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For and on behalf of  
**Bellway Homes Ltd**

**Town and Country Planning Act 1990 (Section 78)**

**APPEAL STATEMENT OF CASE**

**Ashland Road West, Sutton-in-Ashfield**

**Prepared by  
DLP Planning Ltd  
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April 2021



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Date:	April 2021

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Appendix A – Copy of Decision Notice dated 23 March 2021

Appendix B – Copy of Committee Report

Appendix C – Land West of Beck Lane, Skegby Appeal Decision (Ref. APP/W3005/W/18/3213342)

## 1.0 INTRODUCTION

1.1 DLP Planning Ltd is instructed by Bellway Homes Ltd (“the Appellant”) to submit an appeal under Section 78 of the Town and Country Planning Act 1990 against the refusal of outline planning permission (reference: V/2020/0184) by Ashfield District Council (“the Council”) at Land off Ashland Road West, Sutton-in-Ashfield, Nottinghamshire (“the appeal site”). The application sought:

*“Outline planning application (with all matters reserved except access) for a residential development of up to 300 dwellings with associated infrastructure and landscaping”*

1.2 The application was presented to Planning Committee on 17 March 2021 with a recommendation to approve planning permission. The Planning Committee resolved to refuse the application contrary to officer recommendation and a decision notice was subsequently issued on 23 March 2021, detailing the following reason for refusal:

*“The development would result in a significant adverse impact on the character and appearance of the area and surrounding landscape, particularly through the urbanising affects adjacent to Brierley Forest Park. The loss of greenfield and associated habitats would also result in significant and irreversible harmful impacts to biodiversity. In addition, the density of the development is considered to be too high and out of keeping with the surrounding area. Accordingly, the proposal would be contrary to Policies ST1 (a, b and e), ST2 – ST4 and EV2. There would also be conflict with Part 15 of the National Planning Policy Framework: ‘Conserving and enhancing the natural environment’. It is considered that these harms would significantly and demonstrably outweigh the benefits of the development.”*

1.3 As is evident, the reason for refusal can be split out into a number of distinct considerations, as follows:

1. Impact on character and appearance;
2. Impact on biodiversity; and
3. Density.

- 1.4 All other technical matters in relation to the proposed development including: flood risk and drainage, ground conditions, air quality, highways and access, minerals and waste, residential amenity, archaeology, above ground heritage, affordable housing and S106 contributions are confirmed as acceptable by the Council within their Committee Report and also through the scope of the reason for refusal itself. This position is confirmed through a Statement of Common Ground, a draft copy of which is included as part of this appeal submission.
- 1.5 A copy of the decision notice is provided as **Appendix A** and the Committee Report is enclosed as **Appendix B**.
- 1.6 This Statement of Case has been prepared in accordance with the Town and Country Planning (Inquiries Procedure) (England) Rules 2000 as amended and the Planning Inspectorate Procedural Guide (March 2021).

### **Appeal Procedure and Evidence**

- 1.7 Annexe K of the Planning Inspectorate Procedural Guide sets out the criteria for determining the appropriateness of each of the 3 appeal procedures. There are three situations when an Inquiry would be appropriate for a planning appeal, such as this:
1. There is a clearly explained need for the evidence to be tested through formal questioning by an advocate; or
  2. The issues are complex; or
  3. The appeal has generated substantial local interest to warrant an inquiry as opposed to dealing with the case by a hearing.
- 1.8 The preamble to Annexe K confirms as follows: *"The criteria for each procedure cannot be fully prescriptive or entirely determinative: they require judgement to be applied using common sense. More than one criterion may apply."*
- 1.9 Taking into account the criteria set out, the Appellant's view is that the Inquiry procedure is most appropriate given that the matters relate to complex planning issues where evidence should be tested through formal questioning by an advocate.

- 1.10 As noted above, the application was refused at Planning Committee against Officer's advice and therefore there is a need to carefully interrogate the technical basis for that decision and examine the extent to which the Council's reason for refusal is supported by technical data and planning policy given the differing position between Officers and Members.
- 1.11 In addition, the application generated substantial local interest, with 64 individual households writing 69 letters of objection. At the Planning Committee, 3 local residents spoke against the application. The Committee debate lasted over an hour, with all Members subsequently voting against the application.
- 1.12 The evidence which will be presented by the appellant is intended to be as follows:
- **Character and Appearance:** The Council has raised a number of detailed character and appearance matters, with specific regard to the urbanising affects adjacent to Brierley Forest Park. These will all require detailed scrutiny and testing of viewpoints and impacts, to fully understand and explore the issues in question. A detailed analysis of views and the significance of such views cannot be appropriately undertaken and fully addressed without thorough testing. It is considered this evidence can most effectively be tested via round table discussion.
  - **Biodiversity:** The Council has departed from the views of its expert consultees in relation to biodiversity matters and there is a technical case required in order to examine the extent to which this contrary view is supported by any technical data. This can only be achieved through robust testing and explanation. It is considered this evidence can most effectively be tested through cross-examination.
  - **Density:** The Council considers that the density of the development is too high and out of keeping with the surrounding area. This view will require detailed scrutiny and testing, especially in the context of the National Planning Policy Framework's objective of significantly boosting the supply of housing, the national housing crisis and the fact that the Council cannot demonstrate a five year housing land supply. It is considered this evidence can most effectively be tested through cross-examination.
  - **Planning Balance:** It is the appellant's position that the Ashfield Local Plan is out of date, by virtue of being time-expired and because the Council cannot demonstrate a

five year housing land supply. Therefore, the appeal should be determined in accordance with paragraph 11(d) of the National Planning Policy Framework, with limb ii) (referred to as “the tilted balance”) applied in the determination of this appeal. Consideration should be given to 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. In applying the tilted balance, the proposed development’s primarily social and economic benefits would not be significantly and demonstrably outweighed by its minimal adverse environmental impacts. The Council however considers that the harm created by the proposal (i.e. in relation to character and appearance, biodiversity and density) would significantly and demonstrably outweigh the benefits of the development. Such issues need to be considered in the round, in order to fully understand and explore the issues in question. It is considered this evidence can be most effectively tested through cross-examination.

1.13 Overall, therefore, a fair resolution of issues raised by the Council requires scrutiny and questioning by an advocate in order that the following should be properly understood and tested:

- The robustness of the Council's concerns with the scheme;
- The compliance of the appeal scheme with the Development Plan taken overall, taking into account that the appeal should be determined in accordance with paragraph 11(d) limb ii) of the National Planning Policy Framework, (referred to as “the tilted balance”); and
- Whether any adverse impacts of the development, if identified by the Inspector, significantly and demonstrably outweighs the benefits of the appeal scheme. This requires identification of the precise nature and extent of the benefits of the appeal scheme.

1.14 The appellant will put forward appropriate experts to address these points. The advocates will therefore need to test the conflicting evidence and contentions of the respective parties. The Inspector will require this in order to make a properly informed determination of the appeal.

*Inappropriateness of a Hearing*

- 1.15 It is our strong contention that a Hearing is not appropriate in this instance. Firstly, this is a development seeking to provide up to 300 new dwellings (including affordable housing) in an area that has a significant under delivery of housing – the Council can currently only demonstrate a 2.21 year housing land supply. The possibility of the delivery of this important site being held up by suitable dates for a Hearing would deprive this area of a sustainable and ready to go housing development, especially noting that there is only one reason for refusal, with all other technical matters agreed.
- 1.16 Further, the appellant considers that the matters to be addressed as part of the single reason for refusal, could not be adequately explained nor the technical evidence examined for the benefit of an Inspector by written representations or a Hearing. Written Representations and a Hearing would not facilitate the full and detailed presentation of evidence and examination which is required to be able to demonstrate the position on character and appearance, ecology, density and the overall planning balance. Compounded by the absence of questioning, this would prevent the necessary testing, scrutiny and exploration of that evidence.
- 1.17 Lastly, given the differing issues raised, there is a very limited prospect of the case being completed in a 1 day, or even 2 day Hearing (which we understand are to be used only in exceptional circumstances), so a Hearing would be wholly inappropriate.



## 2.0 APPEAL SITE AND SURROUNDINGS

### The Site and its Context

- 2.1 The application site subject to this appeal extends to approximately 10.31ha and is located on the western edge of Sutton-in-Ashfield. Access to the site is from an existing field access on Ashland Road West.



**Figure 1. Site Location**

- 2.2 The site is currently a greenfield agricultural site, formed of two large fields. It is of poor agricultural land quality (Grade 4). The western field consisted of arable land with very wide poor semi-improved grassland margins, and the eastern field consisted of poor semi-improved grassland.
- 2.3 The site is well-contained, being surrounded by existing residential development on three sides to the east, west and south and the former restored colliery site at Brierley Forest Park to the north. Ashland Road West runs along the site's southern boundary.
- 2.4 Mature hedgerows form the majority of the site's boundaries to the north, east and west and in part to the south, where the southern boundary of the site runs along the back of residential properties between Ashland Road and Sutton Road/Huthwaite Road, and along substantial sections of the road frontage along Ashland Road West. A further field hedgerow runs north-south across the middle of the site dividing the two field parcels.

2.5 The site has good access to a range of existing facilities and services. The Council’s 2016 Strategic Housing Land Availability Assessment (SHLAA) report shows the types of facilities which are within walking distance and those that can easily be accessed via public transport:

Access to Services		The site may be suitable	
Within 800m or 10 mins walking			
Primary school:	Yes	Bus stop:	Yes
GP:	No	Cash Machine or Post Office:	Yes
Transport Node:	Over 1km from a major public transport node		
Access to Open Space			
Site within 500m of Natural Open Space?:	Yes	Site within 200m accessible open space?:	Yes
Site within 200m Public Open Space?:	Yes	Does site affect existing open space?:	No
Site within 300m Parks and Rec. Grounds?:	Yes		
Within 30 mins travel by public transport			
Secondary school:	Yes	Retail Area:	Yes
Further Education:	Yes	Hospital:	No
Supermarket:	Yes	Employment:	Yes
Proximity to District Shopping centre:	Over 1km from a town centre Approximately 1.5km		

**Figure 2. Access to facilities and services (extract from Ashfield District Council SHLAA 2016)**

2.6 In addition to the above, there is a Co-op convenience store just over 1km away and the Asda superstore is within 2km of the site.

2.7 The site is served by a good quality bus service operated by Stagecoach Bassetlaw along Huthwaite Road every 10 minutes throughout the day (bus service 1 Mansfield Woodhouse – Huthwaite – Alfreton) plus an additional bus service which operates on Mondays (Our Centre, 101 Huthwaite – Sutton). These link to a wide range of higher order services.



**Figure 3. Bus stops closest to the site (extract from ADC Transport Assessment)**

- 2.8 There are no definitive rights of way which cross the site but Sutton in Ashfield public footpath 47 runs parallel to part of the site's northern boundary. PRoW FP 39 runs within 10m of the site's north-western boundary, linking Sutton in Ashfield with Stanton Hill to the north-east. Brierley Forest Park allows free access across the Park, although the many footpaths and multi-user trails across it direct the circulation.
- 2.9 The highest point of the site is to the south-west, reaching approximately 180m AOD, and from there the land falls in a northerly direction towards Rooley Brook, which lies within Brierley Forest Park. The lowest part of the site lies on the north-eastern boundary, at approximately 160m AOD.
- 2.10 The Nottinghamshire Landscape Character Assessment (LCA) 2009 identifies the site on the southern edge of the Brierley Forest Park Draft Policy Zone (ML021) which comprises the man-made landform of a restored former colliery with a raised woodland covered mound comprising 'engineered' slopes of even gradient.
- 2.11 No designated heritage assets (World Heritage Sites, Scheduled Monuments or Listed Buildings) are located within the site. The nearest Scheduled Monument is the Skegby Manor House, immediately south-east of Pond Cottage, which lies 2km north-east of the assessment area. The nearest Conservation Area is the Sutton-in-Ashfield Church and Market Place, which lies around 1km south-east of the site. Both these heritage assets are separated from the site by existing built development. The site falls within Area G – Meden Valley of the Hardwick Hall Setting Study.
- 2.12 The Government's Flood Map for Planning indicates that the site is located within Flood Zone 1, which is the designation given to sites at low risk from flooding. Whilst there is currently some localised surface water flooding on the site from a culverted drain, this issue will be resolved through the implementation of a sustainable drainage strategy for the site.

### 3.0 RELEVANT PLANNING HISTORY

#### Planning History

3.1 A full application for the residential development of 201 dwellings, made on behalf of David Wilson Homes ('the DWH application'), was refused by the Council on 20 September 2016 (V/2014/0658). This decision was contrary to the planning officer's recommendation to approve the application. The reasons for refusal can be summarised as follows:

- 1) Conflict with policies ST1(a), ST1(b), ST1(c), ST1(e), EV2, EV4, EV5, EV6 of the Ashfield Local Plan Review (2002);
- 2) The site is prone to flooding and in accordance with the NPPF inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk, but where necessary, making it safe without increasing flood risk elsewhere.

3.2 Prior to the DWH application, an application for residential development was refused in 1988 and subsequently dismissed at appeal. As noted in the officer's report for the DWH application, "*although the site history is a material planning consideration, the current proposal is required to be considered against up to date national and local planning policies.*"

#### Pre-application advice

3.3 The proposed development was discussed with a planning officer from Ashfield District Council at a pre-application meeting on 1 July 2019. During this meeting, the officer stated that whilst the proposed development was contrary to the development plan, the Council's lack of a five-year housing land supply and the sustainable location of the site meant the principle of development was likely to receive officer support. This was also reflected by the fact that the site was formally a proposed allocation in the emerging Ashfield Local Plan. Matters including the layout, access, appearance and scale, public open space, developer obligations and public consultation were discussed.

## 4.0 THE APPEAL SCHEME & BACKGROUND

4.1 The application to which this appeal relates was submitted to the Council on 6 March 2020 and validated on 12 March 2020. The application sought outline planning permission for the following works:

*“Outline planning application (with all matters reserved except access) for a residential development of up to 300 dwellings with associated infrastructure and landscaping”.*

4.2 In summary, the relevant aspects of the proposed scheme are:

- The provision of up to 300 homes, including 10% affordable housing;
- Development at a net density of 34 dwellings per hectare (dph) with a higher density towards the existing urban areas and lower densities near Brierley Forest Park;
- A broad mix of house sizes and types, the majority of which will be 2 storey homes, with some occasional 2.5 storey dwellings in key locations to provide distinctiveness in the street scene (the final mix will be determined at detailed design stage);
- Access to Ashland Road West 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 Nottinghamshire Council Highways 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. This is a fixed matter, with access being considered as part of this outline appeal;
- From this primary route the layout incorporates a street hierarchy from primary routes to secondary streets to private drives, help to distinguish key areas of the site, aid traffic calming and encourage walking and cycling;
- Existing 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;

- Provision of open space and green infrastructure, with green corridors being used from north to south through the site at two intervals, breaking up the built form and providing attractive recreational green routes (one around the existing central hedgerow location) through the site to Brierley Forest Park;
- The layout is arranged in perimeter blocks, meaning homes would face out on to the road layout to ensure active frontages. Regard is had to the existing residential development where it adjoins the site. Suitable separation distances are incorporated into the masterplan scheme, and back gardens adjoin existing back gardens where possible; and
- A surface water balancing area is provided in the north-east of the site.

#### 4.3 The application was accompanied by the following supporting documentation:

- Completed Application Form and Declaration
- Covering Letter
- Site Location Plan (ref. P19-1014 002 Rev A)
- Topographical Survey (ref. S672/01 Rev C)
- Topographical Survey (ref. S672/02 Rev C)
- Illustrative Masterplan (ref. P19-1014 007 Rev B)
- Planning Statement (by DLP Planning Ltd) (dated March 2020)
- Design and Access Statement (by Pegasus Group) (dated March 2020)
- Arboricultural Assessment (by FPCR) (dated Feb 2020)
- Archaeological Desk Based Assessment (by University of Leicester Archaeological Services) (dated March 2020)
- Flood Risk Assessment and Drainage Strategy (Rev A) (by EWE Associates) (dated Feb 2020)
- Ecological Appraisal (by FPCR) (dated Feb 2020)
- Ground Investigation Phase II Site Appraisal (by GRM Development Solutions) (dated Dec 2012)
- Gas Completion Letter (by GRM Development Solutions) (dated 7 January 2013)

- Letter of Reliance (by GRM Development Solutions) (dated 20 December 2018)
- Review of Ground Investigation Phase II Site Appraisal Letter (by GRM Development Solutions) (dated 4 March 2020)
- Landscape and Visual Assessment (by Golby + Luck) (dated Feb 2020)
- Statement of Community involvement (by The Community Communication Partnership)
- Transport Assessment (by ADC Infrastructure) (dated March 2020)
- Travel Plan (by ADC Infrastructure) (dated March 2020)
- Noise Assessment (by M-EC Acoustic Air) (dated Feb 2020)
- Air Quality Assessment (by M-EC Acoustic Air) (dated Feb 2020)

4.4 Additional and revised information was provided during consideration of the application. This comprised:

- Site Location Plan (ref. P19-1014 002 Rev B)
- Illustrative Masterplan (ref. P19-1014 007 Rev G)
- Access Junction Layouts (ref. ADC1032-DR-001-P10)
- Proposed Pedestrian Improvements B6026 Huthwaite Road (ref. ADC1032-DR-002 Rev P1)
- Flood Risk Assessment and Drainage Strategy (Rev D) (by EWE Associates)
- FPCR letter in response to Delta Simons Consultation response, including Metric Exercise (dated August 2020)
- Minerals Resource Assessment by GRM (dated May 2020)
- Transport Assessment Addendum (by ADC) (October 2020)
- ADC letter in response to NCC Highway Consultation response (dated 20 November 2020)
- Technical Note H – Junction Capacity Analysis (by ADC) (February 2021)

4.5 The application, as revised and updated, was presented to Planning Committee on 17 March 2021 with a recommendation to approve planning permission. The Planning Committee however resolved to refuse the application, contrary to officer recommendation, and a decision notice was subsequently issued on 23 March 2021, detailing one reason for refusal (as outlined in Section 1 of this Statement).





## 5.0 PLANNING POLICY

5.1 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.

### **The Development Plan**

5.2 The development plan for Ashfield District Council currently consists of the 'saved' policies of the Ashfield Local Plan Review 2002.

5.3 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 6th September 2018 to withdraw the emerging Local Plan and restart the process.

5.4 It is material to note that the application site was 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 is a sustainable option for housing development.

5.5 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 application will be considered solely against the saved Policies of the Ashfield Local Plan Review. In accordance with paragraph 213 of the NPPF, due weight should be given to these policies according to their degree of consistency with the NPPF. The NPPF, PPG and relevant Supplementary Planning Guidance are material considerations.

### **Ashfield Local Plan**

5.6 The strategic policies of the Ashfield Local Plan Review, including **Policy ST1**, express 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).

- 5.7 **Policy ST2** states that development will be concentrated within the main urban areas of Hucknall, Kirkby in Ashfield and Sutton in Ashfield.
- 5.8 **Policy ST4** 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.
- 5.9 **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.
- 5.10 In the West Notts. Sub Area, **Policy HG4** seeks 6% affordable housing on housing development of 25 dwellings or more.
- 5.11 In order to establish that new residential development is designed to a high standard in the District **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.*

5.12 **Policy HG6** 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.

5.13 **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, such as that proposed as part of this application, does not fall within the Council's definition of appropriate development in the countryside.

5.14 **Policy EV4** states that development which does not adversely affect the character and quality of mature landscape areas (MLA) will be permitted. The closest MLA policy to the application site is Huthwaite/Spring Wood (Local Plan reference EV4Rm), approximately 1km to the north of the site.

5.15 **Policy EV5** states that proposals likely to affect Sites of Special Scientific Interest 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.

5.16 **Policy EV6** states that development which adversely [affects] local nature reserves will only be permitted where provision is made within the development for the protection of features of nature conservation, or the development cannot be located elsewhere.

5.17 **Policy EV8** 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.

5.18 **Policy TR2** sets out that development proposals where cyclists would expect to have access should include safe and convenient cycle access, links with existing and proposed cycle routes where appropriate and cycle parking facilities.

5.19 **Policy TR6** 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.

***Ashfield Residential Design Guide SPD (November 2004)***

5.20 This SPD sets out how Ashfield District Council expects the location, form and type of residential development will be considered through the design process. This SPD is more material to detailed planning applications seeking the approval of layout, appearance, scale and landscaping.

***Residential Car Parking Standards (2014)***

5.21 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. As with the Residential Design Guide, this is more of a consideration for full or reserved matters applications.

***Ashfield District Council Housing Land Monitoring Report (August 2020)***

5.22 This document is a material consideration in the context of NPPF paragraph 73 which 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 at 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.

**National Planning Policy Framework (NPPF)**

5.23 The Framework sets out the Government's planning policies for England and how these are expected to be applied.

5.24 The first revision of the NPPF was published in March 2012 with a revised version published

in July 2018, implementing some 85 reforms announced previously through the Housing White Paper, planning for the right homes in the right places consultation and the draft revised National Planning Policy Framework consultation. A further update was issued incorporating minor amendments in February 2019.

- 5.25 The NPPF is underpinned by a presumption in favour of sustainable development and those provisions that are relevant to this proposal are identified below.

### ***Achieving Sustainable Development***

- 5.26 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:

- An economic objective;
- A social objective; and,
- An environmental objective.

- 5.27 Paragraph 10 states that to ensure sustainable development is pursued in a positive way, there is a presumption in favour of sustainable development at the heart of the Framework. For decision-taking, paragraph 11 confirms that this means:

- *Approving development proposals that accord with an up-to-date development plan without delay; or*
- *where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date<sup>7</sup>, granting permission unless:*
  - *the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed<sup>8</sup>; or*
  - *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.*

- 5.28 Footnote 6 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 176) 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 63); and areas at risk of flooding or coastal change.”

- 5.29 Footnote 7 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.*”
- 5.30 Transitional arrangements for the Housing Delivery Test are set out in Annex 1 of the NPPF, and a definition of ‘deliverable’ is provided at Annex 2:

*To be considered deliverable, sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years. In particular:*

*a) sites which do not involve major development and have planning permission, and all sites with detailed planning permission, should be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered within five years (for example because they are no longer viable, there is no longer a demand for the type of units or sites have long term phasing plans).*

*b) where a site has outline planning permission for major development, has been allocated in a development plan, has a grant of permission in principle, or is identified on a brownfield register, it should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years.*

- 5.31 The Housing Delivery Test (August 2020) also indicates the delivery of housing in Ashfield is substantially below the housing requirements over the past three years.

### ***Decision-making***

- 5.32 Paragraph 38 states that local planning authorities should approach decisions on proposed development in a positive and creative way, working proactively with applicants and seeking to approve applications for sustainable development where possible.

- 5.33 Paragraphs 39 to 45 promotes early engagement and pre-application discussions.
- 5.34 Paragraph 47 requires decisions on applications to be made as quickly as possible and within the statutory timeframes unless a longer period has been agreed. Paragraph 48 proceeds that weight may be given to relevant policies in emerging plans according to their stage of preparation, the extent to which there are unresolved objections to relevant policies and the degree of consistency of the emerging policies to those in the Framework (being minded of the transitional arrangements set out at footnote 22).
- 5.35 Paragraphs 54 to 56 require local planning authorities to consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations, subject to compliance with the relevant tests.

***Delivering a sufficient supply of homes***

- 5.36 Paragraph 59 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.
- 5.37 Paragraph 64 states that where major development involving the provision of housing is proposed, planning policies and decisions should expect at least 10% of the 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.
- 5.38 Local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies, or against their local housing need where the strategic policies are more than five years old. The supply of specific deliverable sites should in addition include a buffer of:
- a) 5% to ensure choice and competition in the market for land; or*
  - b) 10% where the local planning authority wishes to demonstrate a five-year supply of deliverable sites through an annual position statement or recently adopted 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 three years, to improve the prospect of achieving the planned supply.*

### ***Promoting healthy communities***

5.39 Paragraph 91 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.

5.40 Paragraph 96 considers that access to a network of high-quality open spaces and opportunities for sport and physical activity is important for the health and well-being of communities.

### ***Promoting sustainable transport***

5.41 Paragraph 103 states that significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes, as this can help to reduce congestion and emissions, and improve air quality and public health.

5.42 In the consideration of planning applications, as is outlined in Paragraph 108, it should be ensured that:

- *appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location;*
- *safe and suitable access to the site can be achieved for all users; and*
- *any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree.*

5.43 Paragraph 109 states that development proposals should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the



residual cumulative impacts on the road network would be 'severe'.

- 5.44 Paragraph 110 considers that development proposals should give priority first to pedestrian and cycle movements, both within the scheme and with neighbouring areas; and second - so far as possible – to facilitating access to high quality public transport, with layouts that maximise the catchment area for bus or other public transport services, and appropriate facilities that encourage public transport use. Further to this, the needs of people with disabilities and reduced mobility should be addressed, and places should be created that are safe, secure and attractive.

***Making effective use of land***

- 5.45 Paragraph 117 requires that policies and decisions 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.
- 5.46 Planning policies and decisions should support development that makes efficient use of land, as is considered in Paragraph 122, taking into account:
- a) *the identified need for different types of housing and other forms of development, and the availability of land suitable for accommodating it;*
  - b) *local market conditions and viability;*
  - c) *the availability and capacity of infrastructure and services – both existing and proposed – as well as their potential for further improvement and the scope to promote sustainable travel modes that limit future car use;*
  - d) *the desirability of maintaining an area's prevailing character and setting (including residential gardens), or of promoting regeneration and change; and*
  - e) *the importance of securing well-designed, attractive and healthy places.*
- 5.47 Where there is an existing or anticipated shortage of land for meeting identified housing needs, it is especially important that planning policies and decisions avoid homes being built at low densities and ensure that developments make optimal use of the potential of each site, in accordance with paragraph 123.

### ***Achieving well-designed places***

- 5.48 As is stated in Paragraph 124, the creation of high-quality 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.
- 5.49 Paragraph 127 outlines a number of requirements which planning policies and decisions should enforce to ensure that development achieves well-designed buildings and places. These include ensuring that development is visually attractive, sympathetic to local character and history, establishes a strong sense of place, and optimises the potential of the site to support local facilities and transport networks.
- 5.50 Paragraph 128 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.
- 5.51 Paragraph 130 states that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area.

### ***Meeting the challenge of climate change, flooding and coastal change***

- 5.52 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 153b).
- 5.53 When determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere (paragraph 163). A Flood Risk Assessment is required

for sites in Flood Zone 1 where they are 1 hectare or more (footnote 50). Major development should incorporate sustainable drainage systems unless there is clear evidence that this would be inappropriate (paragraph 165). Where appropriate, applications should be supported by a site-specific flood-risk assessment.

### ***Conserving and enhancing the natural environment***

- 5.54 Paragraph 170 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).
- 5.55 Paragraph 175 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.
- 5.56 Paragraph 178 seeks to ensure that a site is suitable for its proposed use taking account of ground conditions and any risks arising from land instability and contamination.
- 5.57 Paragraph 180 seeks to ensure that new development is appropriate for its location taking into account the likely effects of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. This includes taking into account any impacts on/from noise and light.
- 5.58 Paragraph 181 seeks opportunities to improve air quality or mitigate air quality impacts, such as through traffic and travel management, and green infrastructure provision and enhancement.

### **Planning Practice Guidance**

- 5.59 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.
- 5.60 The PPG contains extensive guidance on matters of design. Paragraph 001 of this element of the guidance (ref ID 26-001-20140306) highlights that achieving good design is about creating places, buildings or spaces that work well for everyone, look good, last well, and will adapt to the needs of future generations.
- 5.61 Of notable reference to the current application is paragraph 40 (ref ID: 26-040-20140306) which highlights design issues that are particularly relevant to housing design. The PPG states that well-designed housing should be functional, attractive and sustainable. It should be adaptable to the changing needs of its occupants.
- 5.62 The PPG states that affordable housing, in well-designed places, is indistinguishable from private housing by its design and should not be banished to the least attractive part of the site. Consideration should be given to the servicing of dwellings, together with carefully planned bin storage. Car parking and service areas should also be considered in context to ensure that the most successful outcome can be delivered for the site.

## 6.0 THE APPELLANT'S CASE

6.1 This section sets out the Appellant's case against the sole reason for refusal (set out above in Section 1 of this Statement) and other areas of evidence.

### **The Development Plan**

6.2 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that this appeal be determined in accordance with the statutory 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.

6.3 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.

6.4 As is discussed in detail later on in this section of the Statement, whilst it is accepted that the site is currently defined as countryside in the Ashfield Local Plan Review (2002) 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. As such, the appeal should be determined in accordance with the tilted balance at NPPF paragraph 11 d) ii).

6.5 In applying the tilted balance, the proposed development's primarily social and economic benefits would not be significantly and demonstrably outweighed by its minimal adverse environmental impacts. The tilted balance at limb ii) paragraph 11 of the NPPF therefore

supports allowing this appeal and planning permission should be granted accordingly (again discussed in further detail below).

6.6 As outlined previously in Section 1 of this Statement, the reason for refusal can be split out into a number of distinct considerations, as follows:

1. Impact on character and appearance;
2. Impact on biodiversity; and
3. Density.

6.7 Each limb of the reason for refusal is addressed in turn below.

### **Impact on Character and Appearance**

6.8 The Council's first limb of the reason for refusal sets out that the development would result in a significant adverse impact on the character and appearance of the area and surrounding landscape, particularly through the urbanising affects adjacent to Brierley Forest Park.

6.9 The Nottinghamshire Landscape Character Assessment (LCA) 2009 identifies the site as part of Character Area ML021 which comprises the man-made landform of a restored former colliery with a raised woodland covered mound comprising 'engineered' slopes of even gradient. Views are enclosed by woodland on low ground with panoramic views from the top of the colliery mound across urban areas to the south, and open countryside and high ground at the former Silver Hill colliery to the north.

6.10 A Landscape and Visual Assessment formed part of the application submission. It concludes that the site and proposed development are set within an established envelope of built-form (with residential development to three sides) that is already a key characteristic of this landscape setting. This assessment has confirmed that the development of the site is unlikely to result in any adverse effect to the wider character of the Brierley Forest Park landscape area or the main urban area that would be of significance to the decision making process. The only notable effect would be the loss of the open farmland setting of the site.

6.11 The site is not covered by any statutory or non-statutory designations that would prohibit it from being developed for residential purposes. 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.

- 6.12 As is stated in the Committee Report (Section 2, page 30), the Council's Landscaping Officer has advised that the Landscape and Visual Assessment generally provides a balanced approach of the development impacts, noting that the focus should be put on the visual impacts from the south along Ashland Road through appropriate landscaping along the boundary. The visual impact from the north (Brierley Forest Park) can also be reduced by maintaining an open aspect with development frontage facing the park and complemented by landscape boundary improvements.
- 6.13 While it is accepted that the proposed development is likely to 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. 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.
- 6.14 Overall, it is not disputed that there would be some conflict with the NPPF, which recognises the intrinsic character and beauty of the countryside and to ensure decisions contribution to and enhance the natural environment and Saved Policy EV2 which seeks to protect the character of the countryside (although it is our strong contention that this policy is inconsistent with the NPPF and out of date). However, on the basis of the evidence provided and advice received from the Council's Landscaping Officer, it is clear that the impacts on character and appearance, with particular regard to Brierley Forest Park, would be minimal and could be adequately mitigated against. As such there are no adverse landscape impacts that would

significantly and demonstrably outweigh the benefits of the proposed development (the benefits are discussed in detail below). This limb of the reason for refusal is therefore not justified.

### **Impact on Biodiversity**

- 6.15 The second limb of the Council's reason for refusal sets out that the loss of greenfield land and associated habitats would result in significant and irreversible harmful impacts to biodiversity. The reason for refusal cites conflict with Part 15 of the NPPF: 'Conserving and enhancing the natural environment'. In terms of Development Plan Policy, Saved Local Plan Policy EV6 sets out protection for ecological sites, which relates to both Local Nature Reserves (LNR) and Local Wildlife Sites (LWS) and Saved Local Plan Policy EV8 relates to the protection of trees and woodlands, stating 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. Notably neither Development Plan policy is cited in the reason for refusal.
- 6.16 As noted above, Saved 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). Conflict with this policy is cited in the reason for refusal.
- 6.17 An Ecological Assessment was prepared as part of the application submission, including an assessment of the impact of the proposed development on designated sites, habitats and relevant fauna. In terms of statutory consultee responses, Natural England did not have any comments, and no response was received from the Nottinghamshire Wildlife Trust. The Council commissioned an independent ecologist to review the submitted Ecological Assessment, which was funded by the appellant. Following the review, additional information was submitted to the Council to address all points raised by the independent ecologist. A summary of the assessments provided by fpcr are provided below.

#### *Habitats*

- 6.18 The appeal site is not covered by any statutory or non-statutory designations for nature



conservation. The dominant habitat in the application site is intensively managed arable land which limits the value of the site and provides no significant resource for biodiversity locally. Other habitat types recorded include species-poor, semi-improved grassland and scrub which is restricted to the site boundaries of the site and again, do not offer significant value to biodiversity locally. None of the hedgerows are classified as important under the Hedgerow Regulations but whilst all were classified as Habitats of Principle Importance, these are species poor and as such do not provide a significant resource. Plantation woodland adjacent to the northern boundary, which provides some structural diversity to the site, is to be retained.

#### *Designated Sites*

- 6.19 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.
- 6.20 The independent ecologist however noted that such disturbances would be significant 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.
- 6.21 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. The hydrological regime will not be affected due to the provision of the formal

surface water drainage system and SuDs feature, which regulate the flows and filter pollutants.

### *Protected Species*

- 6.22 **Bats** - The species-specific surveys identified some limited use of the site by bats, but the overall level of activity was low and dominated by common and widespread species. A small number of trees were recorded as offering low potential to be used as bat roosts, but no evidence of a roost was recorded. Through the retention of habitats, the implementation of a sensitive lighting scheme and the creation of habitats proposed in the open space, it has been confirmed that the proposals will not materially affect the local bat population.
- 6.23 **Badgers** - During the site survey in July 2019, an active badger sett was recorded along the southern boundary of the site. An updated badger survey was undertaken 27 July 2020 where a thorough search of all areas of the site and accessible areas within 30m of the site boundary was completed. The updated survey demonstrated that the previously identified potential main sett was inactive and as such, its closure is not deemed likely to have a significant effect on the local badger clan. No additional active setts were identified within the site.
- 6.24 **Hedgehog** - No field signs were observed during the field surveys for hedgehog, however the habitats are suitable for foraging, commuting and hibernating. A large proportion of suitable hedgehog shelter and foraging habitat will be retained at the site peripheries. Any losses of hedgehog habitat be appropriately mitigated for via incorporating log piles and provision of hedgehog access points within perimeter garden fences and hedgerows.
- 6.25 **Birds** - The proposals will result in the loss of grassland, arable land and tall ruderal vegetation, habitats which provide nesting and foraging opportunities for birds. However, these habitats are widespread and well represented in the wider local area. Bird nesting and foraging habitats at the site peripheries, consisting of dense scrub, trees (of semi-mature age and older) and majority of all three hedgerows, will be retained and enhanced. In addition, domestic gardens will create areas of additional suitable habitat for urban edge bird species.
- 6.26 **Reptiles** - The hedgerows and scrub with adjacent tall ruderal habitat represent some potential foraging and refuge areas for reptiles while the poor semi-improved grassland and

arable field that made up the majority of the site were of low value to foraging reptiles while basking opportunities were limited and no reptile evidence was found during the field survey.

- 6.27 Due to the small scale of the suitable reptile habitat which will be lost as a result of the proposed development, it is considered that further survey effort would be disproportionate. Site clearance will take place under ecological supervision in a directional manner in accordance with a Great Crested Newt and Common Reptiles Method Statement (included as part of the Ecological Assessment). Habitat retention on the site peripheries will benefit common reptile species, should they be present, and will also create and enhance wildlife corridors and connectivity of habitats within the local landscape.
- 6.28 **Great Crested Newts (GCN)** - Small areas of suitable habitat are present at the peripheries of the site to support GCN. There are two ponds within 500m of the site. P1, a fishing pond had poor suitability for GCN whereas P2 had good suitability.
- 6.29 The vast majority of the terrestrial habitats that provide opportunities for amphibians within the site for foraging, commuting, rest and shelter, will be retained and enhanced as part of the proposed development, while maintaining connectivity to suitable amphibian habitat to the north of the site (in Brierley Forest Park LNR/LWS). These habitats sit along the site boundaries, creating a buffer between the area of proposed development footprint and the ponds to the north, and will include all three hedgerows, dense scrub, and scattered trees and tree groups.
- 6.30 In addition, an attenuation basin will be created in the south western site corner, directly south from P2, where recommended habitat creation includes new native species rich neutral grassland and native species scrub planting around the attenuation basin. Along with this, it is recommended that log piles also be incorporated in this area. The combination of these habitat features in this location will create foraging and sheltering opportunities for any GCN (and other common amphibians) which may enter the site, as well as improving general habitat connectivity. As referred to above, a Great Crested Newt and Common Reptiles Method Statement accompanies the application to ensure there is no breach in the legislation which protects Great Crested Newts.

### *Biodiversity Net Gain*

- 6.31 Paragraph 174 of the NPPF sets out the aspiration that development should “...*identify and pursue opportunities for securing measurable net gains*”. The Draft Environment Bill, although currently not mandated, is likely to set a mandatory net gain requirement of 10%. The Ashfield Local Plan contains no defined policy requirement for a biodiversity net gain.
- 6.32 Despite there being no policy requirement for a biodiversity net gain, a Biodiversity Impact Assessment using the DEFRA metric was submitted in support of the application. This confirms that a 10% biodiversity net gain will be delivered as part of the scheme proposals, through a combination of on-site mitigation and financial contribution, in accordance the emerging DEFRA guidance.

### *Summary*

- 6.33 The NPPF, at paragraph 175, states that if significant harm to biodiversity resulting from 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.
- 6.34 As is demonstrated above, 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). The ecological work undertaken by the appellant was assessed by an independent ecological consultant commissioned by the Council, and ultimately confirmed acceptable. Any ecological harm can be adequately mitigated, and in accordance with NPPF paragraph 175(a) should therefore not be refused in ecological terms. Importantly this view point is confirmed by Officer’s in the Committee Report (Section 3, Page 33), stating:

*“The applicant has supplied an Ecological Assessment of the impact of the proposed development on designated sites, habitats and relevant fauna. It includes mitigation and enhancement measures. The report has also been assessed by independent ecologist and additional information provided. On the basis of the evidence supplied, it is considered the ecological impacts - comparative to a development site of this size – are fairly limited and can be adequately mitigated.*

*It is acknowledged that the proposal would result in a net loss of biodiversity on site.*

*However, a contribution will be secured towards off-site improvements. Overall, it is considered that the proposals would not merit a refusal in accordance with paragraph 175 of the NPPF.”*

- 6.35 Further, in accordance with Saved Policy ST1, in ecological terms, it is clear that there would be no conflict with other policies in the Local Plan (part a), the development would not adversely affect the environment in which it is located (part b) and would not conflict with an adjoining or nearby land use (part e).
- 6.36 This limb of the reason for refusal, is therefore not justified.

### **Density**

- 6.37 Turning to the last limb of the reason for refusal, the Council has stated that the density of the development is considered to be too high and out of keeping with the surrounding area. Saved Local Plan Policy HG3: Housing Density is the relevant Development Plan policy in this respect, although it is notably not cited in reason for refusal.
- 6.38 Saved Local Plan 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.
- 6.39 The application site is greenfield and measures approximately 10.31ha. The submitted Masterplan sets out indicative development parcels of c.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. The density of the surrounding established residential area ranges from 20 – 37 dwellings per hectare.
- 6.40 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.”*

- 6.41 Within the context of national planning policy, 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 of housing. 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 Framework, development should be optimised.
- 6.42 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 is an outline application, matters of layout, appearance, scale and landscaping are reserved for later approval. Notwithstanding this, as part of the outline submission, a broad layout was prepared 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, from a highways adoption perspective, is informed by the local highways authority's requirements; and
- appropriate levels of residential amenity (i.e. in the form of separation distances).

6.43 Overall, the efficient use of land is supported by the Framework (paragraph 122). 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 and the development on the land is optimised in line with the Framework which is particularly important given the national housing crisis and the District's inability to demonstrate a five year housing land supply.

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

6.45 This limb of the reason for refusal, is therefore not justified.

#### **Compliance with Development Plan Taken as a Whole**

6.46 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.

6.47 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.

6.48 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.

- 6.49 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.
- 6.50 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.
- 6.51 For applications involving the provision of housing and where local planning authorities cannot demonstrate a five year supply of deliverable housing sites, footnote 7 to the NPPF is clear that relevant Development Plan policies should be regarded as out of date.
- 6.52 The application should 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.
- 6.53 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). 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 tilted 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).

- 6.54 In relation to this appeal, 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.
- 6.55 The appeal proposals have 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, 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 Bellway Homes’ 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. The Inspector in respect of the Skegby appeal gave the provision of housing considerable weight in favour of the proposals. 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.

- 6.56 The government has a clear objective to significantly boost the supply of homes (NPPF, paragraph 59). 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 73). The application 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.
- 6.57 It is material that the 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 need cannot be met within its out of date settlement boundaries, meaning greenfield sites will need to be released.
- 6.58 The site is a logical extension to the town and is well contained on three sides by the existing urban area 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 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.

6.59 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).”*

6.60 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 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 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 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 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.

6.61 As discussed in further detail above, 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 accompanying Landscape and Visual Assessment 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. Below, this Statement demonstrates that the impacts in terms of highways, flood risk, archaeology, noise, air quality can also be mitigated effectively.

- 6.62 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 development's primarily social and economic benefits, including the provision up to 300 dwellings, with a policy compliant provision of 10% affordable housing. As such, the appeal should be allowed.

#### Other Technical Issues

- 6.63 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 design, layout and appearance will form part of a future reserved matters application.
- **Construction Phase:** Some local residents have 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 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.

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. The junction is already equipped with MOVA, however 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 (Section 7 of this Statement sets out the proposed S106 Heads of Terms in line with 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.





## 7.0 SECTION 106 HEADS OF TERMS

7.1 Planning obligations can only be a requested provided that it is necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. As is set out in the Council's Committee Report, the appellant intends to enter into a Section 106 Agreement in order to secure the following:

- Primary Education: £1,297,296
- Secondary Education: £1,146,000
- Healthcare: £162,562
- Public Open Space: £600,000
- Built Sport Facilities: £258,000
- Bus service: £90,000
- Bus stops: £28,000
- Sustainable Transport: £20,000
- Libraries: £10,571,00
- Biodiversity: £134,300
- Highways - Sustainable Transport: £130,000
- 10% Affordable Housing
- Monitoring Contribution: £2,500
- Travel Plan

7.2 Notably, at the time of submission, Nottinghamshire County Council (NCC) outlined with respect to the requested Primary and Secondary School Education contribution that, based

on current pupil forecasts, there is a projected surplus within the planning area. However, NCC has been consulted on a number of planning applications, which it is deemed would result in a shortfall of places and so the Council requested full primary and education contributions be provided as part of the proposals. The appellant accordingly requests that the requirement for the education contributions be reappraised at the time of the appeal decision to ensure that their requirement is valid. Indeed, the obligation must pass the Community Infrastructure Levy (CIL) tests i.e: a) necessary to make the development acceptable in planning terms; b) directly related to the development; and c) fairly and reasonably related in scale and kind to the development.

7.3 Similarly, the appellant would also welcome consideration as to the validity of the requirement for 10% affordable housing provision. The appeal site is located in the West Notts area within the context of the saved Local Plan for the District, whereby Policy HG4 seeks 6% affordable housing on housing development of 25 dwellings or more. The Council has sought a 10% provision in this instance based on their interpretation of Paragraph 64 of the NPPF, albeit they notably do not have a specific Development Plan Policy requiring such a level of provision.

## 8.0 OVERALL PLANNING BALANCE AND CONCLUSIONS

- 8.1 The site subject to this appeal extends to approximately 10.31ha and is located on the western edge of Sutton-in-Ashfield, in a highly sustainable location. The site is currently a greenfield agricultural site, formed by two large fields. The site is well-contained, being surrounded by existing residential development on three sides to the east, west and south and the former restored colliery site at Brierley Forest Park (a Local Wildlife Site/Local Nature Reserve with public access and recreational facilities) to the north. Ashland Road West runs along the site's southern boundary.
- 8.2 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.
- 8.3 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).
- 8.4 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.
- 8.5 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.

8.6 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. As such, the appeal should be determined in accordance with the tilted balance at NPPF paragraph 11 d) ii).

8.7 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 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 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 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.

8.8 Turning to the various limbs of the reason for refusal, in terms of character and appearance, 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. 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. This limb of the reason for refusal is therefore not justified.

- 8.9 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). The ecological work undertaken by the appellant was assessed by an independent ecological consultant commissioned by the Council, and ultimately confirmed acceptable. Any ecological harm can be adequately mitigated, and in accordance with NPPF paragraph 175(a) should therefore not be refused in ecological terms. This limb of the reason for refusal is therefore not justified.
- 8.10 In terms of density, the efficient use of land is supported by the Framework (paragraph 122). 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 and the development on the land is optimised in line with the Framework which is particularly important given the national housing crisis and the District's inability to demonstrate a five-year housing land supply. This limb of the reason for refusal, is therefore not justified.
- 8.11 Overall, 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 and ecology. However, as demonstrated above, any limited harms can be adequately mitigated against. Further, impacts in terms of highways, flood risk, archaeology, noise, air quality have also been demonstrated to be acceptable and can be mitigated effectively, where required.
- 8.12 Therefore, 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. As such, the appeal should be allowed.



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