nature of the site from greenfield to residential, there will be some negative environmental impacts, relating to landscape and visual impact. However, the Landscape and Visual Assessment which accompanied the planning application concludes that beyond the immediate boundaries of the site, the proposals are unlikely to result in adverse effects that would be of significance to the planning decision making process. In ecological terms, the proposals seek to minimise impacts on and provide net gains for biodiversity (in the form of new planting and habitat creation) in accordance with NPPF paragraph 174(d). Any ecological harm can be adequately mitigated, and in accordance with paragraph 180(a) should not be refused in ecological terms. Below, this Statement demonstrates that the impacts in terms of highways, flood risk, archaeology, noise, air quality can also be mitigated effectively.

- 6.36 Reference to matters of density are addressed under **Policy HG3**. Whilst the Council has stated that the density of the development is considered to be too high and out of keeping with the surrounding area, this concern is cited in reason for refusal itself.
- 6.37 The appeal site is greenfield and measures approximately 10.31ha. The submitted Masterplan sets out indicative development parcels of circa 8.49 ha, resulting in a density of 34 dwellings per hectare. This includes access roads within the site, private gardens, car parking areas, and areas of incidental space. The proposed densities are anticipated to vary across the site within the context of the relevant developable areas, with a higher density towards the existing urban areas and a lower density near Brierley Forest Park.
- 6.38 The density of the surrounding established residential area ranges from 20 – 37 dwellings per hectare.
- 6.39 The proposed net density of 34 dwellings per hectare therefore directly accords with the minimum net density requirement of 30 dwellings per hectare set out in Saved Local Plan Policy HG3, and also accords with the varying densities of the surrounding established residential area. Crucially, the Committee Report notes that the proposed overall density of 34 dwellings per hectare is acceptable in the context of Saved Local Plan Policy HG3 as the starting point should be 30 dwellings per hectare, stating (at Section 5, Page 35) that:
- “The density of the proposed development accords with the minimum net density requirements of 30 dwellings per hectare set out in the ALPR. It also falls within the recommended 30 – 50 dwellings per hectare, for a suburban location, in the draft National Model Design Guide.”*
- 6.40 Within the context of national planning policy (discussed in further detail below), the scope to make efficient use of land within urban areas to deliver more new homes should be actively considered. Failure to do so would be inconsistent with national policy, particularly being minded of the national housing crisis context and the Council’s position that it cannot demonstrate a five year housing land supply, with just a 2.21 year supply. In this respect, the site is located within a very sustainable urban fringe location, with existing established residential development to three sides, where, in line with the NPPF, development should be optimised.

6.41 To confirm, in order to determine the optimum development potential for the site, as part of the planning application submission, the appellant undertook detailed technical assessments and design work to determine that the site could satisfactorily accommodate the number of dwellings proposed. As this appeal is in outline, matters of layout, appearance, scale and landscaping are reserved for later approval. Notwithstanding this, as part of the appeal submission, a broad layout is included to demonstrate that the site can developed for up to 300 dwellings, whilst achieving:

- a suitable and safe access for both vehicles and pedestrians;
- a permeable and legible layout;
- a layout which responds well to the existing site levels;
- the retention of natural landscape features;
- the provision of links to the Forest Park;
- natural surveillance (via the inclusion of perimeter blocks and active frontages);
- positive assimilation with the existing surrounding built form;
- a road layout which is informed by the local highways authority's requirements; and
- appropriate levels of residential amenity (i.e. in the form of separation distances/garden sizes).

6.42 Overall, the appellant is able to offer an overall quantum of up to 300 dwellings by means of an efficient site layout, taking into account relevant technical considerations. The quantum of housing proposed on the site is therefore considered entirely appropriate in accordance with Saved Local Plan Policy HG3. The development on the land is also optimised in line with national planning policy, which is particularly important given the national housing crisis and the District's inability to demonstrate a five year housing land supply.

6.43 Further, it is also worth noting that this is an outline appeal for up to 300 dwellings and so the Council will have a further opportunity to determine the appropriateness of the density put forward at the reserved matters stage, once the detailed scheme design is presented.

- 6.44 **Policy HG4 requires the provision of affordable housing on larger residential proposals.** In the case of the appeal; scheme the Council has sought a 10% provision of affordable housing in this instance based on Paragraph 65 of the NPPF, albeit the Development Plan Policy does not require such level of provision. Notwithstanding this, the proposed development will provide 10% provision of affordable housing, in line with the NPPF. This policy is satisfied, and significant weight should be afforded to this matter.
- 6.45 **Policy HG5 refers to new residential developments.** In this case of the appeal scheme is submitted in outline form, with all matters reserved, except access. Details of layout, scale, appearance and landscaping are therefore reserved for future consideration as part of any reserved matters application. The access points to the adopted highway are to be determined at the appeal. The internal access roads shown on the illustrative layout are not for consideration and are matters to be assessed at the Reserve Matters stage of the process should the appeal be allowed.
- 6.46 Access to Ashland Road West is proposed via two new T-junctions located along the southern boundary of the site. The primary route to the west will be 7.3m wide with 3m footpaths either side, being over engineered at the Highway Authority's request due to the number of plots being served from that spur of the development. The access to the east is proposed via a standard 5.5m wide junction arrangement, with 2m footpaths either side. As noted in Section 7, Page 37 of the Committee Report, the Highway Authority has confirmed that the proposed access junction layout (drawing number ADC1032-DR-001 Rev P10) is acceptable.
- 6.47 Further, as noted in Section 7, Page 37 of the Committee Report, the Highway Authority agrees that the proposed pedestrian improvements (shown on drawing number ADC1032-DR-002 Rev P1) support sustainability of the site by providing safe access to and from the westbound bus stop on Huthwaite Road, providing wider community benefits. A condition is requested in order to secure the detailed design.
- 6.48 As noted above, access is being considered as part of this outline appeal, and in accordance with part e) of this policy, will provide a safe and convenient access for vehicles, pedestrians and cyclists which is integrated with existing provision.
- 6.49 There are no Highway reasons for refusal associated with this appeal

- 6.50 **Policy HG6 relates to open space is housing developments.** In this appeal case, a financial contribution of £600,000 towards off-site open space is to be provided by the appellant in accordance with the consultation response received from the Council's Places and Localities Team. This is to include maintenance payment of 2.5% of £600,000 = £15,000 per year, at a total £225,000 over 15 years. In addition, a built sports facility financial contribution of £258,000 is to be provided by the appellant in accordance with the consultation response received from the Council's Places and Localities Team. This will fund improvements to the existing leisure facilities at the Lammas Leisure Centre. This approach is confirmed at Section 7, Pages 38/39 of the Planning Committee Report associated with the appeal scheme.
- 6.51 **Policy EN4 relates to Mature Landscape Areas** - The closest MLA to the appeal site is Huthwaite/Spring Wood (Local Plan reference EV4Rm), approximately 1km to the north of the site. The proposed development will not adversely affect the character and quality of this MLA due to the distance between this and the appeal site, and intervening vegetation/built form.
- 6.52 **Policy ENV5 refers to Sites of Special Scientific Interest** - The Teversal Pastures SSSI is approximately 2km from the boundary of the site. Given the distance of this designated site from the appeal site and the intervening habitats and resource, increased recreational pressure will not affect the conservation value of the designated site. This matter is confirmed between all parties
- 6.53 **Policy ENV6 refers to Local Nature Reserves** - Adjacent to the northern boundary of the site is Brierley Forest Park, which is a Local Nature Reserve / Local Wildlife Site and a statutory site of local importance. This nature reserve provides a range of recreational facilities including visitor centre, walks and mountain bike trails. Consequently, the adjacent Local Nature Reserve has recreational facilities which provide for informal / formal recreation which have been designed and are managed to minimise potential effects to nature conservation. The Ecological Assessment identifies that an increase in formal visitor pressure is expected to result in a localised minor impact on the woodland.
- 6.54 The independent ecologist however noted that such disturbances would have an impact and thus recommended that the number of accesses to the Local Nature Reserve is reduced to

two points. It is also recommended that a buffer area consisting of densely packed native species scrub such as blackthorn is planted, along with signage and bins. As this appeal seeks outline planning permission (with all matters reserved except access), such measures could be agreed through a Reserved Matters application, albeit notably the Masterplan was amended through the decision period, with the number of accesses to Brierley Forest park limited to two, as recommended.

- 6.55 **Policy ENV8 refers to Trees and Woodlands** - The main landscape features of the site beyond its existing land use are its boundary hedgerows and tree cover all of which are both common and widespread in the locality and should therefore not represent a significant constraint to development. However, the Illustrative Masterplan seeks to substantially retain these features and reinforce them with new planting measures that over time will secure an attractive landscape setting and soften the appearance of the development.
- 6.56 **TR2 refers to Cycling provision** - The appeal proposed development is submitted in outline form, with all matters reserved except access. In terms of part (a) of the policy, which relates to access, as noted above, the Highway Authority has confirmed the proposed access arrangements are acceptable. In terms of part (b), a financial contribution of £130,000 towards cycling measures to support sustainable transport and reduce the impact of motorised vehicles on the highway is to be provided by the appellant. Nottinghamshire County Council has identified a Strategic Cycle Network extending west of Sutton Town Centre along Huthwaite Road for the proposed contribution. The route will actively encourage cycling as a sustainable alternative to the car from this development. The contribution of £130,000 is equal to the cost of the junction upgrade. In terms of part (c), details of cycle parking will be provided as part of any reserved matters application(s).
- 6.57 **Policy TR8 refers to developer contributions to fund highway improvements.** In accordance with the Highway Authority's advice, the following financial contributions will be provided by the appellant in order to fund improvements to transport (which is in addition to the £130,000 cycling measures contribution outlined above):
- £90,000 for a bus service contribution - to provide improvements to the local bus services to serve the site;
 - £28,000 for bus stop infrastructure at stops on Rooley Avenue, Norwood Close,

George Street and Siddalls Drive; and

- £20,000 sustainable transport contribution.

6.58 These contributions are deemed appropriate to the Council and the County Highways authority and included with the supporting Section 106 obligations.

6.59 In summary, in applying the *tilted balance*, detailed evidence has been provided in support of the appeal, demonstrating that there are no adverse impacts that would significantly and demonstrably outweigh the dated development plans allocation. It is evident that the Development Plan Policies as reported in the reason for retail have previously been considered out of date. It is also clear that the appeal proposal complies with a range of applicable policy guidance as applied by the Council and as such, it is considered that there is no conflict with the basket of Development plan policies taken as a whole.

7.0 OTHER MATERIAL CONSIDERATIONS

National Planning Policy Framework (NPPF)

7.1 The NPPF (and its associated guidance), is a significant material planning consideration and itself recognises the primacy of the Development Plan for decision making (notably paragraphs 2, 12 and 47). The first revision of the NPPF was published in March 2012 with a revised version published in July 2018 and then February 2019. A further revised version was subsequently published in July 2021.

Achieving Sustainable Development

7.2 Paragraph 7 describes that the purpose of planning is to contribute to the achievement of sustainable development. Paragraph 8 proceeds that the planning system, in the context of sustainable development, has 3 overarching interdependent objectives, namely economic, social and environmental.

7.3 **Comment:** The appeal proposal complies with each of these aspirations, and the economic, social and environmental benefits have been addressed in detail in Section 6 of my Proof.

The Presumption in Favour of Sustainable Development

7.4 Paragraph 11 requires plans and decision to apply the presumption in favour of sustainable development. For decision taking this means (c) approving development proposals that accord with an up-to-date development plan without delay or (d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless: (i) the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or (ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

7.5 Footnote 7 confirms that policies in the Framework that protect areas or assets of particular importance are those “relating to: *habitats sites (and those sites listed in paragraph 180) and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, an Area of Outstanding Natural Beauty, a National Park (or within the Broads*

Authority) or defined as Heritage Coast; irreplaceable habitats; designated heritage assets (and other heritage assets of archaeological interest referred to in footnote 67); and areas at risk of flooding or coastal change.”

- 7.6 Footnote 8 of the NPPF makes clear that, for applications involving the provision of housing, policies will be regarded as out-of-date “*where the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer, as set out in [NPPF] paragraph 73); or where the Housing Delivery Test indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years.*”
- 7.7 **Comment:** As addressed in Section 6 of my Proof, in this case, the Development Plan consists of the Ashfield Local Plan Review, adopted in November 2002 and intended to guide development in the District up to 2011. The Local Plan is clearly out of date with regards to the matters of housing land supply because it is time expired and settlement boundaries were drawn to reflect a housing need for the period up to 2011. Policies ST2 – ST4 are restrictive of development outside the main urban areas and named settlements, lacking 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 by the NPPF. It is also clear, that these policies are not providing for sufficient housing for the District. The basket of policies for determining the appeal are therefore considered to be out of date.
- 7.8 Further, it is the Council’s position that it cannot demonstrate a five year housing land supply, as required by the NPPF. The Council’s Committee Report confirms that the District can demonstrate a housing land supply of 2.21 years, which is a significant undersupply of housing. The Housing Delivery Test (published August 2020) also indicates the delivery of housing in Ashfield is substantially below the housing requirements over the past three years. The Council’s 2019 Housing Land Monitoring Report stated a supply of 2.67 years (as 1 April 2019), and the previous year’s figure (as 1 April 2018) was 3.92 years. As such, in accordance with footnote 8 of the NPPF, it is clear that relevant Development Plan policies should be regarded as out of date.

7.9 In applying the *tilted balance*, detailed evidence has been provided in my Proof and also Mr Goodman's and Mr Holliday's Proofs in support of the appeal, demonstrating that there are no adverse impacts that would significantly and demonstrably outweigh the development's benefits.

Delivering a sufficient supply of homes

7.10 Paragraph 60 states that it is important a sufficient amount and variety of land can come forward where it is needed, that needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay to support the Government's objective of significantly boosting the supply of homes.

7.11 **Comment:** The Council's Committee Report and SoCG confirms that the District can demonstrate a housing land supply of only 2.21 years, which is a significant undersupply of housing. The appeal proposals would make an important contribution towards the District's housing land supply to meet an identified need. It would be the appellant's intention to prepare and submit a reserved matters application within approximately one month from receiving outline consent and to commence on site as soon as practically possible. This is a material consideration and as such, significant weight afforded to the matter.

7.12 Paragraph 65 states that where major development involving the provision of housing is proposed, planning policies and decisions should expect at least 10% of the total number homes to be available for affordable home ownership, unless this would exceed the level of affordable housing required in the area, or significantly prejudice the ability to meet the identified affordable housing needs of specific groups.

7.13 **Comment:** The appeal scheme includes a 10% provision of affordable housing and as previously mentioned, significant weight applied to this matter.

7.14 Paragraph 74 requires local planning authorities to identify a supply of specific deliverable sites to provide a minimum of 5 years' worth of housing. This should include a) a buffer of 5% to ensure choice and competition in the market for land, b) 10% where demonstrated through an annual position statement or recently adopted local plan to account for any fluctuations in the market during that year, or c) 20% where there has been significant under delivery of housing over the previous 3 years (measured against the Housing Delivery Test)

to improve the prospect of achieving the planned supply.

7.15 **Comment:** The Council’s Housing Delivery Test (published August 2020) indicates the delivery of housing in Ashfield is substantially below the housing requirements over the past three years. The Council’s 2019 Housing Land Monitoring Report stated a supply of 2.67 years (as 1 April 2019), and the previous year’s figure (as 1 April 2018) was 3.92 years. The Council’s Committee Report confirms a worsened position i.e. that the District can demonstrate a housing land supply of just 2.21 years.

7.16 In terms of the delivery record of the Council, the following data demonstrates the under delivery rate for the area:

	2017/18	2018/19	2019/20
Housing Requirements	471	502	435
Delivery Rate	401	344	174
Difference	-70	- 158	- 261

DCLG – Housing Delivery Test 2020

7.17 It is evident that the delivery rates represent a 65% achievement of the Government Targets, and hence the appeal proposal will go some considerable way to rebalancing the agreed targets, although the appeal itself will not make up the required figure alone

Promoting healthy communities

7.18 Paragraph 92 describes the importance of creating healthy, inclusive and safe places. Planning policies and decisions should therefore promote social interaction, safe and accessible environments which reduce the potential for crime and disorder (including fear of crime) and enable / support healthy lifestyles.

7.19 **Comment:** these matters will be agreed at the detailed design stage. Notwithstanding this, it is considered that the appeal scheme would offer a safe, accessible, inclusive development through careful and well thought out design, proximity of open space and perimeter

development creating secure living environments.

Open space and recreation

- 7.20 Paragraphs 98 to 100 set out that access to high quality open spaces and opportunities for sport and recreation can make an important contribution to the health and well-being of communities, and can deliver wider benefits for nature and support efforts to address climate change. Opportunities should be sought to provide better facilities for users by, for example, linking to existing rights of way networks including national trails.
- 7.21 **Comment:** The appeal proposals include the provision of green infrastructure, with green corridors which can be introduced from north to south through the site at two intervals, breaking up the built form and providing attractive recreational green routes through the site to Brierley Forest Park. In addition, financial contributions will be provided by the appellant in relation to the improvement of existing open space, as addressed previously as part of my Proof.

Promoting sustainable transport

- 7.22 Paragraphs 104 to 113 describe the promotion of sustainable transport, recognising that different policies and measures will be required in different communities and opportunities to maximise sustainable transport solutions will vary from urban to rural areas.
- 7.23 Paragraph 110 describes that decisions regarding development proposals should ensure that appropriate opportunities to promote sustainable transport modes can be or have been taken up being minded of development type and its location; safe and suitable access to the site can be achieved for all users; the design of streets, parking areas, other transport elements and the content of associated standards reflects current national guidance, including the National Design Guide and the National Model Design Code; and any significant impacts from the development on the transport network or highway safety can be cost effectively mitigated to an acceptable degree.
- 7.24 Paragraph 111 states that development should only be refused on highways grounds where there would be an unacceptable impact on highway safety or the residual cumulative impacts on the road network would be 'severe'.

- 7.25 Paragraph 112 sets out that applications for development will firstly give priority to pedestrian and cycle movements followed by high quality public transport; address the needs of people with disabilities and reduced mobility; create places that are attractive, safe and secure minimising conflicts between users and avoiding unnecessary street clutter, responding to local character and design criteria; allow for efficient delivery of goods and access by service / emergency vehicles; and are designed to enable charging of plug-in and other ultra-low emission vehicles.
- 7.26 **Comment:** The Highway Authority (HA) agreed that the study area has been adequately assessed and mitigation suggested at a number of junctions. There is no evidence of severe harm in highway terms at this appeal site. Equally, there are no Highway reasons for refusal imposed upon the formal decision (refusal) notice.

Making effective use of land

- 7.27 Paragraph 119 states planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions. Strategic policies should set out a clear strategy for accommodating objectively assessed needs, in a way that makes as much use as possible of previously-developed or 'brownfield' land.
- 7.28 Paragraphs 124 and 125 require policies and decisions to support development that makes efficient use of land, avoiding low densities in areas of existing or anticipated shortage of land. Area-based character assessments, design guides and codes and masterplans can be used to help ensure that land is used efficiently while also creating beautiful and sustainable places.
- 7.29 **Comment:** The site is a greenfield location and so it is considered of paramount importance that the most efficient use of such sites is made when undertaking housing development. The appeal scheme makes efficient use of land by developing a viable proposal and constructing to a policy density requirement. The proposed density at 34 units pdh will contribute to increased housing supply, efficiency utilising a greenfield site and therefore meeting needs within the District.

Achieving well-designed places

- 7.30 As is stated in Paragraph 126, the creation of high-quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. Further to this, the Paragraph considers that good design is a key aspect of sustainable development which creates better places in which to live and work and helps make development acceptable to communities.
- 7.31 Paragraph 128 confirms to provide maximum clarity about design expectations at an early stage, all local planning authorities should prepare design guides or codes consistent with the principles set out in the National Design Guide and National Model Design Code, and which reflect local character and design preferences. Design guides and codes provide a local framework for creating beautiful and distinctive places with a consistent and high quality standard of design. Their geographic coverage, level of detail and degree of prescription should be tailored to the circumstances and scale of change in each place, and should allow a suitable degree of variety.
- 7.32 Paragraph 129 confirms design guides and codes can be prepared at an area-wide, neighbourhood or site specific scale, and to carry weight in decision-making should be produced either as part of a plan or as supplementary planning documents.
- 7.33 Paragraph 130 considers that design quality should be considered throughout the evolution and assessment of individual proposals. Early discussion between applicants, the local planning authority and local community about the design and style of emerging schemes is important for clarifying expectations and reconciling local and commercial interests. Applicants should work closely with those affected by their proposals to evolve designs that take account of the views of the community. Applications that can demonstrate early, proactive and effective engagement with the community should be looked on more favourably than those that cannot.
- 7.34 Paragraph 131 sets out trees make an important contribution to the character and quality of urban environments and can also help mitigate and adapt to climate change. Planning policies and decisions should ensure that new streets are tree-lined, that opportunities are taken to incorporate trees elsewhere in developments (such as parks and community orchards), that appropriate measures are in place to secure the long-term maintenance of

newly-planted trees, and that existing trees are retained wherever possible.

- 7.35 Paragraph 134 states development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design, taking into account any local design guidance and supplementary planning documents such as design guides and codes.
- 7.36 **Comment:** The application is submitted in outline form, with all matters reserved except access. The final appearance, scale, layout and landscaping will be agreed at the detailed design stage. However, any proposed layout will consider all of the above matters and look to ensure the design criterion are complied with. The LPA will have the opportunity at Reserve Matters to assess and ensure compliance is achieved.

Meeting the challenge of climate change, flooding and coastal change

- 7.37 In determining planning applications, local planning authorities should expect new development to take account of landform, layout, building orientation, massing and landscaping to minimise energy consumption (paragraph 157b).
- 7.38 When determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere (paragraph 167). A Flood Risk Assessment is required for sites in Flood Zone 1 where they are 1 hectare or more (footnote 55). Major development should incorporate sustainable drainage systems unless there is clear evidence that this would be inappropriate (paragraph 169). Where appropriate, applications should be supported by a site-specific flood-risk assessment.
- 7.39 **Comment:** The site lies within Flood Zone 1 (Low Risk of Flooding, 1 in 1000 years). There is a local water course to the north of the site which is controlled by a culvert under a large soil heap which, if it became blocked could result in localised flooding to the north of the site, however, to mitigate against this, the submitted Flood Risk Assessment recommends certain minimum ground and internal floor levels. Section 4, Page 34 of the Committee Report confirms that no objections are raised from the Local Lead Flood Authority, Environment Agency, or the Council's Drainage Officer, subject to conditions in relation to the requirement of details for a surface water drainage scheme based on Sustainable Urban Drainage Principles, and for details of foul sewage to be agreed. From this regard, there is a culvert

running across the north east corner of the site, and the appellant has demonstrated legal rights to utilise this as their drainage outfall.

Conserving and enhancing the natural environment

- 7.40 Paragraph 174 seeks to contribute to and enhance the natural and local environment, for example by protecting and enhancing sites of biodiversity in a manner commensurate with their statutory status (part a), recognising the intrinsic character and beauty of the countryside (part b), minimising impacts on and providing net gains for biodiversity (part d), preventing new development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of pollution (part e) and remediating contaminated and unstable land (part f).
- 7.41 Paragraph 180 states that when determining planning applications, local planning authorities should apply a number of principles relating to biodiversity. This includes if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.
- 7.42 **Comment:** As demonstrated by Mr Goodman and Mr Holliday in their respective Proofs of Evidence, it is accepted that by changing the nature of the site from greenfield to residential, there will be some negative environmental impacts, relating to landscape and visual impact. However, the Landscape and Visual Assessment which accompanied the planning application, together with Mr. Holliday's evidence concludes that beyond the immediate boundaries of the site, the proposals are unlikely to result in adverse effects that would be of significance to the planning decision making process. In ecological terms, the proposals seek to minimise impacts on and provide net gains for biodiversity (in the form of new planting and habitat creation and financial contribution) in accordance with NPPF paragraph 174(d). Any ecological harm can be adequately mitigated, and in accordance with paragraph 180(a) should not be refused in ecological terms. This matter is confirmed in the evidence of Mr Goodman.
- 7.43 Detailed evidence has been provided in support of the appeal, demonstrating that there are no adverse impacts that would significantly and demonstrably outweigh the development's benefits.

Planning Practice Guidance

7.44 The Planning Practice Guidance (PPG) was launched by the Department for Communities and Local Government (DCLG) on 6 March 2014. It is an online resource that's brings together planning practice guidance for England.

Planning for higher densities

7.45 The PPG confirms that a range of considerations should be taken into account in establishing appropriate densities on a site or in a particular area. Tools that can assist with this include:

- a) *“accessibility measures such as distances and travel times to key facilities, including public transport stops or hubs (and taking into consideration service capacity and frequencies and destinations served).*
- b) *characterisation studies and design strategies, dealing with issues such as urban form, historic character, building typologies, prevailing sunlight and daylight levels, green infrastructure and amenity space*
- c) *environmental and infrastructure assessments, such as the capacity of services and presence of environmental risks*
- d) *assessments of market or site viability”*

(Paragraph: 004 Reference ID: 66-004-20190722. Revision date: 22 07 2019)

7.46 **Comment:** The matter of density has been addressed within this Proof. The proposed net density of 34 dwellings per hectare directly accords with the minimum net density requirement of 30 dwellings per hectare set out in Saved Local Plan Policy HG3, and also accords with the varying densities of the surrounding established residential area.

7.47 The scope to make efficient use of land within urban areas to deliver more new homes should be actively considered, particularly where it complies with the immediate character and involves the use of greenfield sites. Failure to do so would be inconsistent with national policy, particularly being minded of the national housing crisis context and the Council's position that it cannot demonstrate a five year housing land supply, with just a 2.21 year supply of housing. In this respect, the appeal site is located within a very sustainable urban fringe location, with existing established residential development to three sides.

Ashfield Residential Design Guide SPD (November 2004)

- 7.48 This SPD sets out how Ashfield District Council expects the location, form and type of residential development will be considered through the design process.
- 7.49 **Comment:** This SPD is more material to detailed planning applications seeking the approval of layout, appearance, scale and landscaping. This SPD is therefore not assessed any further.

Residential Car Parking Standards (2014)

- 7.50 This SPD sets out the Council's minimum requirements for parking provision to serve new residential developments within Ashfield District. One bedroom dwellings should provide a minimum of one space per dwelling plus one visitor space per two dwellings (off-plot); two/three bedroom dwellings should provide two spaces per dwelling and four+ bedroom dwellings should provide three spaces per dwelling.
- 7.51 **Comment:** As with the Residential Design Guide SPD, this is a consideration for full or reserved matters applications. This SPD is therefore not assessed any further.

8.0 OTHER TECHNICAL ISSUES

8.1 The Council's Committee Report confirms that there are no insurmountable technical issues or material considerations that should prevent permission being granted. In summary, these are as follows:

- **Flood Risk/Drainage:** The site lies within Flood Zone 1 (Low Risk of Flooding, 1 in 1000 years). There is a local water course to the north of the site which is controlled by a culvert under a large soil heap which, if it became blocked could result in localised flooding to the north of the site, however, to mitigate against this, the submitted Flood Risk Assessment recommends certain minimum ground and internal floor levels. Section 4, Page 34 of the Committee Report confirms that no objections are raised from the Local Lead Flood Authority, Environment Agency, or the Council's Drainage Officer, subject to conditions in relation to the requirement of details for a surface water drainage scheme based on Sustainable Urban Drainage Principles, and for details of foul sewage to be agreed. From this regard, there is a culvert running across the north east corner of the site, and the appellant has demonstrated legal rights to utilise this as their drainage outfall.
- **Residential Amenity:** Section 6, Page 35 of the Committee Report confirms that the indicative masterplan shows that sufficient separation distances could be achieved, so that the development would not adversely impact upon existing residential dwellings privacy and light. Details of the scale, layout and appearance will form part of a future reserved matters application.
- **Construction Phase:** Some local residents raised concern surrounding disruption during the construction phase of the development. Section 6, Page 35 of the Committee Report that a Construction Management Plan condition is appropriate to govern such matters, such as working hours, vehicle parking, wheel washing, emission of noise/dust/dirt etc.
- **Highway Impact:** Section 7, Page 36 of the Committee Report confirms that the Highway Authority (HA) agreed study area has been adequately assessed and mitigation suggested at a number of junctions. Due to the issues surrounding Covid-19 and obtaining accurate traffic count data, the HA has accepted the assessments

based on the data provided as the best available at the time.

A number of junctions were assessed as part the Transport Assessment work. Many of these were demonstrated to operate within capacity and therefore no mitigation is required - this includes the junction of Huthwaite Road and Ashland Road West. The following junctions require improvement, and the HA has agreed that the proposed mitigation is acceptable:

Blackwell Road / Common Road (Junction 2) – the development is forecast to significantly reduce capacity at this junction. However, the installation of on-crossing and kerbside detection, which generally allows more green time to vehicles, is considered to be an acceptable mitigation proportionate to the development.

Lammas Road / Hack Lane (Junction 6) - The junction is due to be refurbished out of the Local Transport Plan budget, however the development is demonstrated to have a significant impact. Accordingly, to make the development acceptable, the HA requires a contribution to sustainable transport measures with the aim of reducing the number of vehicles utilising the junction.

Nottinghamshire County Council has identified a Strategic Cycle Network extending west of Sutton Town Centre along Huthwaite Road for the proposed contribution. The route will actively encourage cycling as a sustainable alternative to the car from this development. The development will provide a contribution of £120,000 which is equal to the cost of the junction upgrade.

A38 Kings Mill Road / Station Road (Junction 9) - The HA agrees that there is no mitigation available proportionate to the development; however, as the development does have a notable impact, a Section 106 contribution is required to support the sustainable transport measures. A contribution of £10,000 is considered to be reasonable.

Mansfield Road/Stoneyford Road & Mansfield Road/Dalestorth Street (Junctions 10 & 11) - The HA disagrees with conclusions drawn from the modelling that the development only has a small impact. However, MOVA signal upgrades and CCTV are considered as proportionate and reasonable mitigation at both junctions.

Overall, the Committee Report at Section 7, Page 37 confirms that a robust scheme of mitigation is proposed, along with Section 106 contributions to improve sustainable transport measures and as such the proposed development is acceptable in highway safety terms.

- **Points of Access:** Two points of vehicular access are proposed off Ashland Road West to serve the development. As noted in Section 7, Page 37 of the Committee Report, the HA has confirmed that the proposed access junction layout (drawing number ADC1032-DR-001 Rev P10) is acceptable.
- **Pedestrian Crossing Point:** As noted in Section 7, Page 37 of the Committee Report, the HA agrees that the proposed pedestrian improvements (shown on drawing number ADC1032-DR-002 Rev P1) support sustainability of the site by providing safe access to and from the westbound bus stop on Huthwaite Road, providing wider community benefits. A condition is requested in order to secure the detailed design.
- **Developer Contributions:** Section 8, Pages 37-41 of the Committee Report set out the developer contributions required to make the development acceptable in planning terms. A draft S106 Agreement is being prepared on the basis of the requested contributions.
- **Above Ground Heritage:** Section 9, Pages 41/42 of the Committee Report confirms that there are no designated or non-designated heritage assets on or adjacent to the site. The site falls within Area G – Meden Valley of the Hardwick Hall Setting Study. However, given the location of the site and the topography of the land, the application proposals would not have an impact on the setting of Hardwick Hall.
- **Archaeology:** Section 9, Page 41 of the Committee Report confirms that a pre-commencement condition is required for the submission of a written scheme of investigation prior to commencement of works to ascertain if any mitigation is required.
- **Air Quality:** Section 9, Page 42 of the Committee Report confirms that there are no issues surrounding air quality and the Council's Environmental Health Officer has

reviewed the submitted Air Quality Assessment, confirming the findings are acceptable i.e. the impact of the development upon local air quality will be negligible and that the site itself is acceptable for residential development.

- **Noise:** Section 9, Page 42 of the Committee Report confirms that the proposed mitigation recommended by the Noise Impact Assessment (i.e. including selection of glazing, ventilation, building fabric with a sufficient sound reduction index; and 1.8m high acoustically sound fencing at garden boundaries adjacent to Ashland Road West) is acceptable and there are therefore no concerns regarding noise impact for future residents.
- **Loss of Open Space:** Section 9, Page 42 of the Committee Report confirms that the application site is in private ownership, with no existing right of public access and the site does not form part of Brierley Forest Park. A footpath (47) runs adjacent to the site, along the northern boundary, but will be unaffected by the development.

9.0 INTERESTED PARTY COMMENTS

9.1 A number of comments have been received from interested parties. The comments are summarised and addressed in detail below (to note, the matters raised which formed part of the reason for refusal are fully addressed earlier in this Proof. Matters which did not form part of the reason for refusal are therefore addressed below.

Adverse impact on ecology:

9.2 As set out in Mr Goodman's Proof of Evidence, the proposals seek to minimise impacts on and provide net gains for biodiversity. The ecological work undertaken by the appellant in relation to the application was assessed by an independent ecological consultant commissioned by the Council, and ultimately confirmed acceptable. Any ecological harm can be adequately mitigated.

Adverse impact on the character and appearance of the area:

9.3 As set out in Mr Holliday's Proof of Evidence, while it is accepted that the proposed development is likely to materially alter the setting of views and thus the character and appearance of the area through the loss of greenfield and addition of built form, this is a level of effect that is not uncommon or unexpected for this type of development.

9.4 In response to this, the housing layout will be designed in accordance with recognised amenity standards and include new landscape measures to secure an appropriate and attractive transition with the existing residential areas, as well as Brierley Forest Park to the north. Therefore, it is clear that the impact on the character and appearance of the area and surrounding landscape, particularly Brierley Forest Park, can be adequately mitigated against through appropriate landscaping and design. As this scheme is submitted in outline (with all matters reserved except access), the precise details of landscaping, design/appearance can be agreed at the Reserved Matters stage. As such there are no adverse landscape impacts that would significantly and demonstrably outweigh the benefits of the proposed development.

Surrounding area is mainly bungalows so would be out of keeping:

9.5 The application is submitted in outline form, with all matters reserved except access. The

final mix and provision of dwelling types will be determined at the detailed design stage i.e. as part of any reserved matters application. Notwithstanding this, regard is had to the existing residential development where it adjoins the site and suitable separation distances are incorporated into the illustrative masterplan scheme. There is no policy requirement specifying that bungalows should be provided.

Density of development too high:

- 9.6 The proposed density of the development is addressed fully above as part of my Proof of Evidence, and thus is not repeated here.

Site is located within the countryside, so conflicts with the Development Plan (Policy EV2):

- 9.7 The compliance of the proposal with the Development Plan is addressed fully above as part of my Proof of Evidence, and thus is not repeated here.

Increase flooding, cause drainage issues, sewer capacity cannot cope:

- 9.8 As noted previously, the site lies within Flood Zone 1 (Low Risk of Flooding, 1 in 1000 years). There is a local water course to the north of the site which is controlled by a culvert under a large soil heap which, if it became blocked could result in localised flooding to the north of the site, however, to mitigate against this, the submitted Flood Risk Assessment recommends certain minimum ground and internal floor levels.
- 9.9 Section 4, Page 34 of the Committee Report confirms that no objections are raised from the Local Lead Flood Authority, Environment Agency, or the Council's Drainage Officer, subject to conditions in relation to the requirement of details for a surface water drainage scheme based on Sustainable Urban Drainage Principles, and for details of foul sewage to be agreed. From this regard, there is a culvert running across the north east corner of the site, and the appellant has demonstrated legal rights to utilise this as their drainage outfall.

Will cause highway safety issues, access arrangements are not suitable, impact of the development on traffic and road infrastructure not properly considered, cars will have to park on the road:

- 9.10 As noted previously, Section 7, Page 36 of the Committee Report confirms that the Highways Authority (HA) agreed study area has been adequately assessed and mitigation suggested at a number of junctions. Due to the issues surrounding Covid-19 and obtaining accurate traffic count data, the HA has accepted the assessments based on the data provided as the best available at the time.
- 9.11 Overall, the Committee Report at Section 7, Page 37 confirms that a robust scheme of mitigation is proposed, along with Section 106 contributions to improve sustainable transport measures and as such the proposed development is acceptable in highway safety terms.
- 9.12 In terms of access, two points of vehicular access are proposed off Ashland Road West to serve the development. As noted in Section 7, Page 37 of the Committee Report, the HA has confirmed that the proposed access junction layout (drawing number ADC1032-DR-001 Rev P10) is acceptable.
- 9.13 In terms of parking, the application is submitted in outline form, with all matters reserved except access. The final provision of car parking will be agreed at the detailed design stage at which point the HA will have the opportunity to provide comments on the acceptability of the proposed parking arrangements.

Adverse impact from construction traffic:

- 9.14 As noted previously, Section 6, Page 35 of the Committee Report confirms that a Construction Management Plan condition is appropriate to govern such matters, such as working hours, vehicle parking, wheel washing, emission of noise/dust/dirt etc.

Adverse impact on pollution/air quality:

- 9.15 As noted previously, Section 9, Page 42 of the Committee Report confirms that there are no issues surrounding air quality and the Council's Environmental Health Officer has reviewed the submitted Air Quality Assessment, confirming the findings are acceptable i.e. the impact of the development upon local air quality will be negligible and that the site itself is acceptable for residential development.

Adverse impact in relation to noise:

- 9.16 As noted previously, Section 9, Page 42 of the Committee Report confirms that the proposed mitigation recommended by the Noise Impact Assessment (i.e. including selection of glazing, ventilation, building fabric with a sufficient sound reduction index; and 1.8m high acoustically sound fencing at garden boundaries adjacent to Ashland Road West) is acceptable and there are therefore no concerns regarding noise impact for future residents.

Loss of green space/open space/woodland/agricultural land:

- 9.17 As noted previously, Section 9, Page 42 of the Committee Report confirms that the application site is in private ownership, with no existing right of public access and the site does not form part of Brierley Forest Park. A footpath (47) runs adjacent to the site, along the northern boundary, but will be unaffected by the development.
- 9.18 While there would be the loss of open agricultural land and the urbanisation of the existing fields, the site is heavily influenced by the urban fringe and surrounded by compatible residential development on three sides.
- 9.19 Boundary trees and hedgerows will largely be retained where possible. The central hedgerow will need to be removed to facilitate the engineering of the site, albeit a replacement hedgerow will be provided within the same central location of the existing hedgerow as part of the proposed development. In addition, new native hedgerow planting and tree cover will be provided throughout the site.

Impact of the development on infrastructure and services:

- 9.20 The appellant will enter into a Section 106 securing contributions towards infrastructure improvements, including education, health care, public open space, sports facilities, bus services and bus stops, sustainable transport, libraries, biodiversity and affordable housing. The contributions/obligations proposed form an agreed matter with the Council, as set out in the SoCG.

There is no need for the development/further houses:

- 9.21 The Ashfield District Council Housing Land Monitoring Report (August 2020) is a material

consideration. Paragraph 74 of the NPPF requires local planning authorities to demonstrate a five year housing land supply of deliverable sites. This document sets out the Council's current housing land supply position as of 1 April 2020, concluding that the Council has a supply equivalent to just 2.53 years. The Council's Committee Report in respect of this scheme however confirms a worsened position, confirming the District has just a 2.21 year housing land supply, taking into account a 20% buffer. This fact is agreed in the SoCG. The Council cannot therefore demonstrate a five year housing land supply of deliverable sites. Further, the Housing Delivery Test (published August 2020) also indicates the delivery of housing in Ashfield is substantially below the housing requirements over the past three years (see Paragraph 7.16 of this Proof).

- 9.22 The application scheme would make a significant contribution towards the Council's chronic housing land supply, including affordable housing and aid delivery (as stated given the appellants' commitment to the submission of a reserve matters application) at this sustainable location.

There are brownfield sites available which would be more suitable:

- 9.23 The site is a logical extension to the town and is well contained on three sides by the existing residential urban forms and the Brierley Forest Park on its northern side. The Council's own evidence also concludes that the site is suitable for residential development. The SHLAA for Sutton-in-Ashfield was published in November 2016 and included a desktop appraisal for all sites submitted to the Council. The appraisal of each site included an analysis of the potential capacity for residential development and deliverability over a 15- year period. The appeal site was assessed as part of this appraisal. The SHLAA assessment concluded that the site could be considered:

- **Suitable:** in terms of character, land use and location; access to services being within 10 minutes walking distance to a range of basic services, within 30 minutes travel by public transport to a greater range of everyday facilities, and with immediate access to natural and public open space; in terms of physical constraints subject to a further flood risk assessment albeit the site lies within flood zone 1 being at low risk of flooding; and in terms of its impact on landscape and bio-diversity.
- **Available:** with no ownership constraints, confirmed as available by the landowner

within 5 years.

- **Achievable:** the site is considered to be viable through the Nationwide CIL Services Viability Assessment, December 2013.

9.24 The Council's evidence base on the suitability of sites for housing underpinned the withdrawn Ashfield Local Plan (Publication Version, September 2016). Whilst the withdrawn plan holds no weight in the determination of the appeal, it is material to note that the appeal site was considered by the Council to represent a sustainable option for housing development and was a proposed housing allocation for approximately 235 dwellings (site ref. SKA3c).

The development would be visually unattractive:

9.25 The application is submitted in outline form, with all matters reserved except access. The final appearance, scale, layout and landscaping will be agreed at the detailed design stage. Any development will need to accord to detailed design policies and guidance to ensure high quality residential scheme is delivered. These matters are not before this appeal at this point in time.

This development would set a precedent for further development in the area:

9.26 Every application is considered on its individual merits and against the plethora of policy guidance and material consideration applicable at the time.

There is Japanese Knotweed on the site:

9.27 There is evidence of some Japanese Knotweed on the site. This is recognised contaminant and the appeal proposal will offer the opportunity to ensure appropriate and safe removal of this invasive species. The removal of the specie is a moderate benefit associated with the scheme

Risk of crime would increase:

9.28 The application is submitted in outline form, with all matters reserved except access. Notwithstanding this, a number of measures will be incorporated into the detailed design of the scheme to ensure a safe, secure and pleasant environment, including well defined routes for cars and pedestrians which are well overlooked, well defined defensible spaces and the

use of suitable planting; layout designed to minimise vulnerable rear and side boundaries; and robust enclosures provided to rear gardens.

There is a risk of fire from the neighbouring park:

- 9.29 This is not a planning related matter. Notwithstanding this, the internal road layout will allow suitable access for emergency vehicles.

10.0 THE PLANNING BALANCE AND CONCLUSIONS

10.1 Section 38 (6) of the Planning and Compulsory Purchase Act 2004, requires all planning decisions to be made in accordance with the Development Plan unless material considerations indicate otherwise. Policies ST1 (a, b and e) (Development), ST2 (Main Urban Areas), ST3 (Named Settlements), ST4 (The Remainder of the District) and EV2 (The Countryside) are the only Development Plan policies cited in the reason for refusal. The reason for refusal can be split out into a number of distinct considerations, as follows:

- Impact on character and appearance;
- Impact on biodiversity; and density.
- Density of development is too high and out of keeping with the locality

10.2 Policy ST1 states that development will be permitted where it does not conflict with other policies in the Local Plan (part a) and would not adversely affect the environment in which it is located (part b). Further to this, the policy seeks to prevent development which would conflict with an adjoining or nearby land use (part e). Policy ST2 states that development will be concentrated within the main urban areas of Hucknall, Kirkby in Ashfield and Sutton in Ashfield. Policy ST3 allows for limited development within named settlements. Policy ST4 sets out that development outside main urban areas will be on allocated sites. Policy EV2 states that in the countryside, permission will only be given for appropriate development. A definition of what comprises appropriate development is listed at parts a) to h) of the policy. Major housing development does not fall within the Council's definition of appropriate development in the countryside.

10.3 Whilst it is accepted that the site is currently defined as countryside in the Ashfield Local Plan and is therefore contrary to Saved Policies ST2-ST4 and EV2, it is clear that the Local Plan is out of date, by virtue of being time-expired and because the Council cannot demonstrate a five year housing land supply. Indeed, the Council's Committee Report confirms that the District can demonstrate a housing land supply of just 2.21 years, which is a significant undersupply of housing. The Housing Delivery Test (published August 2020) also indicates the delivery of housing in Ashfield is substantially below the housing requirements over the past three years.

10.4 For applications involving the provision of housing and where local planning authorities cannot demonstrate a five year supply of deliverable housing sites, footnote 8 to the NPPF is clear that relevant Development Plan policies should be regarded as out of date. The application should therefore be determined in accordance with paragraph 11(d) of the NPPF and permission should be granted, unless:

- iii. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
- iv. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

10.5 Limb i) of paragraph 11(d) is not satisfied and may not be relied upon to dismiss this appeal as there are no areas or assets of particular importance in close proximity to the appeal site. The decision maker should therefore apply limb ii) (referred to as “the tilted balance”) in the determination of this appeal and consider whether any adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits of the proposals, when assessed against the policies in the Framework taken as a whole.

10.6 As demonstrated by Mr Goodman and Mr Holliday in their respective Proofs of Evidence, it is accepted that by changing the nature of the site from greenfield to residential, there will be some negative environmental impacts, relating to landscape and visual impact. However, the Landscape and Visual Assessment which accompanied the planning application concludes that beyond the immediate boundaries of the site, the proposals are unlikely to result in adverse effects that would be of significance to the planning decision making process. In ecological terms, the proposals seek to minimise impacts on and provide net gains for biodiversity (in the form of new planting and habitat creation and financial contribution) in accordance with NPPF paragraph 174(d). Any ecological harm can be adequately mitigated, and in accordance with paragraph 180(a) should not be refused in ecological terms.

10.7 As a sustainable development, the appeal scheme proposes a range of economic, social and environmental benefits. In summary:

Economic

- Significant and positive contributions to building a strong, responsive and competitive

economy through the creation of temporary construction employment and expenditure. This economic benefit carries moderate weight.

- Ongoing contribution and additional expenditure to the local economy both in terms of employment, spending and service usage from the creation of 300 additional households, boosting vitality and viability. This economic benefit carries significant weight.
- Council Tax and New Homes Bonus money for the Local Authority which can potentially be reinvested into the local economy (to note, whilst this is not a material consideration, it is a benefit of the scheme).

Social

- Boosting significantly housing supply including affordable provision to meet needs both locally and contributing to wider District requirements. The social benefits through the creation of new housing carries significant weight.
- The site is accessible to a range of services, facilities and public transport opportunities. The highly sustainable nature of this site carries significant weight.
- Financial contributions towards the provision and enhancement of local social infrastructure. This carries natural weight.
- Creating a high-quality environment that would represent a land use which would complement and be compatible with neighbouring residential development. The social benefits through the creation of a high-quality environment carries significant weight.

Environmental

- The appeal site is well placed to encourage more sustainable patterns of travel and reduced reliance on the private car, consistent with the sustainable principles set out in the NPPF. The highly sustainable nature of this site carries significant weight.

- No insurmountable technical issues have been identified in respect of flooding, drainage, transport, noise, air quality, archaeological or heritage impacts. This carries significant weight.
- 10% biodiversity net gain via a combination of onsite mitigation methods and a financial contribution.

10.8 It should also be noted that the SHLAA for Sutton-in-Ashfield was published in November 2016 and included a desktop appraisal for all sites submitted to the Council through the SHLAA process. The appraisal of each site included an analysis of the potential capacity for residential development and deliverability over a 15- year period. The appeal site was assessed as part of this appraisal. The SHLAA assessment concluded that the site could be considered suitable, available and achievable for residential development.

10.9 The Council's own evidence base on the suitability of sites for housing underpinned the withdrawn Ashfield Local Plan (Publication Version, September 2016). Whilst the withdrawn plan holds no weight in the determination of the appeal, it is material to note that the appeal site was considered by the Council to represent a sustainable option for housing development and was a proposed housing allocation for approximately 235 dwellings (site ref. SKA3c).

10.10 Overall, in applying the tilted balance as per paragraph 11 d) ii) of the NPPF, detailed evidence has been provided in support of the appeal, demonstrating that there are no adverse impacts that would significantly and demonstrably outweigh the development's primarily social and economic benefits, including the provision up to 300 dwellings, with a policy compliant provision of affordable housing. Consequently, the appeal proposal is fully supported by the titled balance and all other material considerations as referenced in my proof.

10.11 The Council's concern associated with the overall density being out of character and hence harmful is without foundation. It is clear that the housing density as proposed was supported by the Head of Planning, are commensurate with the overall character of the area and lead to efficient use of a greenfield parcel of land in confirmation with local and national planning policy. Indeed, the policy HG3 of the adopted Local plan, actually specified that minimum densities of 30 units pdh should be achieved. The Local Plan policy relating to density is not

specified in the reason for refusal and hence has been complied with.

- 10.12 It is evident that there are no technical reasons why the development should not proceed (highways/noise/air quality/drainage).
- 10.13 On this basis, being minded of the Development Plan position and relevant material considerations, it is respectfully requested that the appeal is allowed, and planning permission granted accordingly.

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