

Ashland Road West, Sutton in Ashfield (V/2020/0184)

The Proposal

The proposed development is for 300 dwellings off Ashland Road West, Sutton in Ashfield. It is understood that of the 10.137 hectares of site, 8.54 hectares will be used for residential dwellings and their associated uses. This will include access roads within the site, private gardens, car parking areas, and areas of incidental space. The development achieves an average net density of 34 dwellings per hectare (dph).

The site is currently a greenfield agricultural site, comprising two large fields. The application site is bounded on three sides by existing residential development and Brierley Forest Park to the north of the site.

Policy Context

Ashfield Local Plan Review 2002 as amended by "saved policies" 2007. (ALPR)

The following ALPR 'saved' policies are considered relevant to the application:-

- Policy ST1: Development.
- Policy ST2: Main Urban Areas.
- Policy ST4: Remainder of the District.
- Policy EV2: Countryside.
- Policy EV6: Sites of Importance for Nature Conservation. (Now known as Local Wildlife Sites).
- Policy EV8: Trees and woodlands.
- Policy HG3: Housing density.
- Policy HG4: Affordable Housing.
- Policy HG5: New residential development.
- Policy HG6: Open space in residential developments.
- Policy TR2: Cycling provisions in new development
- Policy TR3 Pedestrians and People with limited mobility.
- Policy TR6: Developer contributions to transport improvements

There is no neighbourhood plan relating to the area in question.

Material considerations

National Planning Policy Framework (NPPF) policies relevant to the application are:

- Para 11: Sustainable Development.
- Part 5: Delivering a sufficient supply of homes.
- Part 8: Promoting healthy and safe communities
- Part 9: Promoting sustainable transport.
- Part 10: Supporting high quality communications.
- Part 11: Making effective use of land.
- Part 12: Achieving well designed places.
- Part 14: Meeting the challenge of climate change, flooding and coastal change
- Part 15: Conserving and enhancing the natural environment.

The NPPF at para. 3 identifies that the NPPF should be read as a whole including its footnotes and annexes.

National Planning Policy Guidance (PPG) brings together national planning guidance on various topics.

Supplementary Planning Documents

- Residential Design Guide SPD 2014
- Residential Car Parking Standards 2014

Legislation

Natural Environment and Rural Communities Act 2006 section 40 duty “to have regard” to the conservation of biodiversity in England.

Summary

The development plan comprises the saved policies within the Ashfield Local Plan Review 2002 (ALPR). The Council does not have a 5-year housing supply of deliverable housing sites. In these circumstances, the application must be seen in the context of the National Planning Policy Framework (NPPF) paragraph 11. Consequently, unless it can be established that Paragraph 11 d) i applies, the starting point is the presumption in favour of sustainable development. Paragraph 11 d) ii sets out that, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole.

The proposed development is located in the Countryside as defined by the ALPR in Policies ST4 and EV2 and the Proposals Map. The proposed development does not fall within the definition of appropriate development in ALPR, and consequently does not meet the policy requirements of EV2. However, the Policy must be considered in relation to the provisions of the NPPF. Policy EV2 has some consistency with the NPPF's requirement to recognise the intrinsic beauty and character of the countryside. However, it is more restrictive and lacks the NPPF more flexible approach. The NPPF paragraph 59 sets out that it is the Government's objective to significantly boost the supply of homes. Paragraph 73 requires local planning authorities to identify a minimum of five years' worth of housing against the local housing requirement allowing for a buffer varying between 5% and 20% dependent on the local planning authority circumstances. Therefore, Policies ST4 and EV2, taken together with the role of settlement boundaries, are inconsistent with the NPPF and consideration has to be given to what weight can be carried by these policies.

Any decision has to consider the impact on biodiversity. There are local wildlife sites adjacent to the site and Brierley Forest Park in a local nature reserve. An ecology report submitted with the application advises that the application site has limited ecological value and set out a number of recommendations in relation to ecology. These should be considered in relation to ALPR policy EV6 and the provisions of the NPPF and Planning Practice Guidance (PPG). Similarly, the arboriculture assessment emphasises the need to ensure the protection of trees and hedges if permission is granted. (ALPR Policy EV8).

In terms of landscape, the site is not covered in the ALPR by any landscape designation and there appears to be no evidence that it would fall within a valued landscape as set out in the Stroud case.

No designated or non designated heritage assets have been identified on or adjacent to the site.

The site has been submitted as part of the Strategic Housing and Economic Land Availability Assessment (SHELAA). At this time, the site has been identified as a green site for 'Availability' and an amber site for 'Suitability'. (The site is potentially suitable). This reflects the need for any development to take into account the Local Nature Reserve and the Local Wildlife Sites immediately adjacent to the site and the areas of surface water flooding which may require mitigation.

The site is located in Flood Zone 1. It is noted that a site specific flood risk assessment has been submitted which address the issues from flooding from local watercourses. The NPPF paragraph 165 emphasises that given that this is major development, Sustainable Drainage Systems (SuDs) should be utilised unless there is clear evidence that this would be inappropriate. The submitted information will need to identify the proposed operational standards and what maintenance arrangements will be in place to ensure an acceptable standard of operation for the lifetime of the development.

It is understood that a significant part of the site is located in a minerals safeguarded area – Limestone.

If it is considered appropriate to consider granting permission for housing, the various policy requirements are set out in the main comments. As the site area is 10.137 ha, the ALPR saved policies TR6 Developer Contributions to Transport Improvements, and HG6 Public Open Space in New Residential Developments will apply. Design is of key importance reflecting the provisions of NPPF, supporting PPG and the ALPR policies ST1, HG3, HG5, TR2 and TR3. Based on the requirements of the ALPR Policy HG4 and the NPPF, 10% affordable housing will be required.

NPPF in Part 8, Promoting healthy and safe communities emphasises the importance of planning positively for community facilities, ensuring sufficient choice of school places, and access to high quality open spaces respectively. Developer contributions are likely to be required in order to ensure a sustainable development, which satisfies NPPF requirements. It is advised that Nottinghamshire County Council highways, and education, together with the healthcare providers are consulted in respect of these requirements.

Policy Comments

Under the Planning and Compulsory Purchase Act 2004, section 38(6) applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. Therefore, the starting point for decision making are the policies set out in the Ashfield Local Plan Review 2002 (saved policies).

The National Planning Policy Framework (NPPF) is a material consideration, which, as it is government policy, is likely to command significant weight. The NPPF may provide reasons why an application for planning permission should be granted notwithstanding the development plan. When considering the weight to be given to development plan policies, it is necessary to consider the degree of consistency of development plan policies with the NPPF (NPPF paragraph 213).

The ALPR has an end date of 2011. However, the Court of Appeal has held that there is nothing in NPPF para. 11(d) to suggest that the expiry of the specified period of a

development plan document automatically renders the policies in that document “out-of-date” for the purposes of that paragraph¹. It remains a question of planning judgement.

In relation to the operation of the ‘tilted balance’, the High Court² has clarified that it is a matter for the decision-maker to decide how much weight should be given to the policies of the development plan, including the “most important policies” referred to in paragraph 11(d). The triggering of the tilted balance does not automatically lead to the grant of planning permission. Instead, it involves the balancing of competing interests, but with the tilt towards granting permission. This should involve consideration of whether or not the policies are in substance out-of-date and, if so, for what reasons. The most important development plan policies for an application should be viewed together and an overall judgement must be formed as to whether or not taken as a whole the policies are to be regarded as out of date for the purpose of the decision³.

The Court of Appeal⁴ has held that there was nothing in para.11(d) NPPF or its predecessor (para 14) which rendered policies ‘out of date’ merely because of the expiry of the plan period.

Housing Supply

The Housing Monitoring Report 2019 -20 provides information on the District’s five year housing land supply based on the standard methodology as set out in NPPF paragraph 60 and the supporting Planning Practice Guidance. As of 31st March 2020, Ashfield District had a 2.53 years housing land supply based on a 5% buffer.

Consequently, unless it can be established that NPPF Para 11 d) i applies, demonstrating that policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development then, as this is an application involving the provision of housing under NPPF Para 11 footnote 7 the tilted balance of paragraph 11 of the NPPF is engaged.

The Housing Monitoring Report 2020 is available on the Council’s website at:

<https://www.ashfield.gov.uk/residents/planning-building-control-and-land-charges/forward-planning/monitoring/housing-land-monitoring/>

Policy ST1 Development.

The proposal needs to be considered against ALPR Policy ST1, which specifies a number of provisions including that development will be permitted where:

- a) It will not conflict with other Local Plan policies.
- b) It will not adversely affect the character, quality, amenity or safety of the environment.
- c) It will not adversely affect highway safety or the capacity of the transport system.
- d) It will not prejudice the comprehensive development of an area.
- e) It will not conflict with adjoin or nearby land use.

¹ Peel Investments (North) Limited V Secretary of State for Housing, Communities and Local Government (1) Salford City Council (2) [2020] EWCA Civ 1175

² Gladman Developments Ltd v Secretary of State for Housing, Communities and Local Government & Anor [2020] EWHC 518 (Admin)

³ Wavendon Properties Ltd v SSHCLG [2019] EWHC 1524 (Admin).

⁴ Peel Investments (North) Ltd v SSHCLG [2020] EWCA Civ 1175.

Policy ST1 is generally consistent with the provision of the NPPF. However, in relation to any conflict with 'other Local Plan policies', these other policies have to be considered in relation to the provisions of the NPPF.

Policy ST4 The Remainder of the District and Policy HG1 Housing land Allocations

The ALPR Policy ST2, ST3 and ST4 aimed to concentrate development within the urban areas and the named settlements. The ALPR set out allocations of a number of housing and employment sites.

The NPPF in paragraph 59 sets out that it is the Government's objective to significantly boost the supply of homes. Paragraph 73 requires local planning authorities to identify a minimum of five years' worth of housing against the local housing requirement allowing for a buffer varying between 5% and 20% dependent on the local planning authority circumstances.

The Council's housing land requirements are set out in the ALPR and Policy HG1 allocations of housing sites. The ALPR in Policy HG1, set out allocations of housing sites. This included allocations in what was formally the open countryside to meet anticipated future need. As part of the Plan, the urban and settlement boundaries were amended to include these allocations, which were typically adjacent to the former main urban areas or named settlements. While the establishment of settlement boundaries is not inconsistent with the NPPF, the settlement boundaries within the ALPR were defined to allow for sufficient growth to meet future land use needs for the Plan period to 2011. Many of the housing allocations under ALPR, Policy HG1 have been developed, as such, this limits the opportunity for the existing ALPR to meet future housing needs. Policy HG1 does not identify sufficient sites to meet future requirements. In this context Policy ST4 lacks the balancing exercise required by the NPPF and therefore, is inconsistent with it.

Countryside

Policy ST4 identifies that outside the Main Urban Areas and Named Settlements permission will only be given for sites allocated for development or development appropriate to the Green Belt or Countryside as set out in Policies EV1 and EV2. Therefore, in relation to the application site, one of the key policies in the ALPR is Policy EV2 (The Countryside). The Policy provides that planning permission will only be given for appropriate development and development that is located and design so as not to adversely affect the character of the countryside and its openness. None of the forms of appropriate development are applicable in relation to the proposed application. Consequently, the proposal is contrary to Policy EV2.

The NPPF sets out a more flexible approach to rural housing in paragraph 77 and 78 and to the rural economy in paragraph 83. Policy EV2 does allow some development and does not impose a blanket ban on new development in the countryside. The NPPF in paragraph 170 b also recognised the intrinsic character and beauty of the countryside⁵. Consequently, the Policy has some consistency with the NPPF and can be considered to attract weight in this context. However, the policy has to be seen with Policy ST4 and in the context that it limits the opportunity for the existing ALPR to meet future housing needs. As such it also lacks the balance required by the NPPF. As the proposal conflict with both Policy ST4 and Policy EV2 they are inconsistent with the NPPF and consideration has to be given to what weight can be carried by these policies.

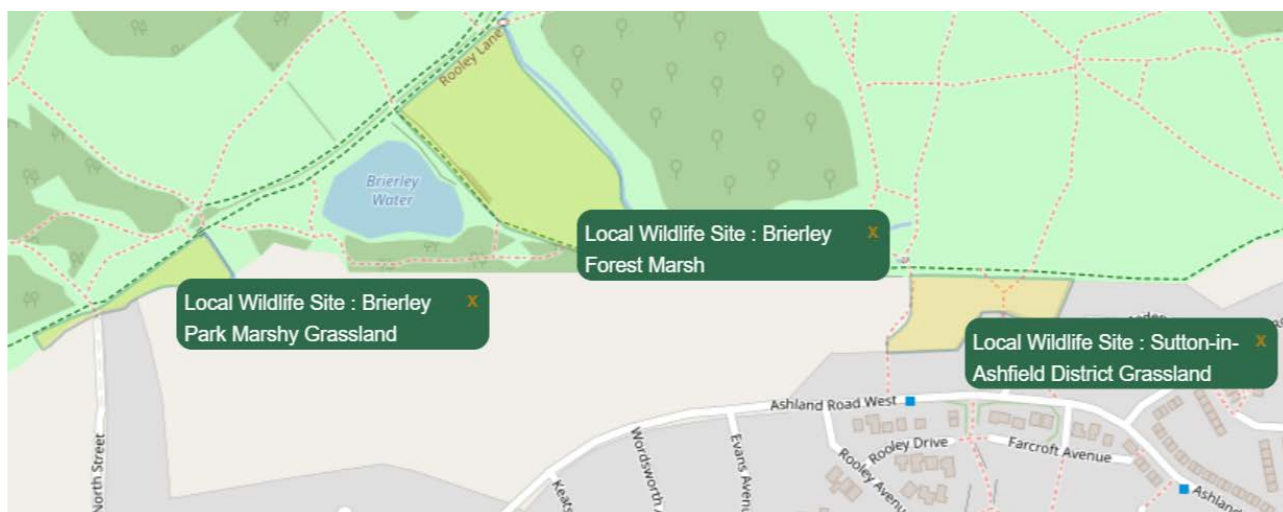
⁵ Telford and Wrekin v Secretary of State CLG and Gladman [2016] EWHC 3073 (Admin)

Environment

The Council is under a duty under section 40 of the Natural Environment and Rural Communities Act 2006 “to have regard” to the conservation of biodiversity in England, when carrying out their normal functions. PPG identifies *that ‘a key purpose of this duty is to embed consideration of biodiversity as an integral part of policy and decision making throughout the public sector, which should be seeking to make a significant contribution to the achievement of the commitments made by government in its 25 Year Environment Plan’* (PPG Natural environment Paragraph: 009 Reference ID: 8-009-20190721. The NPPF para 170 stresses that planning policies and decisions should contribute to and enhance the natural and local environment by a variety of measures including minimising impacts on and providing net gains for biodiversity.

The application site is not subject to any environmental designations. However, Brierley Forest Park, located to the northern boundary of the site, is a Local Nature Reserve. Local wildlife sites are located in close proximity to the boundaries of the application site at:

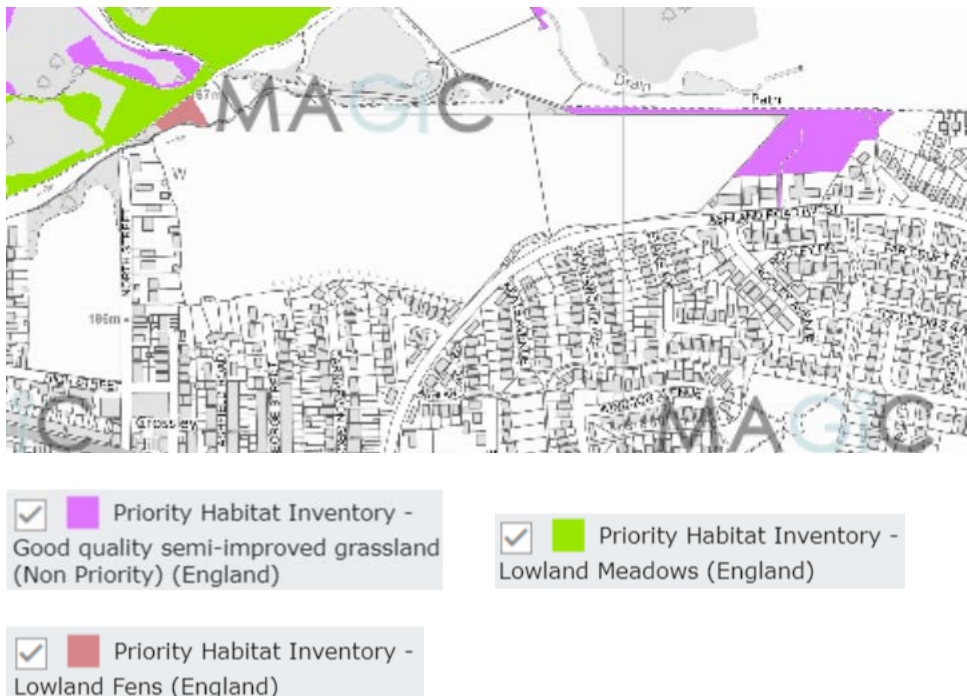
- Brierley Forest Marsh.
- Brierley Park Marshy Grassland.
- Sutton in Ashfield District Grassland.



The ALPR sets out policy protection for ecological sites in Policy EV6, which relates to both Local Nature Reserves and Local Wildlife Sites.

Land to the east of and a small strip of land to the northern boundary is identified as Priority Habitat – Good quality semi improved grassland⁶. Trees and woodlands are protected in accordance with Policy EV8. The Map below set out priority Habitats identified by Natural England’s Magic Maps.

⁶ Natural England Magic Map.



Both Policy EV6 and EV8 are environmental policies which are considered to be broadly consistent with the NPPF paragraph 170, 171, 174 and 175. Under NPPF paragraph 175 a), planning permission should be refused if significant harm to biodiversity results from the development and this cannot be avoided or mitigated or compensated against.

I noted that an ecology report and an arboriculture assessment has been submitted as part of the application. The ecology report advises that the application site has limited ecological value and set out a number of recommendations in relation to ecology. Similarly the arboriculture assessment emphasis the need to ensure the protection of trees and hedges if permission is granted.

ALPR Policy EV4 does not identify the site as being in a mature landscape area, which reflects a local landscape designation in 2002. The Nottinghamshire Landscape Character Assessment (LCA) 2009 was carried out for the whole of Nottinghamshire because of increased emphasis on the use of LCAs to inform policy in Local Development documents. It updates the earlier Countryside Appraisal (NCC), which formed the basis for EV4. The LCA identifies the site as part of Character Area ML021, which comprises the man-made landform of a restored former colliery with a raised woodland covered mound comprising 'engineered' slopes of even gradient. Views are enclosed by woodland on low ground with panoramic views from the top of the colliery mound across urban areas to the south and to the north open countryside and high ground at the former Silverhill colliery to the north. The application site is located at the southern part of this area and is situated lower than its surroundings, enclosed by existing residential development on three sides. The overall landscape condition and strength is 'Moderate', with an overall strategy to 'enhance'. Specific actions include to conserve remnant hedgerows and encourage infill planting within gaps rather than erection of timber fencing, and to conserve and enhance the wooded boundaries adjacent to the urban fringes to screen them from the DPZ.

The NPPF identifies that decisions should 'protect and enhance valued landscapes' (NPPF para. 170 a). What is a 'valued' landscape is not defined by the NPPF. However, the Stroud⁷ case identified that a valued landscape is that which is "out of the ordinary", "to be valued would require the site to show some demonstrable physical attribute rather than just popularity". The site is not identified in the ALPR by any landscape designation and

⁷ Stroud DC v Secretary of State and Gladman Developments Limited [2015] EWHC 488 (Admin)

there appears to be no evidence that it would fall within a valued landscape⁸ as set out in the Stroud case.

ALPR Policy EV9 Agricultural was not saved. Nevertheless, under NPPF paragraph 170 b) consideration should be given to the benefits of the best and most versatile agricultural land (grades 1, 2 and 3a). Based on East Midlands Region 1:250 000 Agricultural Land Classification Map the land is indicated to be Grade 4. However, this Map does not provide site specific information. No information on the site is available from the Post 1988 Agricultural Land Classification (England).

Heritage Assets

No designated or none designated heritage assets are identified on or adjacent to the site. The site does fall within Area G – Meden Valley of the Hardwick Hall Setting Study. However, this reflects that the setting areas following the boundary to the urban area set out in the ALPR. Given the location and the topography of the land, the application site is not anticipated to have an impact on the setting of Hardwick Hall.

Whether a Suitable and Sustainable Location

The site has been submitted as part of the Strategic Housing and Economic Land Availability Assessment (SHELAA). At this time, the site has been identified as a green site for 'Availability' and an amber site for 'Suitability'. (The site is potentially suitable). This reflects the need for any development to take into account the Local Nature Reserve and three Local Wildlife Sites immediately adjacent to the site and the areas of surface water flooding which may require mitigation.

Flooding

Flooding was not a saved policy under the ALPR. Consequently, any application will need to be considered against the provisions of the NPPF Part 14 Meeting the challenge of climate change, flooding and coastal change. There is a watercourse to the north of the site but it is not identified as falling within Flood Zones 2 or 3 on the Flood Zone maps. The site itself is identified in Flood Zone 1. Flood Risk from surface water is identified on the relevant maps to the north east of the site with some small area of low risk surface water being located within the site.

NPPF paragraph 165 emphasises that given that this is major development, Sustainable Drainage Systems (SuDs) should be utilised unless there is clear evidence that this would be inappropriate. The submitted information will need to identify the proposed operational standards and what maintenance arrangements will be in place to ensure an acceptable standard of operation for the lifetime of the development.

Surface water flow rates should be restricted to greenfield run off rates. Given the size of the development site, a site-specific flood risk assessment will be required.

Mineral Areas

It is understood that a significant part of the site is located in a minerals safeguarded area – Limestone and the County Council, as the mineral authority, should be consulted on this aspect.

The site is identified as being in a low risk area for coal.

⁸ It should be noted that NPPF paragraph 11, footnote 6, does not include 'valued landscapes' within the specific policies in the NPPF which are protected areas or assets.

Housing Requirements

The NPPF in paragraph 59 gives substantial emphasis on significant boosting the supply of homes, stressing that it is important that a sufficient amount and variety of land can come forward where it is needed.

Both Local Plan policies and the NPPF sets out various requirements, which need to be considered as part of any application for residential units.

- Open Space & Recreation - ALPR Policy HG6 requires a minimum of 10% of the gross housing area to be provided as open space. The policy does allow for planning contributions towards existing open space where it is not appropriate to provide open space within a site boundary.

While there are no designated footpaths on the site, it is important that the layout of the development reflect the need for local resident to access Brierley Forest Park, which is a substantial recreation resource within this area.

- Design, Housing Density & Housing Mix - Any future development scheme should aim to achieve a permeable, safe and accessible environment with clear legible pedestrian routes and high quality public space. The ALPR sets out policies on design aspect in Policy ST1 and HG5 and these are supported by SPDs on residential design and car parking, which provides detailed guidance on the standards of design the Council is looking to achieve. The policies in the development plan are supported by the provisions of the NPPF, which places substantial emphasises the importance of good design with the creation of high quality buildings and places (NPPF paragraph 124) and the effective use of land. (NPPF Part 11). This has been further emphasised by the Planning Practice Guidance on Design: process and tools which stresses that this should be read alongside national design guidance⁹, which sets out the characteristics of well-designed places and demonstrates what good design means in practice.
- Housing density requirements are set out in ALPR saved Policy HG3. In this location, the Policy requires a net minimum density of 30 dwellings per hectare (dph). Paragraph 5.69 sets out how the net density is derived. However, this has to be seen in the context of the NPPF, paragraph 123 where it is identified that where there is an existing shortage of land for meeting housing needs, planning decision should avoid homes being built at low densities and ensuring that development makes optimal use of the potential of each site. The NPPF emphasises the need to make effective use of land in meeting the need for homes. The supporting Planning Practice Guidance on Effective Use of Land highlights that it is important to consider housing needs, local character and appropriate building forms relate to the density measures being used (paragraph 66-005-20190722).

The Greater Nottingham & Ashfield Housing Need Assessment, September 2020, Icen, sets out recommendations on market housing mix which seeks to respond to the modelled outputs, recent delivery trends and the needs for family households; as well as the role which each area plays in the wider housing market area. In terms of affordable housing provision, consideration is also given to affordability as well as the types of housing which will meet the needs of those of greatest priority. All these factors have been brought together by Icen to arrive at a recommended housing mix by size and type.

⁹ Planning Practice Guidance on Design: process and tools Reference ID: 26-001-20191001.

Recommended Housing Mix by Size by Type

Authority	Housing Type	1 Bed	2 Beds	3 Beds	4+ Beds
Ashfield	Market	4%	27%	45%	24%
	Affordable Home Ownership	23%	38%	24%	15%
	Affordable Rented	35%	37%	25%	3%

lceni identify that the recommendations can be used as a set of guidelines to consider the appropriate mix on larger development sites, and lceni consider that it would be reasonable to expect justification for a housing mix on such sites, which significantly differs from that modelled herein. It is also the case that site location and the character of an area are also relevant considerations in determining the appropriate mix housing on individual development sites.

Affordable Housing

The current affordable housing requirement is set out in 'saved' ALPR policy HG4. The size and location of the proposal would require 6% affordable housing, preferably provided on-site. However, it is not considered that the Policy is consistent with the NPPF paragraph 64. Paragraph 64 sets out that

'Where major development involving the provision of housing is proposed, planning policies and decisions should expect at least 10% of the homes to be available for affordable home ownership²⁹, unless this would exceed the level of affordable housing required in the area, or significantly prejudice the ability to meet the identified affordable housing needs of specific groups.'

29 - As part of the overall affordable housing contribution from the site.

For Sutton in Ashfield it is considered that 10 % affordable housing should be provided on site.

Affordable housing needs to be integrated into the overall design and layout of the proposed development. National Design Guidance in U2 A mix of home tenures, types and sizes emphasises that:

- para 115 Well-designed neighbourhoods provide a variety and choice of home to suit all needs and ages. This includes people who require affordable housing or other rental homes, families, extended families, older people, students, and people with physical disabilities or mental health needs.
- para 116 Where different tenures are provided, they are well-integrated and designed to the same high quality to create tenure neutral homes and spaces, where no tenure is disadvantaged.

Highways/Transport

There are policies in the ALPR, which relate to the development of the site and transport aspects but it is recognised that they are not comprehensive. Policy ST1 seeks to ensure that development will not adversely affect highway safety. Policy TR2 Cycling provisions in new development set out the requirements in relation to cycling. Policy TR3 identifies policy requirements in relation to pedestrians and people with limited mobility. Policy TR6 of the ALPR, 2002 seeks contributions towards transport improvements where they are directly related/needed because of the development. The NPPF has a more comprehensive approach to transport promotes sustainable transport and ensuring it

contributing towards sustainability and health objectives. This is reflected in paragraphs 108 to 111 in relation to decision making. The emphasis giving priority to pedestrians, cycling and facilitating public transport.

Infrastructure

A significant element of local infrastructure supporting local housing relates to the responsibilities of the County Council. The County Council has set out a Planning Obligations Strategy, January 2021. This includes education as the County Council's is under a legal duty to ensure sufficient school places are available. Therefore, it is important that where appropriate development should contribute towards the provisions of school places. While the ALPR is silent on this aspect, the NPPF in paragraph 94 emphasis the requirement to:

- a. give great weight to the need to create, expand or alter schools through the preparation of plans and decisions on applications; and
- b. work with schools promoters, delivery partners and statutory bodies to identify and resolve key planning issues before applications are submitted.

It is anticipated from the evidence base for withdrawn Local Plan in the Joint Education Statement on provision of school places that there is shortage of pupil places for both primary and secondary schools in Sutton in Ashfield. The County Council will need to be consulted on this aspect.

Health provision is also important, and the Clinical Commission Group should be consulted on any health requirements that could arise from the proposed development.

In accordance with CIL Regs 2010, paragraph 122, contributions can only be required if there are needed as a direct consequence of the development.