

For and on behalf of
Bellway Homes Ltd


Town and Country Planning Act 1990 (Section 78)

Final Comments on Third Party Representations

**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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August 2021

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1.0 INTERESTED PARTY COMMENTS

- 1.1 A substantial number of comments have been received from interested parties. These have been supplied to the Inspectorate and will be considered as part of the Inspector's assessment of the appeal proposal.
- 1.2 Third party representations are capable of being material considerations and as such, it is appropriate to respond the issues raised.
- 1.3 These additional statements build off my Proof of Evidence and will respond to further points raised.
- 1.4 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 in my Proof and do not need to be repeated). Matters which did not form part of the reason for refusal are therefore addressed below.
- 1.5 It must be noted that whilst a substantial number of written submissions have been supplied, the vast majority are standard objection letters and repeat the same areas of concern.

Adverse impact on ecology:

- 1.6 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:

- 1.7 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.
- 1.8 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:

- 1.9 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:

- 1.10 The proposed density of the development is addressed fully 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):

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

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

- 1.12 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.

- 1.13 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:

- 1.14 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.
- 1.15 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.
- 1.16 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.
- 1.17 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:

- 1.18 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:

- 1.19 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:

- 1.20 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:

- 1.21 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.
- 1.22 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.
- 1.23 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:

- 1.24 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:

- 1.25 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, considering 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).
- 1.26 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 appellant's commitment to the submission of a reserved matters application) at this sustainable location.

There are brownfield sites available which would be more suitable:

- 1.27 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.

1.28 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:

1.29 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:

1.30 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:

1.31 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:

- 1.32 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:

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

There will be development of the Park:

- 1.34 There appears to be a misunderstanding from many of the third party comments received that the appeal proposal will actually involve developing land within the adjoining Brierley County Park.
- 1.35 There will be no development within or encroaching upon the nearby Country Park. The appeal site lies adjacent to the Park only.

There are likely to be problems with the ground due to pasty mining activities:

- 1.36 This matter has been assessed by the appellant. The are has been the subject of past mining activities, as has much of the immediate area, Midlands and north of England. Any ground conditions relating to the site will be appropriately addressed and as such do not represent reason or obstacle in the case to warrant refusal of the appeal scheme.

The appeal proposals are contrary the Planning Policy Guidance and Regional Planning guidance:

- 1.37 The policy guidance referred to has been cancelled and is not applicable to the appeal

proposal. No weight can be given to these former policy guidance documents.

The site has been subject to appeal and was subsequently dismissed

- 1.38 Previous appeals will have been considered in the context of the Policy guidance and all other material considerations in place at the time. This appeal will need to be assessed against current planning policy guidance and associated supporting guidance.

The site should be left in memory of the Miners/Mining Community

- 1.39 There are already several memorials dedicated the mining heritage of the community. This particular field was not a colliery, nor was it the subject of any spoil tipping. There is no need to protect this specific site for this memorial purpose.

There are water shortage problems:

- 1.40 There are no objections from statutory undertakes indicating any shortage of water to serve the appeal site.

There will be environmental pollution of the water course from the housing scheme:

- 1.41 There is no evidence to suggest the Housing development will lead to further contamination of the adjoining water courses.

There will be an increase in light pollution:

- 1.42 There will be an increase in light emanating from a site where no housing currently exists. This will be of domestic nature and needs to be assessed in the context in the surrounding extensive urban areas. The impact upon light pollution will be negotiable.

The Land is Green Belt:

- 1.43 The appeal site is not defined Green Belt Land. It is a Green filed site.

There will a be a loss of views:

- 1.44 This is a common concern, but it is not a material consideration.

Fly Tipping will occur at the bottom of gardens in the Park:

- 1.45 Housing will be designed and laid out to have frontage facing the park, hence avoiding rear gardens and boundary fencing abutting the Park boundary which often encourages garden waste depositing.
- 1.46 Existing residential properties about the Park and little evidence of fly tipping has been observed.

The Traffic Survey was conducted at the height of the COVID pandemic:

- 1.47 The details of the survey have been accepted by the County Highways Department who objectively assess such supporting information. There are no highway reasons for refusal and hence the data supplied is deemed appropriate.

There is no need for extra housing. Vacant properties and buildings can meet need:

- 1.48 There is an acknowledged shortfall of housing land in the Ashfield area. No evidence of vacant housing has been supplied to support the case that this can meet the substantial housing land supply shortages.

Developing the site will have an adverse impact upon physical and mental health:

- 1.49 The appeal site is not publicly available and does not serve any public use. The substantial and high quality Brierley Country Park will remain available for outdoor activity with is of value to peoples' wellbeing.
- 1.50 These are not considered to be significant material considerations.

2.0 THE PLANNING BALANCE AND CONCLUSIONS

2.1 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

2.2 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.

2.3 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.

2.4 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:

- 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.

2.5 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.

2.6 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 170(d). Any ecological harm can be adequately mitigated, and in accordance with paragraph 175(a) should not be refused in ecological terms.

2.7 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.

2.8 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.

2.9 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).

2.10 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.

2.11 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 PhD should be achieved. The Local Plan policy relating to density is not

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

- 2.12 It is evident that there are no technical reasons why the development should not proceed (highways/noise/air quality/drainage).
- 2.13 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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