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TOWN AND COUNTRY PLANNING ACT 1990
(as amended)

Section 78 Appeal by Hallam Land Management

**Land at Newark Road, Coxmoor Road,
Sutton in Ashfield, Nottinghamshire**

EDUCATION MATTERS
Education Provision in Sutton in Ashfield, Nottinghamshire

Nottinghamshire County Council

EDUCATION REBUTTAL

Ben James Hunter

BA DipMS

PINS Reference: APP/W3005/W/24/3350529

LPA Ref: V/2022/0629

Date: 7th January 2025

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Contents

Chapter		Page
1.	Introduction.....	3
2.	NCC Secondary School Provision Statement.....	3
3.	Conclusion.....	11
4.	Appendix A.....	12



1 Introduction

1.1 My name is Ben James Hunter. My qualifications and experience are detailed in the Appellant’s Education Statement of Case (10th December 2024) which is appended to Gary Lees’ Proof of Evidence.

1.2 Subsequent to the production of the Appellant’s Education Statement of Case, Nottinghamshire County Council (“NCC”) have provided an updated consultation response (received on 19th December 2024) which supersedes the previous evidence dated 14th March 2024. Accordingly, the purpose of this Rebuttal is to respond directly to the updated evidence.

1.3 For the sake of brevity, this Rebuttal will reproduce the data in the consultation response verbatim, and provide a response to the new information.

2 NCC Secondary School Provision Statement (19th December 2024)

2.1 The NCC Secondary School Provision Statement consists of seven paragraphs and three tables, over three pages. The first paragraph states the following:

The County Council forecasts future school capacity on a pupil planning area basis using the methodology prescribed the Department or Education (DfE). The forecast data includes demand expected from new housing development where this is subject to planning permission. The latest projection data (School Capacity Survey 2024) was published in October 2024 and includes demand from consented developments as of April 2024. A summary of the pupil projection data for the Kirkby-Sutton Planning Area is displayed below.

Planning area	DfE no	School	District	Net capacity	Pupil projection	Housing commitments, 7 yrs	Projected places available
Kirkby/Sutton	4009	Ashfield School	ASHFIELD	2053	1961	44	+48
Kirkby/Sutton	4027	Outwood Academy Kirkby	ASHFIELD	678	567	9	+102
Kirkby/Sutton	4068	Quarrydale Academy	ASHFIELD	1411	1107	127	+177
Kirkby/Sutton	4015	Sutton Community Academy	ASHFIELD	735	781	35	-81
Kirkby/Sutton	0012	PLANNING AREA TOTAL	ASHFIELD	4877	4416	215	+246

2.2 There is no argument with NCC regarding how the projections were produced. However, what is evident, if this paragraph is correct, is that there has been double counting of applications. This is discussed further below.

2.3 The second paragraph states:

There is forecast to be a surplus of secondary school places in the planning area which would be sufficient to accommodate the pupil demand from a further 1537 dwellings based on the County Council's adopted pupil yield (16 secondary pupils per 100 dwellings). Thus, the appeal site alone would not result in a deficit of places.

2.4 This is an important statement. There is currently forecast to be sufficient capacity for 1,537 new dwellings (assuming that all will be child accommodating dwellings, which they will not be, meaning that this is a worst-case scenario figure) whereas this development is 300 dwellings, meaning that there is over five times the number of surplus places available based on the most recent published projections. This surplus capacity takes account of all sites with Planning Permission up to April 2024, as discussed in paragraph 1. The remaining applications are at various stages of the planning process, and may never receive a positive determination, as discussed further below.

2.5 The second paragraph continues:

However, the appeal site is not the only development proposal within the planning area. The County Council has been consulted on 19 planning applications, totalling 1912 dwellings, which have not been included in the projections data, either because they remain to be determined or, in few cases, have only recently been permitted. Cumulatively these sites would result in a deficit of school places and therefore the County Council is seeking to ensure that the cost of the additional places required is shared proportionately between sites, also having regard to the further sites which have been allocated in the draft local plan and which have not yet come forward for consent.

2.6 The first paragraph and the second paragraph of the Secondary School Provision Statement do not correlate. The first paragraph states that the impact of all

consented developments as of April 2024 have been included in the projections. However, when looking at the Table of developments that NCC claim have not been included in the projections, it is clear at least one has been permitted prior to April 2024.

- 2.7 Specifically, the allocation site of H1Kd – Off Walesby Drive (196 units) was Approved in January 2024, with a signed Section 106 agreement dated 9th January 2024. This development will have been included in the projections if NCC's previous assertion about developments approved as of April 2024 being included is accurate. This is therefore a clear case of double counting.
- 2.8 Furthermore, the allocated site of H1S1 – North of Frackley Road, Teversal (124 units) was Refused in December 2023, and was the subject of a Hearing in December 2024, which has yet to be decided. This development, therefore, should not be included in the projections.
- 2.9 Other sites, as the NCC Statement makes clear, do not have planning permission. Indeed, of the 1,912 units (which should be at most 1,592 to address the double count above, and the refused application) there are only two¹ that have received permission since April 2024 (for 40 dwellings and 11 dwellings respectively). The rest are applications that may or may not be approved, and if or when they are, will have to address any shortfall that exists at the time.
- 2.10 It should be noted that in regards to the development of 40 dwellings (Hardwick Lane, V/2024/0063 – see Appendix A), NCC requested a Secondary School planning obligation, but this was not supported by ADC, who stated (page 24 of the Committee Report):

A contribution of £125,960 towards secondary education is requested by the County Council. Despite this request, this application on its own does not lead to a deficit in secondary school places within the Kirkby-Sutton planning area. For reference, this development would generate the need for six secondary school places within the planning area at a time when there is currently a surplus of 179 secondary school places.

¹ V/2024/0063 and V/2021/0793, as per the Planning Portal on 5th January 2025

Whilst it is recognised that the County Council have been consulted on numerous planning applications within the planning area which could cumulatively result in a deficit in secondary school places if all pending major planning applications were to be granted planning consent, in accordance with Regulation 122 of the Community Infrastructure Levy Regulations 2010, planning obligations are intended to assist in mitigating the impact of unacceptable development to make it acceptable in planning terms and can only constitute a reason for granting planning permission if they meet the tests that they are necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development.

On this occasion, the grant of planning permission would not result in a significant reduction in the availability of secondary school places within the Kirkby-Sutton planning area, with 173 secondary places remaining available should this application be granted planning consent. Subsequently the requested financial contribution of £125,960 cannot be adequately justified as necessary in accordance with Regulation 122 at the present time with regard to this application.

Based on current data there is a projected surplus of places in the planning area for primary secondary places, and the impact of the development would not lead to a deficit in provision. Contributions are not sought towards primary education.

- 2.11 ABC confirmed in this Committee Report that, in line with the Appellant's Education Statement, that planning obligations towards Secondary School provision did not fulfil the tests of CIL Reg 122 (2). The difference between the number of available pupil places when this Committee Report was published (17th April 2024) and today, is that spare capacity has grown.
- 2.12 What is clear is that, as NCC state in paragraph 2 of their Statement, there is capacity for 1,537 new dwellings before the schools are full. There are currently 51 dwellings with planning permission that can draw upon this surplus. Therefore, this development of 300 dwellings does not cause a deficit, and there is clearly still expected to be a significant number of surplus places available if this development receives a positive determination.

2.13 On the basis of the above, there is not sufficient evidence to demonstrate a deficit of places.

2.14 The third paragraph states:

The 1912 dwellings which are subject to planning applications comprise 1227 dwellings on sites which are allocated in the draft Ashfield Local Plan (ALP) and 685 on windfall sites which are not allocated in the draft ALP, including 300 dwellings on the appeal site. The draft ALP proposes to allocate a further 1177 dwellings on sites which are not yet subject to planning applications. The total growth across all these sites would be 3089 dwellings, which is 1552 dwellings more than the projected surplus capacity could accommodate. It is therefore requested that the cost of the required number of school places is shared proportionately.

2.15 The CIL Regulation 122 (2) compliance of this approach is dealt with by Gary Lees in his Proof of Evidence. NCC is not acting appropriately in seeking to secure payments from the Appeal site to reflect an assumption of child yields from sites that do not have planning permission and may not come forward. If they do, they will have to mitigate their impact based on the best evidence at the time.

2.16 The fourth paragraph states:

The total number of secondary aged pupils generated by 1552 dwellings would be 248 which would cost £7,506,960 to accommodate (based on 248 pupils x £30,270 per place), which would equate to £2,430 per dwelling if shared between all local plan and windfall sites, including the appeal site (i.e., 3089 dwellings). Therefore, the financial contribution requested from the appeal site is £729,000, to mitigate the cumulative impact of the development.

2.17 This figure is clearly excessive as it includes the impact of 1,177 dwellings that are of no greater status than draft allocations in a Plan that the Council accepts has limited weight, are not the subject of planning applications, and may never come forward. Beyond this, almost all the rest of the 735 dwellings (1,912 – 1,177) do not have planning permission even if they are the subject of an application. This is clearly inappropriate, and as a result inflates the financial contribution being requested

against this development. This is all while there is significant spare capacity in the Secondary Schools close to this development currently, and forecast in the future, as outlined in the Appellant's Education Statement of Case.

2.18 The fifth paragraph states:

It is recognised that this contribution is required based on a 'worst-case-scenario' and that there is uncertainty over whether all the sites listed below would secure consent.

2.19 NCC acknowledge in this statement that their approach is likely to be excessive, as it relies on a significant number of assumptions. It does not, for example, factor in the fact that a proportion of the dwellings will be one bedroom dwellings, and therefore unlikely to accommodate any Secondary School aged children, or accommodation for the over 55's, which again, is very unlikely to accommodate any Secondary School aged children. A formula approach as applied in this area is too crude an instrument to be able to be directly related to a specific development.

2.20 The fifth paragraph continues:

However, given the current housing land supply in the district and the advanced status of the draft ALP (undergoing examination) it is considered appropriate to have regard to the cumulative impact of these proposals on education infrastructure. Paragraph 100 of the NPPF requires decision maker to give great wight [sic] to the need to expand schools through decisions on applications.

2.21 Paragraph 100 of the NPPF states:

100. It is important that a sufficient choice of early years, school and post-16 places are available to meet the needs of existing and new communities. Local planning authorities should take a proactive, positive and collaborative approach to meeting this requirement, and to development that will widen choice in education. They should:
- a) give great weight to the need to create, expand or alter early years, schools and post-16 facilities through the preparation of plans and decisions on applications; and
 - b) work with early years, school and post-16 promoters, delivery partners and statutory bodies to identify and resolve key planning issues before applications are submitted.

2.22 The clear issue here is that the need to expand school provision has not yet been proven. As the Education Statement of Case highlights, there were (2023/24 academic year) 276 spare places in Years 7-11 in the four closest schools to this development. NCC discuss 246 spare places when factoring in all of the developments with planning permission up to April 2024. The latest School Capacity Projections show 522 spare places (the housing equivalent of over 3,262 dwellings) in the Kirby/Sutton Secondary Planning Area by the end of the decade. There are forecast to be 128 spare places in Year 7 alone by the end of the decade, whereas this development is expected to accommodate just 48 Secondary School aged children, or around 10 per Year Group. This position of surplus is also consistent with the October 2024 Infrastructure Delivery Plan Update produced by the District Council with input from NCC to inform the emerging Local Plan (CD 12.26, page 16) which says that in Kirkby and Sutton there is forecast to be sufficient places to meet future needs, although the position is different in Hucknall. This is shown below:

Secondary Planning Areas

- **Hucknall Secondary Planning Area** - There is forecast to be insufficient capacity to meet future needs and therefore all allocations within Hucknall will be required to make contributions relative to their pupil yield towards the expansion of Holgate Academy. Therefore, in Ashfield, secondary contributions will be required through Section 106 agreements and from Top Wighay Farm, contributions will be obtained from Gedling Borough Council's Community Infrastructure Levy, as stated in its Infrastructure Funding Statement.
- **Kirkby/Sutton Secondary Planning Area** - There is forecast to be sufficient places to meet future needs.
- **Selston Secondary Planning Area** - there is forecast to be sufficient places to meet future needs.

2.23 If it is the case, as per the October 2024 Infrastructure Delivery Plan Update, that there is expected to be sufficient capacity in the Kirkby/Sutton Secondary Planning Area, then there is no justification for planning obligations, as per ADC's and NCC's own evidence. The statement regarding the Kirkby/Sutton Secondary Planning confirms the outcomes of the Appellant's Education Statement of Case.

2.24 The final paragraph states the following:

It should also be noted that the planning inspectorate has previously shown support for the principle of addressing cumulative education impacts within Ashfield. The following statement is taken from the appeal decision relating to a proposed development of 300 dwellings at Land off Ashland Road Sutton-in-Ashfield V/2020/0184 (Appeal Ref: APP/W3005/W/21/3274818):

"Appropriate financial contribution towards primary education provision: This would be on the basis that despite a current relatively small surplus of places, there is sufficient certainty that enough other new residential developments will come forward, such that the proposed development when considered cumulatively with those others (undetermined planning applications or extant planning permissions) would result in a shortfall of places and the need for a new school. This would be in accordance with paragraph 95 of the Framework which states amongst other things that it is important that a sufficient choice of school places is available to meet the needs of existing and new communities" (PINS, December 2021).

2.25 There is a fundamental difference between the Ashland Road West decision and this Appeal. That is that the Education contribution was not scrutinised in the Ashland Road West Appeal. Paragraph 69 of the Decision states that *Planning Obligations have been submitted within a Section 106 Agreement (s106)*... In contrast, Gary Lees and I are raising fundamental issues with NCC's approach that have required more scrutiny, and a decision to be made on the appropriateness of the approach by the Inspector. There was no Education Consultant called in the Ashland Road West Appeal, and a joined up approach between the Appellant and NCC in relation to that case meant that no in depth scrutiny was necessary.

2.26 On the basis of the new consultation response, two points are evident. Firstly, the number of spare places forecast has increased considerably between March 2024 and December 2024. Second, based on the spare capacity currently, and forecast in the future, planning obligations cannot be said to make the development acceptable in planning terms. Further there is a fundamental and unexplained contradiction between the evidence compiled by the District Council with input from NCC for the emerging Local Plan and the latest Statement to this Inquiry by NCC.

3 Conclusion

3.1 I was instructed by the Appellant to prepare this written Rebuttal in response to the updated consultation response. The new data does not change the conclusion of the Appellant's Education Statement of Case dated 10th December 2024. That is that there is no justification for planning obligations, nor is there any Education related reason why this development cannot progress.

4 Appendix A

4.1 Recreation Ground, Hardwick Lane, Sutton in Ashfield Committee Report sections on Education (17th April 2024):

<u>COMMITTEE DATE</u>	17/04/2024	<u>WARD</u>	Sutton Central & New Cross
<u>APP REF</u>	V/2024/0063		
<u>APPLICANT</u>	Ashfield District Council		
<u>PROPOSAL</u>	Construction of 40 Dwellings and Associated Infrastructure		
<u>LOCATION</u>	Recreation Ground, Hardwick Lane, Sutton in Ashfield		
<u>WEB-LINK</u>	https://www.google.co.uk/maps/@53.1214384,-1.2570982,17.21z?entry=ttu		
<u>BACKGROUND PAPERS</u>	A, B, C, D, E, F, H & K		
App Registered:	06/02/2024	Expiry Date:	13/05/2024
<i>Consideration has been given to the Equalities Act 2010 in processing this application.</i>			
<i>This application has been referred to Planning Committee in the interest of transparency since Ashfield District Council are the applicant, and also the owner of the application site.</i>			
<u>The Application</u>			
This is an application that seeks full planning consent for the construction of 40 dwellings and associated infrastructure on land as Hardwick Lane recreation ground, Sutton in Ashfield. The scheme is proposed to comprise of a mix of 1, 2, 3 and 4 bed units in varying forms of flats, bungalows, terraced properties and semi-detached properties. All 40 units are to be affordable homes, contributing towards the Council's own social housing stock.			
<u>Consultations</u>			
A site notice has been erected and a press notice issued, together with individual notification to surrounding residents.			
The following representations have been received:			
ADC Tree Officer:			
The supplied arboricultural survey, tree protection plan and arboricultural method statements are satisfactory and should ensure the safe retention of trees on site. The details should form part of any approved plans for the development.			

the development and operational phases. It would be useful if the application was supported by a waste audit.

NCC Archaeology:

There are no comments or recommendations in respect of archaeology having regard to the Nottinghamshire Historic Environment Record (HER).

NCC Built Heritage:

The local Magnesian Limestone boundary wall running the full length of the application site along Hardwick Lane is a local heritage feature of considerable interest. Walls of this type are important to the local distinctiveness of the area and are irreplaceable as there are no longer any quarries open for this type of limestone. Attempts should be made to retain the wall as part of the development and repaired as necessary using appropriate traditional materials (lime mortar) as required. Removal of the wall would be contrary to national planning policies and Ashfield District Council's own criteria for identifying assets of local heritage interest.

NCC Education:

Primary Education

Based on current data there is a projected surplus of places in the planning area for primary places, and the impact of the development would not lead to a deficit in provision. Contributions are not sought towards primary education.

Secondary Education

Based on current data there is a projected surplus of secondary places in the Sutton-Kirkby Planning Area, and the proposal alone would not lead to a deficit of provision. The County Council have however been consulted on numerous planning applications within the planning area which remain to be determined which could cumulatively result in a deficit in secondary school places. The cost of additional places is required to be shared between sites.

The Ashfield Infrastructure Delivery Plan 2023 identifies the need for three additional forms of entry in the Sutton-Kirkby Planning Area, amounting to 450 places, based on the cumulative growth proposed through the draft Ashfield Local Plan. It is proposed that the cost of this infrastructure is divided pro-rata between sites, so that each site makes a proportionate contribution to education provision. In total there are 3,767 dwellings to be delivered on allocated sites which after deducting existing housing commitments amounts to 3,237 dwellings, as well as a further 695 dwellings subject to planning applications on windfall sites. Taking account of the pupil demand that is already included within the pupil projection data arising from existing housing commitments, the net growth in housing delivery is estimated to be 3,932 dwellings, which would generate 630 secondary aged pupils. There is currently forecast to be capacity for 179 pupils and thus the residual number of places required would be 451.

The cost of delivering the required capacity is estimated to be £12,383,100 (451 x £27,518). This should be divided between the total number of dwellings (3932), which equates to £3,149 per dwelling.

The County Council seeks a proportionate secondary education contribution from this site of £125,960 (40 dwellings x £3,149) to be used towards improving, remodelling, enhancing, or expanding facilities to provide additional permanent capacity within the Sutton-Kirkby planning area, to accommodate pupil growth from the development.

Post 16 Education

Based on current data there is a projected surplus of places in the planning area, and the impact of the development would not lead to a deficit in provision. Contributions are not sought towards post 16 education.

NCC Transport and Travel:

Site access will be from Hardwick Lane with the closest bus stops being AS0643 and AS0743 Coburn Street, on Harwick Lane approximately 100 metres from the centre of the site.

- The current infrastructure at the nearest bus stops do not meet access standards. A bus stop infrastructure contribution of £19,200 is required for improvements at two bus stops (AS0643 and AS0743 Coburn Street). This will include the installation of raised boarding kerbs at AS0643 and real time bus stop poles & displays including associated electrical connections and raised boarding kerbs at AS0743.
- Contributions towards local bus service provision is not requested at this time. The current service level of the local public transport network is sufficient.
- Contributions towards school transport provision are not requested.
- Planning condition requesting the provision of free bus passes to residents of the development be provided, if approved.

NCC Public Rights of Way:

Sutton in Ashfield Footpath 126 runs to the north of the application site but appears unaffected by the proposal. There are as such no objections to the scheme.

NCC Highway Authority:

The application proposes the development of 40 dwellings on a vacant former playing field at Hardwick Lane, Sutton-in-Ashfield. A new access is proposed onto Hardwick Lane. The development mix comprises: 4 no. 1-bed flats, 4 no. 2-bed flats, 12 no. 2-bed houses, 18 no. 3-bed houses and 2 no. 4+ bed houses.

Two sets of comments have been received from the Highway Authority (HA) (dated 20/02/24 and 26/04/24); the latter of which follows minor revisions to the internal layout of the scheme. The comments are summarised as follows:

Biodiversity Technical Paper 2013. This amounts to £1,000 per dwelling, which is considered reasonable in kind and scale.

The contributions are directly related to the development, necessary to make the development acceptable in planning terms and they are also fairly related in scale and kind and therefore meet the necessary tests.

- Health Care – £42,500

The ICB has provided its standard formula for the cost of extensions as identified by a quantity surveyor experienced in health care projects, which equates to a total contribution of £42,500 on the basis of 40 dwellings. This will provide enhancements to the capacity and infrastructure at either: Kings Medical Centre, Willowbrook Medical Practice or Woodlands Medical Practice – the nearest centres to the proposed development. This formula has been devised by a suitably qualified expert and is therefore fairly and reasonably related in scale and kind to the development.

The proposal would generate a requirement for healthcare provision for residents and is therefore directly related. This contribution therefore satisfies the necessary tests.

- Bus Stop Infrastructure – £19,200

A bus stop infrastructure contribution of £19,200 is required to provide improvements to the bus stops denoted as AS0643 (Coburn Street) and AS0743 (Coburn Street). Improvement works will include the installation of raised boarding kerbs at AS0643, and real time bus stop pole & displays including associated electrical connections and raised boarding kerbs at AS0743. Nottinghamshire County Council seek to achieve the standard for bus stop facilities as set out in their response to the application.

The improvements are at the nearest bus stops which are situated adjacent to the site, so are relevant to the development, precisely specified, and fairly and reasonably related in scale and kind. The contribution therefore meets the statutory tests.

- Education – £125,960

A contribution of £125,960 towards secondary education is requested by the County Council. Despite this request, this application on its own does not lead to a deficit in secondary school places within the Kirkby-Sutton planning area. For reference, this development would generate the need for six secondary school places within the planning area at a time when there is currently a surplus of 179 secondary school places.

Whilst it is recognised that the County Council have been consulted on numerous planning applications within the planning area which *could* cumulatively result in a deficit in secondary school places if all pending major planning applications were to be granted planning consent, in accordance with Regulation 122 of the Community Infrastructure Levy Regulations 2010, planning obligations are intended to assist in mitigating the impact of unacceptable development to make it acceptable in planning terms and can only constitute a reason for granting planning permission if they meet the tests that they are necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development.

On this occasion, the grant of planning permission would not result in a significant reduction in the availability of secondary school places within the Kirkby-Sutton planning area, with 173 secondary places remaining available should this application be granted planning consent. Subsequently the requested financial contribution of £125,960 cannot be adequately justified as necessary in accordance with Regulation 122 at the present time with regard to this application.

Based on current data there is a projected surplus of places in the planning area for primary secondary places, and the impact of the development would not lead to a deficit in provision. Contributions are not sought towards primary education.

- Affordable Housing – 10%

The NPPF 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 ownership.

Planning Balance and Conclusions:

The proposal would result in the loss of an area of formal open space; however, the proposals are not considered to be contrary to Policy RC3. This is because significant improvements are being provided to recreation facilities in the locality - in the form of financial contributions towards improvements to the existing playing pitch provision and general open space provision at Sutton Lawn (£80,000) in conjunction with the Council's Playing Pitch Strategy 2023-2027. The Playing Pitch Strategy also indicates that the former playing pitch at the application site would be surplus to requirement.

The Council has a significant shortfall in housing land supply, with only 2.56 years identified; well below the 4-year requirement. Accordingly, the titled balance is engaged. This is a case where 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 as a whole.

The NPPF states that proposals should be considered in the context of the presumption of sustainable development, which is defined by economic, social and environmental dimensions and the interrelated roles they perform.