
Appeal Decision

Inquiry held on 14 – 16 January 2025

Unaccompanied site visits made on 13, 15 and 16 January 2025

by David Spencer BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11/02/2025

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

Land at junction of Newark Road and Coxmoor Road, Sutton-in-Ashfield, Nottinghamshire.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Hallam Land against the decision of Ashfield District Council.
 - The application Ref V/2022/0629 is dated 12 August 2022.
 - The development proposed is an outline application (with all matters reserved except access) for a residential development of up to 300 dwellings with associated infrastructure and landscaping.
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Decision

1. The appeal is allowed, and planning permission is granted for an outline application (with all matters reserved except access) for a residential development of up to 300 dwellings with associated infrastructure and landscaping, at Land at junction of Newark Road and Coxmoor Road, Sutton-in-Ashfield, Nottinghamshire, in accordance with the terms of the application reference V/2022/0629 and the conditions set out in the schedule attached to this decision.

Application for costs

2. At the Inquiry an application for costs was made by Hallam Land against Ashfield District Council. This application is the subject of a separate Decision.

Procedural Matters

3. Whilst matters of appearance, landscaping, layout and scale would be reserved for future determination, the proposal was accompanied by an illustrative masterplan, showing approximately one third of the site would remain open space, in a scheme of up to 300 dwellings. As part of the appeal a further iteration of this illustrative masterplan¹ has been produced to demonstrate that attenuation basins as part of a sustainable urban drainage system could be accommodated to avoid that part of the site which is a former landfill area whilst retaining a broadly similar illustrative layout for the areas of built development. During the Inquiry conditions were proposed that would require the preparation of reserved matters to be broadly in accordance with the revised illustrative masterplan and to commit at this early stage to avoiding the former landfill area for drainage basins. The revised illustrative masterplan would not fundamentally alter how the development would come forward, and

¹ Drawing EMS2254_120_D_01 Illustrative Masterplan (Drainage Option)

the Local Planning Authority (LPA) would retain control over the details of the final layout in any event. Accordingly, I have had regard to the revised illustrative layout in considering the proposed conditions and consider no-one would be prejudiced by my doing so.

4. Since the appeal was lodged, the National Planning Policy Framework (NPPF) was updated on 12 December 2024. I am satisfied that the main parties have had an appropriate opportunity to consider the relevant updated national planning policy in preparing their evidence for this appeal including a Statement of Common Ground on Housing Land Supply (8 January 2025).
5. An executed agreement pursuant to Section 106 (S106) of the Town and Country Planning Act 1990 (as amended) and dated 27 January 2025 was submitted after the Inquiry event. The S106 agreement includes obligations concerning, amongst other things, community infrastructure (including education, health and libraries), affordable housing, bus service provision, household waste and sport and recreation. I return to the matter of the planning obligations later in this decision.
6. The appeal site can be observed from the public highway in Newark Road and Coxmoor Road, from points within the adjacent housing estate and from public footpaths that extend south of Searby Road. On this basis I did not consider an accompanied site visit to be necessary. Given the main issues in this appeal, particularly in relation to highway safety, I visited the area on several occasions, including at times to coincide with the evening and morning peak periods on the dates set out in the decision banner above.

Context and Main Issues

7. The application for outline planning permission for the appeal proposal was submitted in August 2022. No objections on technical matters were raised by statutory consultees during the application process, subject to the imposition of suggested conditions. The appeal proposal has generated significant levels of local objection, particularly from adjoining residential areas.
8. The appeal proposal was initially recommended for approval by officers in a report to the District Council's Planning Committee meeting on 31 July 2024. A decision was deferred at that meeting to obtain additional information in relation to ground contamination and water quality, sustainability of location (linking to impact on highway network) and effect on best and most versatile land. This appeal for non-determination was submitted shortly thereafter. The appeal proposal was returned to the Planning Committee at its meeting on 23 October 2024, where it was resolved that had the LPA determined the application it would have refused planning permission on five grounds.
9. On 17 December 2024, the LPA disclosed that, for various reasons², it had resolved to withdraw its putative reasons for refusal and withdraw their objection to the appeal proposal³. Nonetheless, appreciable local objection to the scheme remains. The five reasons for refusal promulgated at the 24 October 2024 Planning Committee meeting closely align with matters of local

² Additional survey work from the appellant submitted during the appeal and the associated Contaminated Land Officer's response addressed putative reason #4 and the resultant re-balancing in the context of the tilted balance at NPPF paragraph 11d) together with "...having regard to the December 2024 NPPF".

³ CD16.12

concern. As such, and notwithstanding the LPAs final formal position, they remain the main issues for this appeal.

10. The main issues in this appeal are as follows:

- (1) Whether a Sustainable Location.
- (2) The effect on the character and appearance of the surrounding area.
- (3) The effect on best and most versatile agricultural land.
- (4) Suitability of the appeal site for the development proposed having regard to ground conditions and risks arising from contamination.
- (5) Effects on the safety and performance of the local highway network with particular reference to the proximity of the Newark Road level crossing.

Reasons

The Development Plan and planning policy context

11. The development plan at the appeal location comprises the Ashfield Local Plan Review 2002 (ALPR), which has a plan period to 2011. The appeal site is outside of, but adjacent to, the main urban area for Sutton-in-Ashfield as identified in the ALPR. It is countryside for the purposes of planning policy in the ALPR. Consequently, the proposal would be contrary to Policies ST4 and EV2 which seek to control development outside of the main urban areas other than to sites allocated for development in the ALPR or where they constitute "appropriate development" for a countryside location (as set out in Policy EV2).
12. The ALPR significantly predates the 2012 NPPF and subsequent iterations, including, amongst other things, up-to-date methodologies to establish the housing need. Moreover, at various points, policies in the ALPR do not reflect the need for a balanced approach to decision-making consistent with current national planning policy, including Policy ST1 as the overarching development management policy. This means Policy ST1 is out-of-date.
13. There is no dispute that prior to this appeal being lodged and having taken account of the updated 2024 NPPF and the latest 2023 Housing Delivery Test (HDT) results, there is not a five year supply of deliverable housing land⁴. Against the latest requirements in the NPPF, and even when recognising improvements against the HDT such that a 5% buffer is applicable, the Local Planning Authority (LPA) agrees it can demonstrate no better than a 3.66 years deliverable supply. The appellant advocates that the figure should be lower at 3.34 years, identifying four sites it submits do not meet the NPPF definition of 'deliverable'. Either way, a significant shortfall in deliverable land to meet local housing needs has arisen. The means Policies ST4 and EV2, as key policies for managing the spatial pattern of development to meet local needs, are also out-of-date.
14. The starting point for decision-making remains the development plan. Whilst policies which are most important for determining this proposal are out-of-date, that does not mean they, and any conflict with them, would be of no weight. Nonetheless, it does mean that the tilted balance at paragraph 11(d) of the NPPF applies in this appeal. This means that planning permission should be

⁴ CD9.8 Five Year Housing Land Supply Statement of Common Ground (signed 7 & 8 January 2025).

granted unless the harms arising from the appeal proposal significantly and demonstrably outweigh the benefits.

15. The District Council has spent some time preparing a new Local Plan during which the appeal site has been initially considered but not proposed for allocation. The examination of the emerging Local Plan (the eLP) is ongoing, but the plan examiners have recently identified soundness concerns around a shortfall in meeting the housing need and the approach to site selection. The District Council has responded to the eLP examiners indicating that, whilst it contests their initial findings, they will nonetheless seek to address the matters subject to the outcome of a committee meeting⁵. This could include identifying additional sites for allocation. As such there currently remains appreciable uncertainty around how and when the eLP would be adopted. Therefore, I give only very limited weight to the eLP as a material consideration.

Main Issue 1 – Whether a Sustainable Location?

16. Sutton-in-Ashfield is identified in the ALPR at the top of the settlement hierarchy and a focus for growth during the plan period to 2011. The eLP similarly identifies Sutton-in-Ashfield as one of 3 main urban areas assigned to accommodate the largest scale of growth, reflecting its sustainability credentials⁶. The appeal site is located at the south-eastern edge of the town. There are some facilities within a desirable walking distance of the site, including a local convenience store, a pub and local employment. Other facilities are further afield within the town including schools, medical facilities and Sutton Parkway train station. These are within a recognisable maximum walking distance of up to 2,000 metres⁷, accessible via connecting routes of a good standard for pedestrians. Sutton-in-Ashfield town centre is just beyond a maximum regular walking distance but there is a convenient route via Newark Road and Station Road directly into the town centre, including safe facilities to cross the A38. It is not inconceivable that future occupiers of the appeal proposal would walk to the town centre.
17. In terms of cycling, the appeal site is within readily cyclable distances⁸ to various employment areas, Sutton Parkway train station, the Kings Mill Hospital and facilities across Sutton-in-Ashfield (and parts of Kirkby-in-Ashfield and Mansfield). There is the ability for the appeal proposal to be safely connected along Newark Road to the existing shared foot/cycle path along Kirkby Folly Road which extends towards Sutton Parkway station. Furthermore, the appeal proposal would include off-site highway works that would allow for safer cycling connectivity across Coxmoor Road to link to the cycle path along Hamilton Road towards Mansfield and the Oakham Business Park. Cycling into the centre of Sutton-in-Ashfield would be within a built-up urban environment where on-road cycling is to be expected, generally along wide and well-lit roads within a 30mph speed limit. Overall, the appeal location offers a good prospect of facilitating a reasonable degree of modal shift onto cycle.
18. At present various bus services call at existing stops on Kirkby Folly Road a moderate distance to the west of the appeal site. Some of these bus stops are good quality and have real time information displays, which would encourage

⁵ ID4

⁶ CD6.1, proposed Strategic Policy S1 'Spatial Strategy to Deliver the Vision'

⁷ Guidelines for Providing for Journeys on Foot, Institution of Highways and Transportation 2000, Paragraph 5.1 and Figure 1, David Cummins Proof of Evidence.

⁸ Applying a prudent 5km radius.

patronage. I accept the Kirkby Folly Road bus stops would be some distance from parts of the appeal site but nonetheless they would be within an acceptable walking distance.

19. Whilst buses have been recently withdrawn (August 2023) from those stops on Sotheby Avenue and Searby Road closest to the appeal site, dialogue with Nottinghamshire County Council (NCC)⁹ has identified various options to establish or reintroduce a bus service within or closer to the appeal site and other measures to encourage bus use. This would be advantageous for encouraging further modal shift. Whilst there is some local scepticism about whether the sum offered would be sufficient to subsidise bus services over a necessary period of time it is nonetheless the figure appears to have been developed collaboratively with NCC as the public transport authority, using their modelling¹⁰. I deal with the planning obligation separately below, but I am satisfied, in considering this main issue, that whilst the site is only slightly removed from the existing bus network there are reasonable options to alter or extend services closer to or into the site. As such there is legitimate scope to encourage bus use as an alternative to the car at the appeal location to access services and employment.
20. The appeal site is close to Sutton Parkway train station, which provides regular direct services to Nottingham (approximately 30 minutes) and Mansfield (approximately 6 minutes). The station is within a reasonable walking distance from all parts of the appeal site and within an easy cycling distance, including via the shared path along Kirkby Folly Road. Whilst there is some existing cycle parking at the station, the appeal scheme proposes to fund improvements to this. The site's proximity to this station means the appeal proposal is very well located for train travel, further reducing reliance on the car.
21. There is some concern regarding the proposed foot/cycle connection from the appeal site into Searby Road and potential for anti-social behaviour. Whilst fear of crime is a legitimate consideration, there has been no objection to the proposal from the Police¹¹. There would be appreciable benefit in enhancing permeability from the proposed development via this connection, including to local bus stops, the local convenience store, and The Junction pub. There is no substantiated evidence that this proposed link would result in crime and disorder that would undermine the quality of life or community cohesion and resilience in this part of Sutton-in-Ashfield.
22. In conclusion, there would be a genuine choice of transport modes for future occupiers of the proposed development which would reduce reliance on the car. Active travel and using the local buses and nearby train station could be encouraged through a Travel Plan for the development, secured by way of a condition. Locationally, the appeal site would be contrary to ALPR Policy ST4 by virtue of being outside of but adjoining the main urban area boundary for Sutton-in-Ashfield established 22 years ago, but that does not mean it would be an unsustainable location for the development proposed. The appeal proposal would readily integrate within the main urban area of Sutton-in-Ashfield, one of the largest settlements in the district, with good services, frequent buses, train station with regular services and a good network of

⁹ Appendix B to David Cummins Proof of Evidence – Dialogue with NCC Transport and Travel Services Team – November 2024

¹⁰ Appendix B to David Cummins Proof of Evidence, paragraphs 3.16-3.19

¹¹ CD2.10

footway and cycle paths. The location of appeal proposal would not be at odds with the need to secure sustainable patterns of development. The location of the appeal proposal would be in accordance with NPPF paragraphs 109, 110, 115 and 118 which collectively seek to manage patterns of growth to promote sustainable transport, including by focusing significant development on locations which are or can be made sustainable. The proposal would also accord with NPPF paragraph 117 in terms of giving priority to pedestrian and cycle movements and facilitating access to high quality public transport.

Main Issue 2 – Character and Appearance

23. The appeal site comprises two arable fields generally bounded by hedgerows. A solitary mature tree stands within the larger of the two fields and is proposed to be retained within open space. Whilst I recognise, the fields provide an open outlook and generic countryside setting to the existing housing at this edge of Sutton-in-Ashfield, in terms of landscape character and qualities, there is very little to set the appeal site apart from ordinary, undulating farmland redolent of the host Lindhurst Wooded Farmlands landscape (part of the Sherwood Policy Zone (SPZ11) within the wider Sherwood Regional Character Area)¹².
24. To the north and west of the appeal location, the wider urban agglomeration of Sutton-in-Ashfield with neighbouring Kirkby-in-Ashfield and the fringes of Mansfield exert a strong influence on the character and setting of the appeal location. Other urbanising features in the landscape include the street-lit Newark Road and Coxmoor Road and the cluster of housing around the Sherwood Observatory to the south of the appeal site. Accordingly, in many perspectives, the appeal proposal would be experienced as a logical extension to the built form of the town and not as a stark or disparate intrusion of development into wider countryside. Some of the more distinctive landscape features such as the pronounced rise in the land close to the Coxmoor Road boundary and large lengths of the boundary vegetation could be retained through the detailed layout and landscaping at the reserved matters stage. Approximately one third of the appeal site is proposed to be retained as open space. This would assist in assimilating the proposed development into its landscape context.
25. Overall, there is little before me to conclude other than the landscape at the appeal site has a low to medium sensitivity. There would be a loss of characteristic farmland but that would amount to no more than a limited landscape harm, commensurate with the development of any ordinary, intensively managed arable farmland.
26. Turning to visual impacts, these are mixed. On the one hand, the loss of open farmland would be keenly experienced from various dwellings which back onto the site, from viewpoints from within the streetscene of Searby Road, Harby Avenue and Barnhill Gardens, and from the public right of way immediately along the western boundary of the site. With landscaping and some intervening open space, the initially intrusive presence of development would significantly soften over time. In many of these perspectives, existing residential development is already dominant in the foreground. Nonetheless, there would remain a notable residual loss of the sense of looking out from

¹² CD1.38 LVIA paragraph 4.14 “intensive arable farming in large geometric fields”, “gently undulating topography” and paragraph 4.17.

within the built-up area to the countryside beyond. I consider these residual visual impacts to be moderately harmful.

27. Within the wider landscape, the topography means the appeal site is largely within a shallow bowl. Consequently, from the public rights of way further to the south (including on Windmill Hill) and over to the west, the appeal proposal would not be prominent, due to intervening ridgelines. As such there would be no harmful visual impact on those experiencing these more rural footpaths in the countryside.
28. Hedging around the site is of variable quality, with the hedgerow along Coxmoor Road gappy in places. Accordingly, the thinness of vegetation does allow for panoramas down and across the site from the elevated position of Coxmoor Road. These can be fleetingly glimpsed from within moving traffic. There is a narrow footway along the eastern side of Coxmoor Road (i.e. not along the appeal site boundary) extending up to the observatory. From my observations, possibly due to the proximity and speed of passing traffic, this footway is not a heavily used or an attractive route for those on foot. Nonetheless, any pedestrians moving slowly along this path can appreciate intermittent views through hedgerow gaps across the appeal site, albeit with existing housing clearly forming the immediate backdrop. Additional landscaping along the Coxmoor Road boundary would significantly reduce the visual impact of the proposed housing. Moreover, were the detailed layout to follow the indicative masterplan, housing set back from Coxmoor Road would be on lower lying land, further reducing the degree of visual impact from this perspective. Overall, I do not consider the residual visual impact from Coxmoor Road, once landscaping was established, would be significantly harmful.
29. The proposed principal access would be achieved from Newark Road. This would require vegetation removal along this boundary and along part of Coxmoor Road. From my observations, Newark Road is characterised as a main road with streetlights and footway. Various urbanising features exist at this location. This includes the current junction with Coxmoor Road at the north-east corner of the appeal site which is signal light controlled with numerous signs. On the opposite side of Newark Road to the appeal site are large industrial units. Whilst there is some vegetation screening these units, their scale and utilitarian appearance means they are a prominent feature in that part of the street scene at the proposed access. Whilst the loss of existing boundary hedging would be moderately harmful in landscape and visual terms in the short to medium term, there is no reason why replacement landscaping would not readily filter the visibility of the housing within a relatively short period of time and reinstate a predominantly verdant site frontage. Again, if adhering to the indicative masterplan, the housing could be set back from Newark Road as part of detailed consideration of layout at a later stage, further limiting any visual impact. Whilst the proposed junction and resultant views into the appeal proposal from this perspective would introduce further change into this part of Newark Road, I do not consider it would be significantly harmful to the character or appearance of what is already a predominantly urban context.
30. I therefore conclude that the loss of open countryside at the appeal site would result in a limited degree of landscape harm and moderately harmful visual impacts from a number of perspectives. As such, the proposal would be

contrary to Policy ST1 of the ALPR which requires that development will not adversely affect the character, quality and amenity of the environment. NPPF paragraph 187b states that decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside. As set out above, the appeal site is at the edge of the host landscape area at a point where there are only limited landscape attributes of note. Development would not affect more sensitive parts of the landscape such that any harm to the intrinsic character and beauty of the countryside in this part of Ashfield and would be limited and very localised.

Main Issue 3 – Agricultural Land Quality

31. The site largely comprises Best and Most Versatile (BMV) agricultural land, of which 19.2 hectares is Grade 3a. From the evidence before me¹³ it is clear that BMV, including land of a higher grade (Grade 2), has not been a constraint to identifying proposed housing allocations in the eLP. As the appellant's evidence¹⁴ demonstrates, any development to the north, east or south of Sutton-in-Ashfield would likely involve BMV land, albeit the appeal site at Grade 3a would constitute the lowest grade. As such the appeal site would reasonably fit into a wider pattern that to sustainably accommodate the District's housing need would inevitably require some BMV land.
32. Development on the appeal site would not render the wider agricultural holdings unviable, accounting for about only 5% and 1% of the two affected operations. The economic benefits of the land as Grade 3a BMV compared to what be realised were the appeal site a lower grade, in terms of yields and economic returns, are shown to be insignificant.
33. The NPPF does not preclude the loss of BMV land but does require at paragraph 187b) that the economic and other benefits of BMV are recognised. This was addressed as part of the planning application¹⁵ and has been comprehensively dealt with by the appellant for this appeal. Accordingly, for the reasons set out above, I conclude that only a very limited economic harm would materialise from the loss of BMV at the appeal site.

Main Issue 4 – Ground conditions and risk from contamination

34. Part of the appeal site (circa 4.75ha) was a former sand extraction pit which is now in agricultural use as arable farmland. The pit was infilled during the early 1980s under licence for inert construction waste. The site is not identified by Ashfield District Council in its 2006 Contaminated Land Study as Part 2a contaminated land¹⁶. Nonetheless, there is considerable local anxiety that the licence was infringed, and as such the infill area is likely to harbour unlocated contaminants resulting in harm to the human health of existing and future residents and to the local environment, including potential contamination of underlying groundwater resources and local watercourses.
35. Given the known landfill activities, there have been various assessments of this part of the site. Whilst the assertions of the licence infringement rely on anecdotal evidence, in contrast, the various exploratory work and analysis undertaken reveal that that there is very little to demonstrate that the licence

¹³ CD11.2 eLP Background Paper 5 – Analysis of Constraints

¹⁴ CD16.2 Tony Kernon Proof of Evidence paragraphs 6.20-6.23

¹⁵ CD1.39 Soils and Agricultural Quality Report

¹⁶ Under the Environmental Protection Act 1990

- was unacceptably contravened, including no evidence of asbestos containing materials or of putrescible or domestic material.
36. The approach to understanding any contamination risk for outline planning applications is set out at paragraph 33-008-20190722 of the Planning Practice Guidance (PPG) and says. "The information sought should be proportionate..... but before granting outline planning permission a local planning authority will, among other matters, need to be satisfied that: it understands the condition of the site and that it has sufficient information to be confident that it will be able to grant permission in full at a later stage bearing in mind the need for the necessary remediation to be viable and practicable."
37. The evidence accompanying the planning application included a Phase 1 report (February 2022)¹⁷ together with earlier reports on permeability and ground gas. This assessment was prepared by a competent person as required by NPPF paragraph 196c). Neither the District Council's Contaminated Land Officer or the Environment Agency advised of any deficiency in the scope, approach and conclusions of the Phase 1 report. Both consultees advised that outline planning permission could be granted subject to conditions to ensure no unacceptable risk to the environment or public health. This follows established guidance to first identify and assess if there would be an unacceptable risk, and then to assess what remediation options are suitable to manage the risk. This does not negate a requirement to look at the matter again once the detail of the scheme is worked up, to prepare a remediation strategy at that detailed stage and to undertake a verification process to demonstrate any required remediation has been effective.
38. Notwithstanding the previous advice of the Contaminated Land Officer and the Environment Agency, additional evidence has been presented as part of the appeal, including two reports prepared by ECE for a large regional housebuilder¹⁸. These were not commissioned by the appellant, nor were they requested by the Contaminated Land Officer or the Environment Agency as being necessary to meet PPG paragraph 33-008 as part of a proportionate evidence base for an outline planning application. Nonetheless the two ECE reports add further detail to the understanding of the potential contamination risk at the appeal site.
39. The ECE site investigation report is described as a "Phase 2" survey or report and had been prepared to inform a subsequent detailed scheme at the appeal site. Despite the somewhat contradictory comments of the Council's Contaminated Land Officer¹⁹ following their receipt, the two ECE reports reaffirm rather than invalidate the previous advice from the same officer and the Environment Agency earlier in the application process to impose standard, precautionary conditions in relation to potential contamination risk. Such conditions would require further assessment prior to construction, necessary safeguards if an unanticipated contaminant was discovered and further details on any piling.
40. In looking at the combined evidence for this appeal, including the two supplementary ECE reports, there has been significant intrusive survey work to

¹⁷ CD1.41, submitted to the LPA by the appellant on 14 November 2024

¹⁸ CD13.2 Geotechnical and Geo-Environmental Site Investigation Report 2022 (essentially a Phase 2 Report) & CD13.3 Hydrological Review and Groundwater Piling Assessment 2022

¹⁹ CD2.32, dated 29 November 2024

build a sufficiently robust picture of the potential contamination risk. Approximately 90 exploratory positions have been tested across the former landfill site area. This has confirmed a reliable picture of general compliance with the licence for inert waste.

41. Local expectations that further exploratory boreholes should be sunk at a density across the affected part of the site to eliminate the prospect of undiscovered contaminants before any outline planning permission be granted would not be a proportionate or justified approach. The test in the NPPF at paragraph 187e is that development ensures that any unacceptable risks from soil pollution are mitigated through appropriate remediation, rather than demonstrating zero risk.
42. In relation to the human health of future occupiers of the site, there is nothing in local or national planning policy that precludes housing on former landfill sites subject to appropriate safeguards. The evidence to this appeal demonstrates that the landfill licence was reasonably adhered to. The former landfill area has already been extensively capped²⁰ and has been used for safely growing food crops for some 40 years. The proposal to ensure a minimum 600mm of clean cover on the former landfill site area would provide a sufficient barrier for future residents. The appellant has also indicated that dwellings nearest to the former landfill site would be subject to a ground membrane and passive underfloor ventilation. I do not consider this an admission that the assessment of the former landfill area has underestimated gas risk. It would be a suitably precautionary approach, which has been accepted on former landfill sites elsewhere²¹.
43. Turning to potential water resource contamination, the evidence shows that there is a limited pathway between the former landfill area and groundwater. The appeal site is an appreciable distance from any potable water extraction locations²². Intrusive explorations across the site have rarely encountered water and where they do so the analysis appears to support that these are likely ephemeral pockets of surface water seepage rather than a groundwater body. The Environment Agency has not objected to the proposal but requests a condition be imposed with regards to any piling. Overall, I am satisfied that the appeal proposal does not pose unacceptable risk to groundwater quality.
44. In relation to surface water, local residents refer to the nearby River Maun. I am satisfied that the appellant has accurately considered the surface water hydrology at the appeal location. The site is some distance from the nearest part of the Maun and a tributary of the Cauldwell Brook. There is a drainage ditch on part of the western boundary of the site which connects into the sewer beneath Searby Road. The appeal proposal would reduce rainwater percolation into parts of the former landfill site thus reducing this potential pathway. Additionally, the proposed sustainable drainage system would positively manage and direct surface water at the appeal site including into the receiving ditch/drains. Whilst matters of layout would be reserved for future determination, the illustrative masterplan included attenuation ponds as part of the sustainable drainage system for surface water on part of the former landfill area. As part of the appeal, the appellant has demonstrated that there is

²⁰ CD13.1, paragraph 7.1.1 – generally significantly in exceedance of that required by condition in the 1980 planning consent for the landfill site.

²¹ CD7.29 & CD7.30

²² Mr Kitson-Boyce Proof of Evidence, paragraph 2.3.11

sufficient flexibility within the land budget to accommodate the ponds on parts of the site that were not former landfill. Notwithstanding, that layout would be a reserved matter, this is something which could be secured by condition as part of this proposal to provide further reassurance on this matter. Overall, I am satisfied that the appeal proposal does not pose unacceptable risk to surface water quality.

45. I have been referred to the 1998 report on the site prepared by Scott-Wilson²³, as the basis for adopting a more precautionary approach for contamination. The report identifies that 13 trial pits and 5 boreholes were investigated at that time. This confirmed the presence of inert materials as per the licence but also “..slightly contaminated materials were found in minor quantities in some of the exploratory holes.” The Scott-Wilson report also identified some slightly elevated readings of methane and carbon dioxide, concentrations of heavy metals and other metals marginally exceeding acceptable levels for garden/allotment use and “potential, albeit low-level risks to the eventual residents of the site and to the underlying aquifer.” The report goes on to say. “However, a number of engineering measures can be taken in order to reduce the risks further, to allow development to proceed with a high standard of environmental protection.”
46. The Scott-Wilson report does not conclude that contamination compromises the ability to develop the site. Where contamination is present²⁴ it is “only sporadically” and is “only slight”. It recommends solutions comparable to those now identified by the appellant. The Scott-Wilson report addressed groundwater noting that it was not encountered other than some limited seepage at depth in one borehole. Generally, it noted, the aquifer remains at some depth. In my view, the Scott-Wilson does not provide compelling evidence that the contamination risk at the appeal site has been underestimated or that the evidence in the appellant’s 2022 Phase 1 report was inadequate.
47. Overall, I conclude, that subject to the imposition of conditions, there would be no unacceptable risk to public health or the local environment from development on that part of the site that was formerly a landfill site. The proposal would accord with NPPF paragraphs 187e, 196 and 197 which states that development should only be prevented if it were to be put at unacceptable risk from unacceptable levels of pollution and to ensure that a site is suitable for its proposed use taking account of ground conditions and any risks arising from contamination.

Main Issue 5 – Highway Safety

48. The appeal proposal was accompanied by a Transport Assessment, which has considered the capacity and safety of the local highway network, in dialogue with NCC. Recent accident record data shows that the public highway in the vicinity of the appeal site is not a high accident area. Whilst there are queues at peak periods in the local highway network, including arising from the Sutton Junction level crossing, the principle remains that the assessment of the appeal proposal should be in relation to its effect on the network (as opposed to resolving existing problems).

²³ CD13.1 Geotechnical and Environmental Land Quality Audit Report August 1998

²⁴ CD13.1, paragraph 7.1.4 some materials that contravened the landfill licence but “only a minor constituent” and “encountered in minor quantities”.

49. Vehicular access to the site would be secured from Newark Road. Whilst the position of the new signalised junction would be close to the existing signalised junction at Coxmoor Road and Cauldwell Road there are no technical objections to the proximity of these junctions. Whilst my observations can only provide a snapshot, I observed that other than in peak periods, traffic on Newark Road and Coxmoor Road is generally modest. For very large parts of the day, I am satisfied that the proposed junction and volume of traffic generated by the appeal proposal would not result in any severe harm to the flow and safe operation of traffic on Newark Road or Coxmoor Road. This is reflected in the statement of common ground with the LPA²⁵.
50. A short distance to the north-west of the appeal site is the Sutton Junction level crossing close to the mini roundabout at the junction of Newark Road and Kirkby Folly Road²⁶. The barriers at the level crossing are controlled via CCTV coverage to ensure the track is clear in advance of an oncoming train. Whilst this has resulted in a good safety record it is a precautionary approach which generates longer barrier down times. The appellant's traffic modelling shows relatively low levels of traffic linked to the appeal proposal assigning through the level crossing. Where this would occur, the barriers are well-lit with warning signs and with sufficient highway capacity to queue west of the barriers for eastbound traffic. For westbound traffic, the crossing is highly visible over a good distance such that traffic can safely queue within Newark Road avoiding entry onto the Kirkby Folly Road mini roundabout. The highway environment either side of the level crossing is well-lit and within a 30mph speed limit. Taking this all into account I am satisfied that the development would not have an unacceptable impact on highway safety at the level crossing.
51. Residents and local representatives assert that the barriers are regularly down for up to 10 minutes resulting in long queues within the local road network. The appellant's survey evidence from 2017 and repeated in 2024 shows that the average barrier down time was a little over 3 minutes. There are some occasional outliers with significantly longer down times, but these appear to be exceptional rather than a regular occurrence. On the multiple times I visited the appeal location, the barrier down time aligned with the appellant's evidence of an average of 3 minutes. There are generally 30 barrier closures in the 12-hour period between 7am and 7pm. Accordingly, there are extensive periods when the barriers are up and traffic flows on Newark Road and Kirkby Folly Road are unconstrained.
52. It is evident that the level crossing down time is particularly impactful on local traffic flows in the PM peak period. The mini roundabout at the Newark Road and Kirkby Folly Road junction has segregated lanes on both these arms. Whilst this enables traffic avoiding the level crossing to continue to flow for a period, I observed that the left-hand filter lane on the Newark Road approach for ahead traffic wishing to cross over the level crossing will become full within 3 minutes in the PM peak such that traffic can queue back on Newark Road up to and slightly beyond the Searby Road junction. Whilst I accept these peak period queue lengths are frustrating, there is no persuasive evidence that they are generating a highway safety issue. The evidence before me from the

²⁵ CD9.1, paragraphs 8.57-8.59

²⁶ There have been no accidents at the level crossing in the 24 years for which data is available. Paragraph 10.13 David Cummins Proof of Evidence

- appellants traffic counts and forecast trip assignment demonstrates that the appeal proposal would load relatively little additional traffic in the PM peak period towards the level crossing (an additional 3.3% increase on existing²⁷).
53. The appellant, in consultation with NCC, has assessed and modelled the Newark Road and Kirkby Folly mini-roundabout junction to understand the impact of the development. The evidence shows the junction operating well within capacity during the AM peak period with the appeal development in place. In the PM peak period additional traffic associated with the appeal proposal would exacerbate this junction which would be operating at overcapacity in any event (as observed above).
54. Consequently, as part of the appeal proposal, the appellant proposes off-site highway improvement works to the Kirkby Folly Road mini roundabout. This has been subject to an independent road safety audit and agreed with NCC. Judging by the crumpled kerbs at this location, the proposal to modestly increase the flare length and entry widths at this junction would appear to present some beneficial effects in reducing forecast queue lengths as modelled. Whilst the junction would still operate overcapacity (as existing), the proposed mitigation means the appeal proposal would not worsen this situation and could offer some modest betterment compared to what would exist without the appeal proposal. Additionally, whilst the crossing closure results in queues forming over time on Newark Road and Kirkby Folly Road, I observed that these very quickly dissipate once the barriers go back up, including in both the AM and PM peak periods
55. Neither Network Rail nor NCC as the Local Highway Authority (LHA) object to the appeal proposal on highway safety grounds because of the proximity of the level crossing. The assertions that the LHA is not sufficiently resourced to properly scrutinise the highway impacts of the appeal proposal is not borne out by the level of evidenced engagement during the two years prior to the application being reported to Members. Overall, the appellants transport assessment has enabled the likely impacts of the proposal to be appropriately assessed, in accordance with NPPF paragraph 118.
56. In summary, I do not consider the appeal proposal's proximity would be detrimental to highway safety either on the approach to or at the Sutton Junction level crossing. Whilst there are currently momentary queues in peak periods generated by the crossing, it is clear the appeal proposal would not materially worsen this situation to an extent that the impact on the road network would be severe.
57. A footway and cycleway are proposed along the southern side of Newark Road connecting the appeal site to the existing shared path along Kirkby Folly Road. It would need to cross the current junction mouth with Searby Road, requiring the give way markings at this junction to be set back and for the cycle lane to take priority. Newark Road and Searby Road are both within a 30mph speed limit at this point with good street lighting. As part of the appeal proposal the 30mph speed limit would be extended further east to encompass all of Newark Road as far back as the Coxmoor Road traffic lights.
58. A detailed plan showing this arrangement at Searby Road and the visibility splays has been produced for the appeal. It shows that the necessary visibility

²⁷ At 2032 without development. Based on a distribution and assignment process agreed with NCC.

splays can be secured in accordance with the recommended distances for 30mph as set out in 'Manual for Streets'. Whilst there is a hedge to the side of No.1 Searby Road, I am satisfied from my observations on site, that this would not impede the necessary visibility for the highway conditions. As such I do not find the proposed cycle lane at this location and the resultant set back of the Searby Road junction with Newark Road would result in an unacceptable impact on highway safety.

59. As set out above current traffic flows on Newark Road can be appreciable during the peak periods. The appeal proposal would very modestly add to this. The westbound flow of traffic on Newark Road at the appeal location is already affected by the signalised junction at Coxmoor Road. The proposed signalised junction for the appeal site would have a similar effect in terms of creating pulses of traffic flow. This would result in gaps in westbound traffic to allow Searby Road vehicles to safely exit. The appellant's transport assessment evidence, accepted by the LHA, shows that eastbound queue lengths from the appeal site junction would not, on the whole, extend as far back as the Searby Road turn, such that exiting this junction would not be severely impacted.
60. Photographic evidence is provided of a queue of five cars at the Searby Road from Councillor Relf, which I was told was an image taken in the AM peak period. From my observations in the AM peak period, I predominantly observed only a single car queuing at this junction. Only on one occasion did I observe a queue length of four cars. This queue quickly dispersed in one go during an available gap in traffic flows on Newark Road. Whilst my visits to the appeal location are only snapshots, they nonetheless feed into my overall assessment that the appeal proposal would not have an unacceptable impact on highway safety or capacity at the Searby Road and Newark Road junction.
61. Overall, I conclude that the appeal proposal would not have an unacceptable impact on highway safety, with particular reference to the proximity of the Newark Road level crossing. The appeal proposal would accord with Policy ST1 of the ALPR in that there would be no adverse effect on highway safety, or the capacity of the transport system. The appeal proposal would accord with paragraphs 109, 115, 117 and 118 of the NPPF. There is no reason to refuse the appeal on highway grounds as set out at paragraph 116 of the NPPF.

Other Matters

Flood Risk

62. Neither the Environment Agency (EA) nor the Local Lead Flood Authority (LLFA) objected to the appeal proposal, subject to the imposition of conditions. The entire site is within Flood Zone 1 (an area with the lowest risk of flooding)²⁸.
63. Given its location within a shallow bowl landform, the appeal site is not the receptor for a significant surface water catchment area. Exploratory work on the appeal site has uncovered a land drain on an alignment that coincides with latest EA surface water mapping which shows a small sliver of low level surface water flooding across part of the appeal site. The evidence²⁹ shows that this rudimentary, unjointed land drain is heavily silted and currently ineffective. This may explain overland water flows that have scoured the field. As shown in the proposed land drainage strategy in the appellant's Flood Risk Assessment,

²⁸ Confirmed in CD9.1 Statement of Common Ground at paragraph 8.54

²⁹ CD16.21 Flooding and Drainage Technical Note, RLRE (January 2025)

the appeal proposal would allow for this drain to be replaced and upgraded including better arrangements for future maintenance including de-silting. Additionally, features to receive and manage surface water at the southern edge of the site would be incorporated to intercept any potential external overland flows. As such, any minor surface water flooding on the site would be addressed and any risk to nearby properties reduced compared to the current situation.

64. It is a requirement that development of the site does not result in run-off rates greater than those currently experienced on this greenfield site, including making an allowance for climate change. As per NPPF paragraph 181 development of the site should not increase the risk of flooding elsewhere. In this regard the appeal scheme proposes to incorporate a sustainable urban drainage system (SUDS), as encouraged by national planning policy. The technical evidence at this outline stage demonstrates that sufficient attenuation basins could be accommodated to hold the forecasted surface water volumes on site and release them at an appropriate rate so as not to overwhelm the receiving drainage network. The precise locations and form of the drainage system would be matters of detail for separate determination at a later stage. In principle, there is a feasible and acceptable approach to surface water, which could be secured by condition. Consequently, the proposed SUDS solution would significantly reduce flows from the site compared to the current situation, including during higher category storm events.
65. The proposed foul water strategy in the Appellant's Flood Risk Statement and Outline Drainage Strategy would be to discharge flows via the existing public sewer on Searby Road. There is no persuasive evidence that the existing sewer network or water treatment works do not have sufficient capacity to accommodate the appeal proposal. Whilst the matter has been the subject of much consideration during the course of the planning application, ultimately there was no objection from Severn Trent Water to connect the development into the foul sewage network subject to a condition requiring further details³⁰.
66. Flooding has affected various properties close to the appeal site. There are relatively few details before me as to when these incidents occurred and whether they are directly related to run-off from the appeal site or have arisen because of other factors. As set out above various measures are proposed to reduce surface water run-off once the development is in place compared to what currently occurs in its undeveloped state, including making an allowance for climate change. This has been accepted by the LLFA.
67. Overall, I conclude the proposal would not increase the risk of flooding elsewhere and would appropriately incorporate sustainable drainage systems. The proposal would accord with NPPF paragraphs 181 and 182.

Biodiversity

68. The site has no statutory biodiversity designations. It is predominantly intensively farmed arable land. It is bounded by hedgerows of variable quality. Whilst the site connects into wider countryside to the south, it is adjoined by housing development to the west, industrial units north of Newark Road and housing to the south-east along Coxmoor Road. Additionally, both Newark Road and Coxmoor Road have street lighting and carry variable levels of traffic.

³⁰ CD2.29a dated 5 July 2024

As such there are various existing factors which cumulatively limit the ability of the site in biodiversity terms.

69. Whilst there are concerns from local residents that species of interest/concern in the locality, including red and amber list bird species, could be adversely affected, neither the Council's Ecology Officer nor Natural England have raised concerns regarding any significant ecological impacts. Various mitigation measures could be incorporated within the appeal proposal. Whilst arable farmland would be lost, extensive, similar habitat to the south would remain unaffected. The veteran tree on the site would be retained as would hedgerows to the south and west of the site. Elsewhere, the appeal proposal provides scope to augment the vegetated boundary along Coxmoor Road and to create new significant areas of open space and landscaping, which if laid out as shown on the illustrative masterplan would provide corridors for wildlife. Notably, attenuation basins for the drainage system present opportunities for biodiversity as recognised at paragraph 182 of the NPPF. The details of the extensive green infrastructure across the site would be part of the reserved matters for layout and landscaping.
70. The application preceded the statutory requirement to secure biodiversity net gain (BNG). Nonetheless, it has been calculated that a degree of BNG would be secured that would exceed the minimum 10% uplift using the latest DEFRA metric³¹. The baseline of the site reasonably records it as having a low ecological value. Overall, I find the BNG calculations to have been reasonably calculated. Conditions could be imposed to ensure BNG is secured. As such the BNG gain, which is not a statutory requirement for the scheme, would be a modest environmental benefit weighing in favour of the appeal proposal.
71. Overall, in respect of biodiversity, the appeal proposal would not conflict with Policy ST1 of the ALPR. It would accord with NPPF paragraph 187d) in terms of minimising impacts on and providing net gains for biodiversity and incorporating features for priority species such as bats, swifts and hedgehogs.

Planning Obligations

72. The final signed S106 dated 27 January 2025 was submitted shortly after the Inquiry event. It is constructed as a Deed. It would place various obligations on those with an interest in the land. I am required to consider whether these obligations would meet the necessary lawful tests³². Were I to conclude that they do not, the S106 contains a provision that any such obligations are not binding and would not be taken into account in this decision.
73. The proposed 10% affordable provision would exceed the 6% set out in development plan policy for this part of the district. However, that policy is of considerable age and no longer reflects the pressing demand for affordable housing that now exists in the district. I understand the eLP is seeking a higher percentage, but that policy remains to be examined and is not yet a requirement. The proposed 10% provision would be consistent with other recently approved residential schemes in the district. The S106 contains provisions to secure an appropriate tenure mix for the affordable housing and a fallback mechanism of a financial contribution should a registered provider not

³¹ Appendix 6 to Gary Lees Proof of Evidence, Statement from RammSanderson Ecology Ltd – 11.81% in habitat terms and 19.01% for hedgerows.

³² Community Infrastructure Levy Regulations 2010 – Regulation 122(2) – repeated at NPPF paragraph 58

come forward within a reasonable period of time. Overall, the obligation to provide 10% affordable housing would meet the necessary tests and ensure the proposal would accord with Policy HG4 of the ALPR and NPPF paragraph 66.

74. In respect of health, the Council's CIL Compliance Statement sets out how the obligation for a financial contribution of £541.88 per dwelling would meet the relevant tests, when applying formula from the Nottingham and Nottinghamshire Integrated Care Board (ICB)³³. The ICB has identified options to accommodate the additional patient demand at nearby medical centres in Sutton-in-Ashfield, which are reasonably related to the appeal site, all of which are currently operating at capacity. Accordingly, I find the obligation would meet the relevant tests and so I have taken it into account.
75. NCC have sought financial contributions towards secondary education provision. At present there is no dispute that capacity exists within local secondary schools to accommodate the anticipated pupil numbers arising from the appeal proposal. NCCs evidence is that the appeal proposal (at 300 dwellings) would generate a demand for 48 secondary school places within the Kirkby-Sutton pupil planning area at a time where there currently 246 surplus places. NCCs position is that this available capacity would be absorbed by the cumulative demand arising from a number of development schemes in the pipeline (1,912 units³⁴). Were all of these to come to fruition there would be insufficient secondary education capacity and so NCC are looking for all major residential schemes to make a proportionate contribution towards a strategic approach to provide collective capacity.
76. There is no Community Infrastructure Levy in the District that would support NCCs strategic approach. At present the available secondary education capacity is significant and capable of supporting 1,537 dwellings within the relevant pupil planning area for the appeal location³⁵. The demand from the appeal scheme is modest in this context. There remains considerable uncertainty as to whether or when the pipeline figure above will come to fruition or the point at which the currently available capacity would be fully utilised.
77. The sum sought by NCC would be a proportional contribution to addressing demand (248 secondary places) arising from a further 1,552 dwellings not yet accounted for in the available capacity (1,537) to meet the total growth of the area. This additional demand largely arises from proposed eLP allocations, which are not the subject of planning applications. NCC describe their approach as a 'worse case scenario' but in my view it does not appropriately reflect the current uncertainty with the plan examination³⁶. Moreover, I cannot see how NCCs 'future proofing' approach could be reasonably found to meet the test of being directly related to a specific development when such a significant headroom in capacity currently exists.
78. Additionally, the appellant's evidence on pupil forecasting points to the strong likelihood of increasing secondary school capacity over time arising from falling pupil numbers over time within the Kirkby-Sutton area. This also appears to be reflected in the Infrastructure Deliver Plan accompanying the eLP³⁷. This

³³ CD2.9

³⁴ Includes the 300 units on this appeal site.

³⁵ After planning permissions as of April 2024 are taken into account.

³⁶ CD16.22

³⁷ CD12.26, page 16

gives me further concern as to whether the significant current capacity within the secondary education is likely to be utilised anytime soon. Fundamentally, significant capacity exists now to meet the needs arising from the appeal proposal. As such I cannot conclude that the sums sought for secondary education would be necessary or fairly and reasonably related in scale and kind to the development. Consequently, I have not taken the secondary education obligation into account.

79. I am referred to a 2021 appeal decision in Sutton-in-Ashfield where NCCs approach (of a forecast shortfall), was accepted. I have relatively few details about the evidence and submissions in that appeal, in contrast to the significant scrutiny the appellant has applied here with regards to whether NCCs approach should be considered to meet the necessary tests. As such I have arrived at an alternative conclusion to the Ashland Road West appeal decision based on the considerable evidence before me³⁸.
80. A separation obligation is proposed for Special Educational Needs and Disabilities (SEND) provision. There is no dispute that there is currently no capacity within the existing school network and that the appeal proposal would generate a demand for 2 specialist places for pupils. The sum identified (£190,100) reflects Department for Education figures for the cost of such provision. I am satisfied the obligation meets the necessary tests and so I have taken it into account.
81. A contribution towards library provision based on the Museum, Libraries and Archives Council recommended stock figure of 1,532 items per 1,000 population is identified. Sutton in Ashfield library does not carry sufficient lending stock to serve the projected population of the appeal proposal. A relatively modest sum based on £10 per stock item based on the forecast population of the appeal proposal has been identified³⁹. On this basis, I am persuaded that the obligation would meet the necessary tests.
82. As set out above, discussions with NCC have identified costs to subsidise bus routes closer to the appeal site and to fund improvements to existing bus stops in the locality. Specific bus stops have been identified and the cost of upgrading them to provide real time information⁴⁰. The rationale for the £220,000 for improved bus services is set out in the dialogue with NCC⁴¹, based on their assessment of what would be required to introduce a level of subsidised bus service attractive to instigate modal shift to a point where a commercial service could become viable. Accordingly, these obligations would meet the necessary tests, and I have taken them into account. Similarly, an obligation is proposed to fund cycle parking at Sutton Parkway station. The relatively modest sum of £10,000 to provide eight secure parking spaces and for their maintenance would reflect the evidence from the transport assessment on likely cycle movements and the evidence on the capital cost of initial provision⁴². I am satisfied the obligation meets the necessary tests and so I have taken it into account.

³⁸ Appendix 1 to Gary Lees Proof of Evidence and CD16.17 Educational Rebuttal (EFM Ltd)

³⁹ CD2.7

⁴⁰ Approach set out in CD5.14 NCC Public Transport Planning Obligations Funding Guidance for Prospective Developers (January 2024) – Appendix 1 and also in CD2.17

⁴¹ CD2.17

⁴² Mr Cummins' Proof of Evidence, Section 6.10

83. The appeal proposal would provide appreciable areas of open space including specific provision for a Locally Equipped Area for Play (LEAP) for younger children. The District Council is seeking a contribution of £900,000 towards sports and recreational facilities, particularly in terms of meeting the needs of older children/teenagers. This is based on a figure of £3,000 per dwelling. I understand the Council has corporate objectives to improve health and wellbeing. Policy HG6 of the ALPR seeks the provision of recreational facilities and paragraph 103 of the NPPF reaffirms the importance of access to opportunities for sport and physical activity for health and well-being. However, the figure of £3,000 per dwelling for off-site provision is not transparently formulated. There is little before me to explain whether existing facilities in the catchment area are over-subscribed or whether there is an existing deficiency (against recognised standards).
84. It is not clear why the District Council did not ask for some form of on-site recreation provision in this instance. The District Council has referred me to two nearby sites at Sutton Lawns and the Kings Mill Reservoir as locations where the funds could be spent. The CIL Compliance statement says there is planning permission or other approved plans at these locations for improved facilities. Other than generic costs of providing recreation facilities for older children⁴³, I have no details of what is intended at Kings Mill Reservoir or what additionally could be provided at Sutton Lawns. Nor is it clear why the appeal proposal should contribute to the cost of these plans (and how they are being funded generally), and whether the sum sought would be proportionate. Consequently, I do not consider the proposed sports and recreation obligation meets the relevant tests and so I have not taken it into account.
85. The appeal proposal would generate demand to use household waste recycling facilities. NCC asserts that local facilities are operating at close to or full capacity and that a new site, to serve both Ashfield District and Mansfield is required, based on the expected number of new homes over the period to 2033. I was advised that whilst there are options under consideration, a new site has not yet been identified. Neither NCCs representations on the planning application or the CIL Compliance Statement satisfactorily explain why the sum identified would meet the necessary tests, particularly given significant uncertainties around the cost of any future provision and how that should be proportionately funded. Consequently, I have not taken the obligation into account.
86. In addition, there are some miscellaneous obligations. These include using reasonable endeavours to implement an alternative footway/cycle scheme on a very small part of the Newark Road frontage where land ownership remains uncertain (the option B scheme). Additionally, there is an obligation to fund a bus pass on the basis of 2 per dwelling for a period of 3 months. I find both these obligations to be necessary and directly related to the development to help incentivise modal shift in accordance with the NPPF and so I have taken them into account. There is an obligation to pay a fee of £4000 to the District Council for monitoring the S106 obligations. Given the number of obligations and their relative complexity this would appear to be a very reasonable figure and so I consider the monitoring fee obligation would meet the necessary tests.

⁴³ CD9.7

87. Overall, I find some of the obligations, as set out above, would meet the tests, in terms of necessity, directly related, and being fairly and reasonably related in scale and kind. I have therefore taken these qualifying obligations into account.

Social, Economic and Environmental Benefits of the proposal

88. The appeal proposal would deliver up to 300 homes, of which up to 30 would be affordable homes. There is not a five year supply of deliverable housing land and the shortfall against the local housing need is very significant, even on the Council's figures. In terms of addressing the shortfall, the examination of the eLP is potentially going to take further time through a large part of 2025. Consequently, there remains a notable interim period before there would be any plan-led grip on meeting local housing need. Consequently, sustainably located large windfall sites can make a valuable contribution to maintaining much needed supply and delivery before a new Local Plan can provide certainty⁴⁴. Whilst this proposal is for outline planning permission, there is clear evidence of a large regional housebuilder ready to progress a reserved matters scheme. There are no abnormal up-front infrastructure requirements prior to first delivery and occupation on what is a relatively straightforward greenfield site. I am therefore satisfied the site would make a contribution to delivery within a five year period were outline planning permission granted through this appeal.

89. Consequently, I give the social benefit of the additional market housing substantial positive weight. The 10% affordable housing, as secured through the planning obligation, would make a meaningful contribution towards addressing the pressing and acute needs in the Borough. It would be in excess of the 6% requirement in the ALPR. I therefore consider the proposed affordable housing would amount to a substantial social benefit weighing in favour of the appeal proposal.

90. The appeal would give rise to notable economic benefits. This would include employment during the construction phase as well as ongoing expenditure in the local economy. I give moderate weight to the economic benefits.

91. The appeal proposal would deliver an appreciable amount of green infrastructure, including open space which would be accessible to the wider community. This would amount to a moderate social and environmental benefit. The proposal would also result in a tangible net gain in biodiversity which would be an additional modest environmental benefit. At present surface water run-off from the site is not proactively managed, which results in a low risk. The appeal proposal presents an opportunity to address the situation and secure betterment through reduced run-off and a managed surface water drainage regime. I ascribe this environmental benefit limited weight.

92. Various obligations are proposed that would meet the necessary tests for the development. Nonetheless, these obligations would also yield wider public benefits for the local community. This would include improved local bus stops, enhanced bus service provision, safer cycle parking at Sutton Parkway station,

⁴⁴ Which as shown in Mr Lees' Proof of Evidence at Table 2 is occurring in recent decision-making, of both the LPA and at appeal, despite the conflict with the ALPR because of the sustained lack of a deliverable housing land supply, stemming principally from the lamentable inability of the Council over the past 22 years to prepare a sound Plan to replace the aging ALPR.

and various off-site highway improvements to allow for safer cycling and walking connectivity in this part of Sutton-in-Ashfield. I attach moderate weight to these wider environmental and social benefits.

Balance and Conclusion

93. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
94. The proposal would conflict with ALPR Policies ST1, ST4 and EV2 in terms of being an unallocated site in countryside outside of the main urban area boundary identified in the development plan. There would be some limited harm to the character and appearance of the area in further conflict with Policy ST1. As set out above, by virtue of their degree of inconsistency with national planning policy and the absence of a deliverable housing land supply, these policies are out of date. Whilst the broad objectives of these policies are arguably to be found in the NPPF, these 22-year-old policies are not delivering a sufficient supply of homes. Additionally, their construct lacks sufficient flexibility in terms of recognising that achieving sustainable development necessitates a balanced approach of weighing benefits against harms. It also includes recognising the contribution particular attributes or qualities may have when considering a magnitude of harm rather than potentially applying blanket protection. I therefore give these policies and the conflict with them only limited weight.
95. In arriving at this view of giving limited weight to conflict with the ALPR, the appeal site is sustainably located, aligning with the proposed spatial strategy in the eLP which continues to identify Sutton in Ashfield as a main urban area at the top of the settlement hierarchy. The evidence to the eLP identifies the appeal site being within one of the relatively few unconstrained locations in District for development. The asserted reasons for not allocating the site in the eLP have not withstood scrutiny in this appeal. There would also be limited harm arising from the loss of the lowest grade of BMV agricultural land. For the reasons set out under the related main issue, this harm is only of limited weight.
96. Cumulatively, the harms identified would be limited and of no more than limited weight.
97. The NPPF is an important material consideration, including the approach to decision-making. NPPF paragraph 11d) ii applies here such that the balance is that planning permission should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF when taken as a whole. The benefits are outlined above and collectively would be significant in their degree and the positive weight to be given to them. Furthermore, the appeal proposal would align with key policies of the NPPF to direct development to sustainable locations, make effective use of land and provide affordable homes. The proposal would therefore accord with the policies of the NPPF taken as a whole.
98. My overall conclusion is that the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits. This finding outweighs the conflict with the development plan. The appeal should therefore be allowed, and planning permission granted.

Conditions

99. A schedule of suggested planning conditions was contained within the signed Statement of Common Ground (SOCG). There was then some subsequent updating of the schedule at the Inquiry round table discussion⁴⁵. I have considered the suggested conditions having regard to the PPG and paragraphs 56 and 57 of the NPPF. Some conditions require matters to be approved before development commences. This is necessary either to manage impacts that would arise during construction or because they relate to matters that would need to be resolved at an early stage. The appellant orally confirmed at the Inquiry that the signed SOCG constitutes their written agreement to the suggested pre-commencement conditions.
100. In addition to the standard time limit condition (2) for the submission of reserved matters and commencement of the development, a condition (1) defining the remaining reserved matters to be approved and a condition (3) requiring the development is carried out in accordance with the approved plans are both needed in the interests of proper planning and for the avoidance of doubt. Notwithstanding the description of the development applied for, a further condition (23) confirming that the development would be for no more than 300 residential dwellings would also be necessary for the avoidance of doubt, including in relation to matters of what has been assessed for highway safety as part of this proposal.
101. To ensure surface water on the developed site would not increase the risk of flooding elsewhere, and that a sustainable drainage system solution does not unduly disturb the former landfill area, conditions (4, 5, 19 & 26) are all required to secure the necessary details and to avoid any doubt that surface water attenuation basins would be excluded from the former landfill area. A further pre-commencement condition (13) requiring details for the disposal of surface water and foul sewage is necessary to ensure that prior to first occupation, the site would not increase the risk of flooding or result in pollution. A further condition (18) controlling any required piling or other penetrative foundations would be necessary to protect the water environment, as recommended by the Environment Agency.
102. Notwithstanding the technical evidence submitted as part of both the planning application and planning appeal processes, given the ground conditions at the appeal site, a pre-commencement condition (7) is necessary in the interests of public health and the environment to require further detailed assessment of potential ground contamination and the risk to all receptors and necessary remediation works to be required prior to the first occupation. For similar reasons, were unanticipated contamination to be discovered, a further condition (16) is also necessary. This would require work to cease and for the LPA to have control in signing off any remediation scheme. Ultimately, a further condition (17) would require a post-completion verification report to demonstrate that the development can be safely occupied. These conditions would ensure that the development would be in accordance with NPPF paragraphs 196 and 197.
103. In the interests of highway safety and residential amenity a pre-commencement condition (6) requiring approval of a Construction Environmental Management Plan would be necessary to ensure that

⁴⁵ ID7

construction work is carried out appropriate to its location and that construction traffic is safely accommodated within the local road network, including avoiding the Sutton Junction level crossing. Whilst access is not a reserved matter, a pre-commencement condition (12) requiring further details on the implementation of the principal site access, off-site highway works, and pedestrian/cycle links would be necessary in the interest of the safety of all highway users. A further condition (24) requiring implementation of street lighting on Newark Road prior to first occupation is also necessary for highway safety. To optimise modal shift and sustainable patterns of travel, a condition (25) requiring a Travel Plan prior to first occupation would be necessary.

104. Conditions (9 & 10) are necessary to ensure that biodiversity at the site is protected and where necessary mitigated during the construction phase and subsequent landscaping and ecological management of the site is managed in the long-term. Conditions (20 & 21) are also necessary to secure biodiversity net gain (BNG) and to otherwise deliver identified biodiversity enhancement as recommended in the 2023 Ecological Impact Assessment. Whilst a level of BNG is not mandatory for the scheme⁴⁶, the delivery of the gain would be consistent with NPPF paragraph 187(d). A further condition (22) is necessary in the interests of character and appearance and the wider environment to ensure that development of the site is carried out in accordance with details contained in the Arboricultural Impact Assessment. Japanese Knotweed is present in the local area and so a pre-commencement condition (11) requiring a method statement for dealing with this non-native invasive plant is necessary for protection of the natural environment. Notwithstanding that matters of layout and landscaping would be reserved, a condition (26) specifying that the reserved matters would include details of landscaping, open space works and details of a Locally Equipped Area for Play, including any phased delivery, would be necessary to secure a high quality design.
105. Given the adjoining highway on Newark Road and Coxmoor Road and the industrial units immediately to the north of the site, a condition (14) requiring a sound mitigation scheme to achieve acceptable levels of ambient noise internally and externally at various times of the day/night is necessary for satisfactory living conditions. Given the edge of settlement location, the proximity of Sherwood Observatory and adjacent housing, a condition (15) requiring an external lighting scheme would be necessary to protect living conditions and reduce light pollution. Finally, a pre-commencement condition (8) requiring a waste audit to demonstrate the development would maximise the use of recycled materials and assist the collection, separation, sorting, recycling and recovery of waste arising from it would be necessary in accordance with Policy WCS2 of the Nottinghamshire Waste Core Strategy.

David Spencer

Inspector.

⁴⁶ PPG paragraph 74-003-20240214

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Charles Bishop	Of Counsel, Instructed by Legal Services, Ashfield District Council.
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He called no witnesses but assisted the Inquiry on procedural matters.

For the round table discussions on Planning Obligations and Conditions:

Mick Morley BSc(Hons) DipTP	Development Team Manager, ADC
Will Lawrence MRTPI	Planning & Infrastructure Manager, NCC

FOR THE APPELLANT:

Richard Sagar	Solicitor-Partner, Walker-Morris Instructed by Hallam Land
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He Called:

James Atkin BSc(Hons), DipLM, CMLI	Senior Director (Landscape), Pegasus
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David Cummins BEng(Hons) MSc CEng MCIHT MCILT	Director, ADC Infrastructure
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Darcy Kitson Boyce MEng (Hons), CEnv, MEnvSc, FGS, FRGS, DoWCoP QP.	Associate Director, Rodgers Leask Ltd
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Matthew Leask MSc, CEng, MICE	Associate, Rodgers Leask Ltd
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Gary Lees BA(Hons), DipTP, MRTPI	Director, GRL Planning Ltd
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For the Round Table Discussions on Planning Obligations and Conditions:

Ben Hunter BA(Hons) DipMS	Associate Director, EFM Ltd
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Will Martin	Hallam Land
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INTERESTED PARTIES:

Cllr Jason Zadrozny	District Councillor & Leader of the Council
Cllr Matthew Relf	District Councillor (Ward Member) & Executive Lead Member for Growth, also speaking for Sutton Junction Residents Association

Alice Weaver	Local Resident
Paul Weaver	Local Resident
Leonard Sommerfield	Local Resident
David George	Local Resident
Anne George	Local Resident

Inquiry Documents (IDs) submitted at the event:

- 1 Opening Statement for the Appellant
- 2 Opening Statement for the Local Planning Authority
- 3 Revised Final Draft Section 106 Agreement (14 January 2025)
- 4 Ashfield District Council's response of 14 January 2025 to the Local Plan Examiners' Letter of 3 December 2024
- 5 Summary of the S106 Obligations
- 6 Closing Submissions for the Appellant
- 7 Amended Schedule of Suggested Conditions following round table discussion

Documents submitted after the Inquiry event

- 8 Engrossed S106 Agreement dated 27 January 2025

Schedule of Conditions

- 1) The formal approval of the Local Planning Authority shall be obtained prior to the commencement of any development with regard to the following Reserved Matters:
 - (a) Layout
 - (b) Scale
 - (c) Appearance
 - (d) Landscaping
- 2) The development to which this approval relates shall be begun not later than whichever is the later of the following dates:
 - (a) The expiration of 3 years from the date of the outline planning permission;
 - (b) The expiration of 2 years from the final approval of the reserved matters, or in the case of approval on different dates, the final approval of the last such matter to be approved.
- 3) This permission shall be implemented in accordance with the following plans:
 - EMS2254_018 01 Rev D (Site Location Plan)
 - ADC1580-DR-012 Rev P12 (Proposed Access junction Layout)

- 4) The development hereby approved shall be implemented in broad accordance with the Illustrative Masterplan (Drainage Option) – Drawing Number EMS2254_120_01 Rev D dated 11 December 2024.
- 5) No part of the development hereby approved shall commence until a detailed surface water drainage scheme based on the principles set out in the approved RLRE Flood Risk Assessment (FRA) and Drainage Strategy of 24 June 2022 has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details prior to completion of the development. The scheme to be submitted shall provide:
- Evidence of approval for drainage infrastructure crossing third party land where applicable.
 - A surface water management plan demonstrating how surface water flows will be managed during construction to ensure no increase in flood risk off site.
 - Evidence of how the on-site surface water drainage systems shall be maintained and managed after completion and for the lifetime of the development to ensure long term effectiveness.
 - Evidence of how exceedance routes will not affect third party properties.
- 6) No part of the development hereby approved shall commence until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. The CEMP shall set out:
- Site specific measures to control and monitor impacts arising in relation to construction traffic, noise and vibration, dust and air pollutants;
 - Site working hours; lighting;
 - Wheel washing facilities for construction traffic;
 - A layout of the construction access including a drawing showing visibility splays and method statement for the use of banksmen;
 - Details regarding parking provision for construction workers; and
 - Plans on the site and the route that all construction vehicles shall take to the site avoiding the Sutton Junction Level Crossing.
- It shall also set out arrangements by which the developer shall maintain communication with residents and businesses in the vicinity of the site, and by which the developer shall monitor and document compliance with the measures set out in the CEMP. The development shall be carried out in full accordance with the approved CEMP at all times unless otherwise agreed in writing by the Local Planning Authority.
- 7) No part of the development hereby approved shall commence until a remediation scheme to deal with the potential ground contamination of the site has been submitted to and approved in writing by the Local Planning Authority.

The scheme shall include:

1. A site investigation scheme, to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site;
 2. The results of the site investigation and detailed risk assessment referred to in (1) and based on these, an options appraisal and remediation strategy giving full details of the remediation and mitigation measures required and how they are to be undertaken;
 3. A verification plan setting out the details of the data that will be collected to demonstrate that the works set out in the remediation strategy in (2) are complete to a satisfactory standard; and
 4. The contamination remediation works shall be carried out in accordance with the approved details and completed prior to the first occupation of any area identified by the report.
 5. If required, a monitoring and maintenance plan, setting out provisions for long- term monitoring of pollutant linkages, maintenance and arrangements for contingency action. The provisions of the monitoring and maintenance plan shall be in force from the first occupation of the development and retained for its lifetime.
- 8) No development shall commence until a waste audit has been submitted to and approved in writing by the Local Planning Authority. The waste audit shall address the following:
- The anticipated nature and volumes of waste that the development will generate.
 - Where appropriate, the steps to be taken to ensure the maximum amount of waste arising from development on previously developed land is incorporated within the new development.
 - The steps to be taken to ensure effective segregation of wastes at source including, as appropriate, the provision of waste sorting, storage, recovery and recycling facilities.
 - Any other steps to be taken to manage the waste that cannot be incorporated within the new development or that arises once development is complete.

Thereafter, the development shall be carried out in accordance with the waste audit.

- 9) No development shall take place (including ground works and vegetation clearance) until a construction environmental management plan (CEMP: Biodiversity) has been submitted to and approved in writing by the Local Planning Authority.

The CEMP (Biodiversity) shall include the following:

- a. Risk assessment of potentially damaging construction activities.
- b. Identification of "biodiversity protection zones"
- c. Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (to include consideration of lighting) (may be provided as a set of method statements).
- d. The location and timing of sensitive works to avoid harm to biodiversity features.
- e. The times during construction when specialist ecologists need to be present on site to oversee works.
- f. Responsible persons and lines of communication.
- g. The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person.
- h. Use of protective fences, exclusion barriers and warning signs.

The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details, unless otherwise agreed in writing by the Local Planning Authority.

- 10) No development shall commence until a landscape and ecological management plan (LEMP), also referred to as the Open Space Management Plan, has been submitted to, and approved in writing by, the Local Planning Authority. The content of the LEMP shall include the following:

- (a) Description and evaluation of features to be managed.
- (b) Ecological trends and constraints on site that might influence management.
- (c) Aims and objectives of management.
- (d) Appropriate management options for achieving aims and objectives.
- (e) Prescriptions for management actions.
- (f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a thirty-year period).
- (g) Details of the body or organization responsible for implementation of the plan.
- (h) Ongoing monitoring and remedial measures.

The LEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery.

The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. Thereafter, the approved plan shall be implemented in accordance with the approved details.

- 11) No development, including site clearance, shall take place until a method statement for the control of Japanese Knotweed has been submitted to and approved in writing by the Local Planning Authority. The mitigation measures shall be implemented in accordance with the approved details.
- 12) No development shall take place until such time as a programme has been submitted to and approved in writing by the Local Planning Authority covering the following works:
- i. The provision of the proposed signalised access junction including segregated footway/cycleway and associated highway improvements on Newark Road broadly in accordance with drawing no. ADC1580-DR-012 Rev P12.
 - ii. The amendments to the existing signalised junction at Newark Road/Cauldwell Road/Coxmoor Road broadly in accordance with indicative drawing no. ADC1580- DR-012 Rev P12.
 - iii. The amendments to the existing mini-roundabout at Coxmoor Road/Hamilton Road broadly in accordance with indicative drawing no. ADC1580-DR-005 Rev P11 including provision of cycle facility and proposed toucan crossing and associated improvements.
 - iv. The provision of the proposed footway/cycleway scheme on Newark Road, including the provision of a sparrow crossing and associated improvements, broadly in accordance with indicative drawing no. ADC1580-DR-006 Rev P7.
 - v. The amendments to the existing mini-roundabout at Newark Road/Kirkby Folly Road broadly in accordance with indicative drawing no. ADC1580-DR-004 Rev P8.
 - vi. The provision of the pedestrian/cycle links to the existing Sutton-in-Ashfield locality including Searby Road, broadly in accordance with indicative plan no. ADC1580-DR-013 Rev P8 (Pedestrian/Cycle Access Strategy).
 - vii. The extension of the speed limit along Newark Road broadly in accordance with indicative drawing no. ADC1580-DR-012 Rev P12.

The works shall be carried out in accordance with the agreed programme unless otherwise agreed in writing with the Local Planning Authority. For clarity, these shall be subject to detailed technical appraisal during the s.278 process.

- 13) The development hereby permitted shall not commence until drainage details for the disposal of surface water and foul sewage have been submitted to and approved in writing by the Local Planning Authority. These details shall include the following agreed requirements:

- i. The onsite sewers will be adopted pursuant to a s.104 Agreement (Water Industry Act).
- ii. A s.106 (Water Industry Act) connection application has been approved by Severn Trent for a point of connection on the existing public system.

The drainage scheme shall be implemented in accordance with the approved details before first occupation.

- 14) Prior to the first occupation of the dwellings hereby approved a scheme of sound mitigation shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be designed following the completion of a sound survey undertaken by a competent person. The scheme shall be designed to achieve the following criteria with the ventilation operating:

Bedrooms 30 dB LAeq (15 Minutes) (2300 hrs – 0700 hrs)
Living/Bedrooms 35 dB LAeq (15 Minutes) (0700 hrs – 2300 hrs)
All Other Habitable Rooms 40 dB LAeq (15 Minutes) (0700 hrs – 2300 hrs)
All Habitable Rooms 45 dB L_{Amax} to occur no more than 10 times per night (2300 hrs – 0700 hrs)
Any outdoor amenity areas 55 dB LAeq (1 hour) (0700 hrs – 2300 hrs)

The approved scheme shall be implemented in full and retained thereafter.

- 15) Before occupation of the development hereby approved, details of the external lighting scheme shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall have regard to the "Guidance Notes for the Reduction of Obtrusive Light GN01:2011" produced by the Institution of Lighting Professionals. The approved lighting scheme shall be implemented in full before the lighting is first used and shall be retained thereafter.

- 16) If, during the works, any additional unsuspected contamination is encountered, all works in the relevant part of the site shall cease immediately and not resume until either:

- i. The potential contamination has been assessed and a remediation scheme has been submitted to and approved in writing by the Local Planning Authority; or
- ii. Timescales for submission of a remediation scheme and details of works which may be carried out in the interim have been agreed in writing by the Local Planning Authority.

- 17) The development shall not be occupied until a post-completion

verification report, including results of sampling and monitoring carried out, has first been submitted to and approved in writing by the Local Planning Authority demonstrating that the site remediation criteria have been met.

- 18) Piling or any other foundation designs using penetrative methods shall not be permitted other than with the express written consent of the Local Planning Authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to groundwater. The development shall be carried out in accordance with the approved details.

Informative: If piling is proposed, a Piling Risk Assessment must be submitted, written in accordance with Environment Agency guidance document "Piling and Penetrative Ground Improvement Methods on Land Affected by Contamination: Guidance on Pollution Prevention. National Groundwater and Contaminated Land Centre Report NC/99/73."

- 19) No drainage systems for the infiltration of surface water to the ground are permitted other than with the written consent of the Local Planning Authority. Any proposals for such systems must be supported by an assessment of the risks to controlled waters. The development shall be carried out in accordance with the approved details.
- 20) As part of reserved matters, an updated Biodiversity Net Gain Assessment shall be submitted in writing to the Local Planning Authority that demonstrates a net gain in biodiversity. The approved Biodiversity Net Gain scheme shall be implemented in accordance with the agreed details as construction proceeds and completed prior to the first planting season following occupation of the development.
- 21) As part of the reserved matters, a scheme of biodiversity enhancement as recommended in section 7 Compensation and Enhancement Opportunities of the RammSanderson Ecological Impact Assessment of August 2023 to include features incorporated within the new buildings for roosting bats and nesting swifts along with hedgehog gaps and native planting within the details of landscaping shall be submitted to and approved in writing by the Local Planning Authority. The enhancement scheme shall be implemented in accordance with the agreed details as construction proceeds and completed prior to the first occupation of the development.
- 22) The development shall be carried out in accordance with the details contained within Section 5 and Drawing ST19319-001 Rev B Tree Protection Plan Sheets 1 and 2 as set out in the Arboricultural Impact Assessment, reference ST19319-002-V2.0 dated 15/07/2022.
- 23) The development shall be limited to include up to 300 residential dwellings.

- 24) No part of the development hereby approved shall be occupied until street lighting along the site frontage on Newark Road has been provided in accordance with details to be first submitted to and approved in writing by the Local Planning Authority.
- 25) No part of the development hereby permitted shall be occupied until the Travel Plan has been approved in writing by the Local Planning Authority. The Travel Plan shall set out proposals (including targets, a timetable and enforcement mechanism) to promote travel by sustainable modes which are acceptable to the Local Planning Authority and shall include arrangements for monitoring of progress of the proposals. The Travel Plan shall be implemented in accordance with the timetable set out in that plan unless otherwise agreed in writing by the Local Planning Authority.
- 26) Reserved matters pursuant to condition 1 shall include details of landscaping and related open space works, including details of a Local Equipped Area for Play, together with a programme identifying the phased delivery of all open space areas across the site.
- 27) Reserved matters pursuant to condition 1 shall exclude any surface water attenuation basins on those parts of the site subject to former landfill and as identified on the Illustrative Masterplan, Former Landfill Area Drawing Number: EMS2254_120 02 Rev D.

Schedule ends.

Costs Decision

Site visits made on 13, 15 and 16 January 2025

by David Spencer BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 11/02/2025

Costs application in relation to Appeal Ref: APP/W3005/W/24/3250529 Land at junction of Newark Road and Coxmoor Road, Sutton in Ashfield.

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Hallam Land for a full award of costs against Ashfield District Council.
 - The appeal was against a failure to give notice within the prescribed period of a decision on an application for outline planning permission (with all matters reserved except access) for a residential development of up to 300 dwellings with associated infrastructure and landscaping.
-

Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

1. The application for costs seeks a full award on primarily substantive grounds although there is some overlap with procedural matters. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process¹.
2. The appellants application for costs was submitted and rebutted in accordance with a process and timetable jointly put forward by legal representatives for both main parties at the Inquiry event. Both parties adhered to the timetable. There can be no retrospective criticism of the timing of the appellants costs application, the intention for which was disclosed at the start of the Inquiry event.
3. The PPG advises that the aim of the costs regime is threefold². It is to encourage all those involved in the appeal process to behave in a reasonable way; encourage local planning authorities (LPAs) to properly exercise their development management responsibilities (to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case); and to discourage unnecessary appeals. It is the first and second strands of this aim which are in focus here. In addition to the PPG, the Written Ministerial Statement (WMS) of 19 December 2023 cautions that decisions not in accordance with the recommendation of a professional or specialist officer should be rare and infrequent. The WMS goes on to say that where the Inspectorate cannot find reasonable grounds for the Committee having

¹ PPG paragraph 16-030-20140306

² PPG paragraph 16-028-20140306

overturned the officer's recommendation it should consider awarding costs to the appellant.

4. As the LPA point out a successful award of costs requires demonstrating that any alleged unreasonable behaviour has resulted in unnecessary or wasted expense³. In terms of procedural matters that may give rise to an award of costs, the PPG provides a non-exhaustive list at paragraph 16-047. This includes withdrawal of any reason for refusal.
5. The subsequent paragraph 16-048 of the PPG is relevant in this case and addresses when the handling of planning applications prior to an appeal might lead to an award of costs. The parts of the paragraph of particular relevance to this appeal are as follows. "In any appeal against non-determination, the local planning authority should explain their reasons for not reaching a decision within the relevant time limit, and why permission would not have been granted had the application been determined within the relevant period. If an appeal in such cases is allowed, the local planning authority may be at risk of an award of costs, if the Inspector concludes that there were no substantive reasons to justify delaying the determination....".
6. Turning to the substantive matters identified at PPG paragraph 16-049, the costs application asserts the LPA behaved unreasonably by failing to determine the planning application and by unreasonably defending the appeal (up and until the point of withdrawal). Consequently, it is submitted that in doing so, the LPA had prevented or delayed development which should clearly be permitted. I consider allied to this is also the substantive matter of whether the planning grounds were capable of being dealt with by conditions, where it is concluded that suitable conditions would enable the proposed development to go ahead.
7. The application for the appeal proposal was submitted to the LPA in August 2022, following a protracted, unresolved process with an earlier 2017 application. After some two years of assessing the 2022 planning application, including multiple consultations with statutory bodies and technical consultees, the application was reported to the District Council's Planning Committee in July 2024 with a recommendation for approval subject to the imposition of conditions and securing planning obligations. The officer report recommending approval was well-constructed, comprehensive and recorded that there were no objections to the proposal from statutory consultees (subject to the imposition of conditions). This included, amongst others, the Council's Contaminated Land Officer, the Local Highway Authority, the Local Lead Flood Authority, Network Rail, the Environment Agency and Severn Trent Water.
8. At the time the application was reported to the July 2024 Committee meeting the appeal proposal was informed and accompanied by, amongst other technical documents, a Transport Assessment, separate Pedestrian and Cycle Access and Movement Strategies, detailed plans for off-site highway improvements, a Travel Plan, a Phase 1 Geo-Environmental Desk Study, a Landscape and Visual Impact Assessment, and a Soils and Agricultural Quality Report.
9. There has been no ambiguity, at either the planning application stage or at the appeal stage, that because of a lack of five year supply of deliverable housing

³ PPG paragraph 16-032-20140306

land the tilted balance at paragraph 11(d) of the National Planning Policy Framework (NPPF) should be engaged. This requires decision-making to grant planning permission unless the harm of doing so would significantly and demonstrably outweigh the benefits. This still requires the weighing up of the benefits and harms in a transparent way. This was clearly set out in the officer's report in a lengthy section under 'The Planning Balance'.

10. As the minutes of the July 2024 meeting record, the Members of the committee deferred making a decision on that occasion. They did so for various reasons including: (i) clarification and reassurances with regard to the proposed drainage and contamination strategies which might give rise to the potential contamination of the watercourse from previous landfill; (ii) further information on the sustainability of the site particularly in relation to bus provision and accessibility and security of the station to cyclists and others given distance from facilities; (iii) concern that (ii) would lead to a more severe impact on highways and junctions in the vicinity and sought more detail; and (iv) a better understanding was required as to the impact development would have on the best and most versatile land (BMV). The appellant appealed against non-determination approximately 3 weeks later on 21 August 2024.
11. Matters are then amplified when the application is returned to the Committee at its meeting in October 2024, shortly before the LPA had to submit its Statement of Case for the appeal. At this point the appeal was live and so the LPA is correct that it was no longer the decision maker. However, the submission from the LPA that the putative decision from this meeting was made to provide assistance to the Inspector is troublesome. There were 3 clear options for decision-making at the conclusion of the updated officer report for that meeting. These were: (1) To revert to accepting the previous officer recommendation of a conditional consent subject to a Section 106 agreement. (2) Minded to grant consent subject to different conditions or altered heads of terms in a S106. Or (3) minded to refuse and the reasons would be the basis on which the Council's case at the Public Inquiry maybe based. The report is clear that the options were presented to Members to "steer the public inquiry and reduce time and costs for all parties."
12. The discussion of the appeal proposal was held in private such that there are no published minutes of what was discussed. As such it is difficult to know how the tilted balance was applied, and how Members considered the additional submissions made by the appellant in response to the matters for deferral at the July 2024 committee. The Council's Statement of Case reveals that Members would have been minded to refuse the planning application for five reasons had it been in a position to do so. Putative reasons 1-3 would ordinarily be understood as harms arising from the principle of what is proposed relating to sustainability of location, loss of BMV and adverse impact on character and appearance. Reason 4 has morphed from the basis for the deferral in July to a wider harm of insufficient information to demonstrate that the development would be suitable to provide a residential use taking account of ground conditions and risks arising from contamination. Reason 5 has also evolved since the deferral in July to a position of "insufficient information has been provided to fully assess the impact on the local highway network. In particular there is insufficient information on the impact of the development having regard to its proximity to the existing level crossing and the implications when the crossing gates are closed during peak times." As such putative

Reason 5 says that it has not been demonstrated that a severe impact on the highway would not arise.

13. For the purposes of this costs decision, I turn first to whether the appeal was necessary and then to consider whether once the appeal was submitted whether the LPA behaved appropriately in the context of an appeal for non-determination. In particular, why permission would not have been granted had the application been determined within the relevant period. A key aspect running through the costs material before me is the handling of matters in respect of contamination on that part of the appeal site which was a former landfill site.
14. The July 2024 Committee Meeting was the first opportunity for the LPA to properly exercise their development management responsibilities having received a lengthy and considered officer report recommending approval. It is not clear from the perfunctory minutes of this meeting what particular clarification and reassurances the Committee were seeking in relation to drainage and contamination. There is some illumination when tracking back through the long chain of emails between the appellant and the case officer immediately after the meeting (contained in CD2.24). This provides an officer view of what information might address Members concerns prior to the published minutes being available. The officer interpretation is not supported by the technical evidence or the position of statutory consultees during the application process. Indeed, at the end of the long sequence of emails in CD2.24, the Council's Contaminated Land Officer reiterates on 29 September 2024 that a "... a full contaminated condition should be appended to any permit issued for this development as stated in my email dated 21/01/2024". The Contaminated Land Officer does not request or suggest a Phase 2 investigative report at this point.
15. Furthermore, it is not clear from the Committee meeting minutes, what additional details were required on transport matters, despite the Local Highways Authority advising they had no objections subject to conditions and planning obligations. Nor is it clear what was deficient with regards to the evidence on BMV land to require a "better understanding". Members are entitled to defer a decision and request additional information, but there must be cogent reasons for doing so. The Committee meeting minutes, at 3 relatively short paragraphs, does not provide this.
16. It is understandable that Councillors and Committees want to be assured that developments are going to be safe and avoid unacceptable harms. It is also recognised that Councillors represent local communities and have a democratic mandate. However, the planning system must operate in the wider public interest, balancing competing objectives and ensuring that there would be no unacceptable risk to human health and the environment. The planning system, including the NPPF, reflects this and requires applicants to provide sufficient evidence to demonstrate that the proposal, on balance, would be acceptable, particularly on technical matters such as contamination and highways. It is also important that decision makers understand what they are determining (here an outline application with all matters reserved except access) and what would be a reasonable and proportionate level of evidence. What was apparent in the accompanying appeal is that ordinary thresholds of being put at unacceptable risk had shifted towards almost a demonstration of zero risk.

17. The evidence provided by applicants to accompany the planning application was prepared by qualified persons, as required. It was assessed by persons who were professionally qualified and/or experienced in the particular field and relevant knowledge of the appeal location. Those assessing the appellant's evidence are either officers of the Council or public bodies. Often, there is a good degree of risk aversion with these consultees, exemplified, as in this appeal, by the extensive degree of engagement, refinement and clarification in the multiple responses received during the course of the application. Consequently, if those technical consultees raised no objections and were satisfied that planning matters could be appropriately dealt with by condition or planning obligation, that should have been given very substantial weight. It is not good enough to arbitrarily seek additional (largely unspecified) evidence and so further delay decision making, creating significant and unwarranted uncertainty.
18. Whilst I accept Members are not beholden to accepting the advice of their officers and technical consultees, there must be legitimate and clear reasons for doing so, including when deferring from making a timely decision. Those reasons could be drawn from factors such as competing technical evidence (i.e. a technical report commissioned by an objector) or where a planning officer, taking the bigger picture, has nonetheless recommended approval contrary to the advice of a technical consultee. None of that was in play here. The officer recommendation to grant planning permission, when correctly applying the tilted balance, followed a clear and logic audit trail through the various issues and evidence.
19. As set out above, the Member concern regarding drainage and contamination strategies which might give rise to the potential contamination of the watercourse from previous landfill has come under particular focus. As set out above, there is very little that spells out what Members were seeking and why that would be necessary in light of the clear advice from the Contaminated Land Officer, the Environment Agency and the Local Lead Flood Authority. There is no record that Members had identified a need for a more detailed Phase 2 investigative report or why they were not satisfied that recommended conditions would be ineffective or unenforceable.
20. Overall, I find the Members prevarication in deferring a decision at the July Committee meeting was unreasonable. There was no real basis for doing so and the issues which members were concerned were all entirely capable of resolution through the imposition of conditions and planning obligations. In my view the actions at the July Committee were a key first step in delaying or preventing a development which should be clearly permitted.
21. Turning to whether the appellant was justified at this stage to appeal against non-determination on 21 August 2024, the LPAs costs rebuttal says that at that stage the appeal was entirely speculative as the LPA had only deferred from making a decision at that point. Moreover, the LPA says that the ultimate position it adopted, in withdrawing all of its reasons for refusal, demonstrates that had the appellant provided additional evidence to assuage Members concerns, there would have been a positive outcome. I do not share the LPAs rosy outlook on this point. As set out above, the reasons deferral were poorly articulated and, on balance, unreasonable. When taking the long planning

history of this site into consideration, including “political”⁴ resistance to its inclusion within draft Local Plans, I consider the appellant was legitimate after 2 years of hard work to get the proposal to a point of officer recommendation for approval to fear that prevarication at this meeting was the precursor to the LPA ultimately not reaching a positive outlook. In any event, when presented with options at the Committee meeting in October 2024, Members nonetheless resolved that they would have refused the application, including on grounds at variance to those recorded as the reasons for deferral. In my view, the appellant was not unreasonable in promptly pursuing an appeal against non-determination.

22. I now turn to whether, once in appeal, the LPA behaved reasonably in terms of the reasons for refusal and the timing of the withdrawal of all five putative planning reasons. Much of this hinges on contaminated land. As the Council’s letter of 17 December 2024 discloses, by reference to an unsubmitted proof of evidence from the Council’s independent planning witness (Mr Whitehouse), it is asserted that additional evidence on the contaminated land matter ultimately enabled the Council to withdraw all its putative reasons for refusal, through a revisited titled balance undertaken by Mr Whitehouse.
23. As the appellant identifies, whilst this may provide an explanation in relation to the fourth reason for refusal, it nonetheless remains that following skeleton arguments in the Council’s statement of case, there has been no substantiation of its putative reasons for refusal on matters of sustainability of location, BMV land, character and appearance and highway safety including the additional issue of the proximity of the level crossing. The appellant had to prepare its evidence to the Inquiry in this context. Whilst the LPA submits that the reasons for refusal were to “provide assistance to the Inspector”, they were nonetheless reasons why the LPA, if the appeal had not been lodged, would have refused to grant planning permission. In withdrawing all reasons for refusal on 17 December 2024, the day of the deadline for proofs of evidence, the appellant has had no opportunity to cut its cloth accordingly, in a way which could potentially have reduced time and cost in terms of the remit and depth of its evidence for the Inquiry. As the updated officer report to the October 2024 committee advised. “The decision may go beyond the questions asked⁵ however members are reminded that any reasons for their decision should be defensible at the Public Inquiry.” Reasons 1-3 and 5 have not been defended.
24. The LPA submit that the appellant has not incurred any unnecessary or wasted expense because these putative reasons for refusal were also reflected in third party objections to the appeal proposal, which the appellant would have had to address in any event. As set out above, I consider had the LPA not unreasonably deferred a decision contrary to the officer recommendation, the appeal would have not been necessary in the first instance. Local objections to the appeal proposal were properly summarised and recorded in the officer report to the July committee meeting. There has been relatively limited public interest in the appeal and very little new evidence in response to the appeal notification from third parties (and none from technical consultees) that the appellant has needed to address. There have been appeal statements from Councillors Relf and Zadrozny but these largely capture and speak to local

⁴ As evidenced in the original wording of the 2021 Regulation 18 Sustainability Appraisal report, at Appendix 5 to Gary Lees Proof of Evidence.

⁵ Interpreted to mean the 4 points raised at the Committee meeting on 30 July 2024.

concerns that have been long established. In preparing their evidence, the appellant would have been appropriately focused on the LPAs statement of case and the reasonable expectation that the LPA would defend its putative reasons.

25. As such, I find the last-minute pivoting to withdraw those reasons for refusal not related to contaminated land to have been unreasonable, particularly in relation to significant matters such as highway safety and sustainability of location, which may have required the Council to obtain technical evidence and a related witness. As set out above, from the original deferral, the Council's position on what evidence was lacking on BMV land has been entirely opaque.
26. On the issue of contaminated land, as set out above, the appellant provided, in support of an outline application, a Phase 1 Geo-Environmental Desk Study which contained further evidence on ground gas contamination and hydrology. Additionally, a separate Flood Risk and Drainage Strategy Report was submitted. The Council's contaminated land officer, the Environment Agency and the Local Lead Flood Authority all concluded that the technical evidence was appropriate for the outline proposal subject to the imposition of conditions. They did not require more detailed investigative survey work. In terms of Member considerations, as set out above, concerns on this issue evolved between the initial deferral and the putative reason for refusal.
27. The Council's Statement of Case (paragraphs 6.17-6.19) puts some flesh on the bones of the putative reason for refusal on ground condition/contamination in terms of returning to the issue of risk to water and drainage contamination and whether this can be satisfactorily mitigated where further ground testing is required to be carried out to inform the mitigation. There is a reference to the lack of "uniform testing across the site" to inform proposed mitigation measures and inaccuracies in the appellant's evidence, namely its assumption there are no on-site water courses.
28. As considered in the accompanying appeal decision, the test at NPPF paragraph 187d is "unacceptable risk" (not zero risk). There is little to demonstrate that the Members, in initially deferring the application and then pursuing a putative reason for refusal applied PPG paragraph 33-008 in terms of the proportionate level evidence needed for an outline application. Other than local concern and anxiety, there is little else to explain why Members deviated from the advice from the technical consultees that development of this low-risk site could be appropriately managed through the imposition of conditions.
29. Nonetheless, during the appeal process (on 13 November 2024), the appellant submitted two reports prepared by Eastwood Consulting Engineers (ECE). These documents are not the appellants (insofar that they are not documents the appellant commissioned and potentially withheld). They were prepared for a regional housebuilder to inform a subsequent detailed reserved matters application, not unreasonably working to the conditions recommended to be imposed on any outline consent as recommended by the Contaminated Land Officer. The main report is effectively a Phase 2 investigative report. Whilst the appellant has referred to it in further demonstrating the low degree of risk in their evidence to the Inquiry, it was not confirmed during the application process that this level of information would be necessary or proportionate at this outline stage. It could be secured by condition as part of a suitably precautionary approach when looking at the details and prior to construction. I

also share the assessment of the appellant that if the LPAs main concern was attenuation basins on the landfill part of the site that could have been addressed by way of a condition, either at the July 2024 meeting or under Option 2 at the October 2024 meeting.

30. The LPA submits that the ECE reports were the determinative factor in revisiting its position for the appeal. That does not square with the preceding evidence from the technical consultees during the application process. The Council's Contaminated Land Officer on 29 November 2024 in responding to the ECE reports says, for the first time, that they were on the cusp of requesting a Phase 2 report anyway. However, there is nothing over the preceding 2 plus years to indicate this, including as late as the email of 29 September 2024 to the case officer (CD2.24) after members had made their initial deferral. In any event, the response of 29 November 2024 still seeks the imposition of recognised, precautionary contamination conditions. Whilst the timing ECE material has muddied the waters, and having regard to the position Mr Whitehouse may have taken, it does not justify the Council's approach to assert there was insufficient information, that uncertainty around the risk was too great and as a consequence the issue could not be appropriately dealt with by condition. This was not a situation where Members had competing technical evidence. The body of evidence by July 2024 pointed in one direction, and that was of a low risk, requiring recognised remediation approaches and the imposition of standard, precautionary conditions. The two ECE reports have not changed this situation.
31. Overall, I consider the Council's behaviour in advancing a statement of case on 5 reasons for refusal, perpetuating that position until the deadline day for proofs of evidence and then ultimately withdrawing all reasons for refusal on the grounds of the two ECE reports, and the Contaminated Land officer comments of 29 November 2024 was unreasonable. Accordingly, the appellant has incurred unnecessary expense in the appeal process.
32. Whilst I have sought to be comprehensive and fair in the accompanying appeal decision, recognising that the appeal proposal is of concern to local residents, the bottom line is that there was nothing of substance at the appeal stage to demonstrate that the various technical assessments of the appellants on matters of transport, contaminated land, agricultural land quality, flood and drainage and landscape and visual impacts undertaken by accredited companies were inaccurate or insufficient. The overall planning balance was firmly tilted to the grant of planning permission despite the conflict with the aged 2002 Local Plan Review.
33. The LPAs letter of 17 December 2024) also refers to the December 2024 NPPF as an explanation for withdrawing all of its reasons for refusal but sheds little light on why this would be the case. The statement of common ground in November agreed there was no five year housing land supply and the tilted balance was engaged on this reason alone. The new NPPF does not change this. On the main issues for the appeal, it is difficult to see how the December NPPF has materially changed matters. Overall, I find the LPAs use of the December 2024 NPPF as a reason for its very late change in position obfuscatory in seeking to defend the invidious position resulting from Members unreasonable avoidance and resistance to approve a development that should have been permitted, including through the imposition of suitable conditions.

Conclusion

34. I therefore find that the LPA has unreasonably prevented or delayed a development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations in the terms expressed at PPG paragraph 16-049-20140306. It has also behaved unreasonably in the handling of the application in the terms at PPG paragraph 16-048-20140306 for non-determination appeals in not reaching a decision within the relevant time limit, where there were no substantive reasons to justify delaying the determination.
35. As such I find that unreasonable behaviour on the part of the Council resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated. Accordingly, I conclude that a full award of costs is justified.

Costs Order

36. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Ashfield District Council shall pay to Hallam Land the costs of the appeal proceedings described in the heading of this decision, and such costs shall be assessed in the Senior Courts Costs Office if not agreed.
37. Hallam Land is now invited to submit to the Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

David Spencer

INSPECTOR.