

Remaining Matters

There are a number of matters raised by the Council and consultees which need to be addressed. In summary, these are:

- Green Belt and very special circumstances;
- The deliverability of rail served employment development;
- Highway Impact;
- Flood Risk;
- Nature Conservation;
- Noise;
- Alternative uses;
- Minerals Safeguarding; and,
- Conditions/s106 requirements

Green Belt and very special circumstances

As you identified in your letter of 6 October 2014, Warwickshire County Council imposed a restoration condition on the site pursuant to the provisions of the Town and Country Planning (General Permitted Development) Order 1995.

On that basis, it is agreed that:

- the site does not meet the definition of previously developed land set out within the glossary to the Framework; and that as such,
- the Proposal is inappropriate development in the Green Belt; and that as such,
- there is a presumption against the proposed development unless there are very special circumstances which clearly outweigh the harm to the Green Belt, and any other harm.

In this regard, we note that at our most recent meeting you referred to the High Court judgement pertaining to the Redhill Aerodrome judicial review (*Redhill Aerodrome Ltd v Secretary of State for Communities and Local Government & Ors* [2014] EWHC 2476). Notwithstanding this, however, we would draw your attention to the recent judgement handed down by the Court of Appeal which overturned that decision (*Secretary of State for Communities and Local Government & Ors v Redhill Aerodrome Ltd* [2014] EWCA Civ 1386).

In summary, with respect to what is meant by 'and any other harm' in paragraph 88 of Framework, the Court of Appeal held that this is not restricted to any other harm to the Green Belt as had been held by the High Court, but to any harm other than to the Green Belt should such harm exist. This is supported by previous case law such as



34 Lisbon Street, Leeds LS1 4LX

T +44 (0)113 220 6190 F +44 (0)113 243 9161 E rpsld@rpsgroup.com W rpsgroup.com

(River Club, R (on the application of) v Secretary of State for Communities and Local Government & Anor [2009] EWHC 2674) where it was held that:

'...Accordingly, I hold that "any other harm"...is to be given its plain and ordinary meaning and refers to harm which is identified and which is additional to harm caused through the development being inappropriate...' [paragraph 27]

Demonstrating very special circumstances, therefore, essentially remains a four stage process culminating in a balancing exercise, as it was before the Redhill Aerodrome case.

First, the harm to the Green Belt must be identified. This is done by assessing the harm the Proposal would have upon the openness of the Green Belt, and to any of the five purposes of the Green Belt.

In relation to the Proposal, the harm must be assessed in terms of the site as it would be restored. However, the assessment of harm is complicated in this respect by the fact that the details of the restoration scheme are unknown and have not been approved.

The condition requires the details to be submitted for approval. It states:

"No later than 6 months prior to the complete cessation of mining operations, a comprehensive scheme for the restoration of the colliery 'surfaced authorised site' area shall be submitted for the approval of the County Planning Authority. Following approval, the scheme shall be implemented."

In this respect, we note that the paragraph 45 of Planning Practice Guidance (PPG) sets out that there are many possible uses of land once minerals extraction is complete and restoration and aftercare of land is complete including *'the built environment, such as residential, industrial and retail where appropriate'*. It should not, therefore, automatically be assumed that providing a development platform to enable to the Proposal to take place would not be a valid restoration scheme.

That said, a restored site even if it were to prepare the site for the Proposal would still be a clear site free from built development, and on that basis we propose to carry out the assessment of harm on the basis of the site being free from built development.

Notwithstanding this, the site's previous use is clearly a material consideration in determining very special circumstances, in that had it not been for the underground fire the colliery operation which is in itself harmful to the Green Belt could have been expected to have continued for many more years to come. Any harm to the Green Belt arising from the proposed development must, therefore, take this into consideration.

Secondly, having established how the Proposal is harmful to the Green Belt, it is necessary to establish what other harm the proposal would have, if any, other than to the Green Belt.

The next stage of the balancing exercise is to identify what the considerations are which clearly outweigh the harm to the Green Belt, and any other harm, to amount to the very special circumstances required to justify inappropriate development.

The final stage is then to undertake the balancing exercise of weighing the harm to the Green Belt and any other harm, against the considerations put forward which would clearly outweigh that harm.

This must be undertaken in the context that the Framework is clear that any harm to the Green Belt should be given substantial weight in the balance of considerations.

Harm to Openness of the Green Belt

The Framework sets out that *'The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.'* [Paragraph 79]

As we have previously set out, openness is not defined by statute or government policy, but may be regarded as being the absence and/or the degree of absence of built development and/or other urbanising features associated with development including uses of land which impact upon openness through the presence of man-made objects/features.

In so much as the restored site would be free from development and thus completely open, the proposed development would clearly have greater impact upon openness of the Green Belt. Given the extent of the site this harm would be significant. The Proposal would therefore be harmful to the openness of the Green Belt.

However, this harm has to be set in the context of the site's history given that the closure of the colliery was earlier than it would have been as a consequence of the underground fire. As such, had it not being for the underground fire the site would have continued to be developed for many more years, and would not have been open but rather at least as harmful to openness as the proposed development. In comparison to the colliery operation the proposed development would not be materially any more harmful to the openness of the green belt.

Harm to the five purposes of the Green Belt

The Framework [paragraph 80] identifies that the Green Belt serves 5 purposes:

- check the unrestricted sprawl of large built-up areas;



34 Lisbon Street, Leeds LS1 4LX

T +44 (0)113 220 6190 F +44 (0)113 243 9161 E rpsld@rpsgroup.com W rpsgroup.com

- to prevent neighbouring towns merging into one another;
- assist in safeguarding the countryside from encroachment;
- preserve the setting and special character of historic towns; and
- to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.

The policy objective of the first purpose of the Green Belt is to control the extension or 'sprawl' of large built up areas into the Green Belt through a presumption against such development. However, the application site does not adjoin a large built up area, and as such, would not lead to an extension of such an area or sprawl in to the Green Belt. The Proposal would not, therefore, be harmful to the Green Belt in this regard.

The policy objective of the second purpose of the Green Belt is to prevent neighbouring towns from merging. However, the application site does not neighbour any town nor is it located between neighbouring towns such that it would either lead to a merger of towns, or have a significant effect on the potential merger of any towns as a result of occupying a significant area of land between neighbouring towns. The Proposal would not, therefore, be harmful to the Green Belt in this regard.

The third purpose of the Green Belt is to safeguard the countryside from encroachment. In this respect, as the site would be restored, the Proposal would encroach upon the resulting countryside, and as such, given the site area the encroachment would be significant.

However, as discussed above, this harm to the Green Belt must also be considered in the context that had it not been for underground fire, the colliery operation would have continued, and as such, the Proposal is no more harmful than would have been the case had it not been for the underground fire. This cannot be ignored and must carry some weight in the balance of considerations.

The policy objective of the fourth purpose of the Green Belt is to preserve the setting and special character of historic towns. In this respect the nearest historic towns are Coleshill and Nuneaton. However, given the distance between these towns and the application site and the intervening topography the site does not affect the setting of either of these towns. The Proposal would not, therefore, be harmful to the Green Belt in this regard.

The policy objective of final purpose of the Green Belt is to assist urban regeneration by ensuring that that the Green Belt is not developed instead of sites within urban areas which could deliver the development. In this respect, the site represents a

unique opportunity to provide rail connected employment in line with Government policy as a consequence of its location adjacent to the strategic rail network and of

the site's existing rail infrastructure. The site is not proposed to be developed instead of a site or sites in urban areas. The Proposal would not, therefore, be harmful to the Green Belt in this regard.

In summary, therefore, the harm to the Green Belt resulting from the Proposal relates only to its impact upon the openness of the Green Belt and to the encroachment of the Green Belt. Whilst any harm to the Green Belt must be given substantial weight in the balance of considerations, this harm must be seen in the context that the Proposal would be no more harmful in these respects than the colliery operation which would still be in operation if it was not for an exceptional circumstance i.e. its closure due to an underground fire.

Other Harm

The meaning of '*any other harm*' has recently been clarified by the Court of Appeal in the Redhill Aerodrome case. In summary, '*any other harm*' means:

- harm related to the Proposal other than that to the Green Belt
- includes any harm not just significant harm

In respect to the Proposal, the harm in all respects has been assessed to be less than significant such that it would not result in a justification for refusal alone. Moreover, the harm as identified below would not be sufficient cumulatively to warrant the refusal of the application had the development being by definition appropriate in the Green Belt or elsewhere. The non-Green belt harm associated with has been assessed to be as follows:

- Highways – no harm
- Noise – limited harm
- Flood Risk – no harm
- Heritage – limited harm
- Landscape – no harm
- Nature conservation – No harm

Nonetheless, the non-Green Belt harm is considered to be of some albeit limited weight in the balance of considerations.

Considerations Amounting to Very Special Circumstances

Having established the nature, degree, and weight to be apportioned to the harm identified it is necessary to set out what the considerations are which clearly outweigh that harm.



34 Lisbon Street, Leeds LS1 4LX

T +44 (0)113 220 6190 F +44 (0)113 243 9161 E rpsid@rpsgroup.com W rpsgroup.com

i) **Need & Alternatives**

The Needs Case prepared by CGMS demonstrates an unmet need for rail served manufacturing development in the region in the context of European, National, Regional and local policy which seeks to encourage the modal shift of goods from being transported from road to rail in order to ensure more sustainable development, and promote the growth of manufacturing especially in areas in need of regeneration.

It identifies that Government policy forecasts that rail freight growth is expected to grow by an additional 63 million tonnes and that new rail freight interchanges including rail served manufacturing development will be required in order to accommodate this growth and allow areas to benefit from the creation of employment and economic advantages.

The need for the proposed development is therefore derived principally from an unmet sub-regional rather than local need. The justification for this is based upon the site's location at the heart of the strategic rail network and the sub region which makes it an optimum location for the development together with its unique assets especially its existing rail infrastructure to deliver the proposal (which would cost circa. £5 and £10 million to provide), the existing network capacity and its existing grid connection, water supply, etc. In the context of this need the Intermodality report confirms that Daw Mill represents a rare opportunity to locate rail served manufacturing.

The Intermodality and CGMS Need Case reports demonstrate not only that the site is capable of delivering rail served B2 development, and that there is a need to do so but that there is a real prospect of it being developed.

Moreover, given the extent of the need demonstrated, it is also clear that the proposed development will not be developed at the expense of other sites, should there be other sites, in the sub region that could deliver rail served B2 development.

ii) **Employment creation and Socio-Economic benefits**

At the local level there is an aspiration to broaden the business base of the local economy which has become dominated by storage and distribution since the decline of industry and manufacturing.

The over dominance of storage and distribution also leaves the local economy overly exposed to shifts in labour market demand as witnessed with the recent economic recession.

In addition, it has also led to the local labour market being dominated by the relatively low skilled and lower paid employment that is associated with storage and



34 Lisbon Street, Leeds LS1 4LX
T +44 (0)113 220 6190 F +44 (0)113 243 9161 E rpsld@rpsgroup.com W rpsgroup.com

distribution. At the local level there is an aspiration to attract relatively high skilled higher paid jobs associated with manufacturing back in to North Warwickshire.

Furthermore, there is also a need at the local level to replace the high skilled higher paid jobs lost as a consequence of closure of the site's deep coal mining operation.

In this regard, the Employment Impact Assessment Report (EIAR) estimates that the proposed development could provide 1,413 jobs (1,050 jobs net taking into account leakage and displacement effects) directly of which 477 would be provided within the 30 minute drive time band. This represents a 167% increase in the jobs provided in that area by the Colliery shortly before it closed. A further 305 net additional indirect and induced offsite jobs are also predicted.

This job creation is a substantial economic benefit given the nature of these jobs should deliver the higher skilled higher paid jobs sought in the local economy, especially one which has recently experienced a significant loss of similar jobs and which is expected to grow by 7.7% in the period to 2024, and where the unemployment rate grew from 2008 to 2012.

The provision of these jobs through the delivery of rail served manufacturing development at the site would undoubtedly have a range of wider positive economic effects which would have significant effect on the local economy through opportunities to provide services and functions related to the development on the site. Indeed, the site may well be attractive to companies wishing to benefit from the sites close proximity to the Motor Industry Research Association Technology Park.

The balancing exercise

In the balance of considerations, the harm to the Green Belt would be significant as effectively 31.12 hectares of open land would be developed. However, the extent of this loss must take into account the fact that had it not been for the unexpected unpreventable underground fire (effectively a *force majeure*) the colliery operation and its similar harmful effect upon the openness of the Green Belt would have continued for many more years. Nonetheless, this must weigh substantially against the proposed development for which there is a presumption against.

In addition to this, some further weight must also weigh against granting the proposed development on account of the limited non-Green Belt harm resulting from the Proposal. This weight must be determined in the context that it would not in its totality justify a refusal of the proposal on its own, had the proposal been an appropriate form of development in the Green Belt or elsewhere.

Notwithstanding this collective harm (Green Belt harm and other harm unrelated to the Green Belt), the unmet sub-regional need for the development identified in line with policy at all levels together which could not be provided in a non-Green Belt location with its undoubted benefits in terms of employment of the scaled anticipated



34 Lisbon Street, Leeds LS1 4LX
T +44 (0)113 220 6190 F +44 (0)113 243 9161 E rpsid@rpsgroup.com W rpsgroup.com

and its benefits to the local economy, and in terms of sustainability through the saving of greenhouse gas emissions are compelling and must clearly outweigh that harm.

Deliverability of rail served employment development

In your letter of 6 October you asked that we provide information to satisfy you that the proposal would be able to deliver rail served employment.

An independent report prepared by Intermodality Ltd is submitted in support of the amended Proposal which concludes that:

- The considerable post-war rationalisation of RFI facilities now creates a considerable challenge to secure suitable locations for RFI, in particular those with existing rail connections, given the significant cost and lead time of creating new connections in the national rail network.
- The challenge is acknowledged by Government transport and planning policy, which has introduced specific policies to address the need for new Strategic RFI, but which also recognise the role that other types of RFI will play, in support of the overall objective of increasing mode shift of freight from road to rail.
- Daw Mill represents one of a declining number of large sites within Great Britain which retains main line rail access in both directions of travel (which might otherwise cost c.£5-10m and 2-3 years to install), towards the geographic centre of the Strategic Freight Network. Network Rail continues to maintain the main line connections to allow rail freight services to operate to and from the site, through a Connection Agreement with the landowner.
- Whilst the existing rail infrastructure is not capable of supporting the operation of a larger Strategic RFI development such as Hams Hall or Birch Coppice, it can nevertheless create opportunities to support a wide range of industrial uses (and associated employment), which would benefit from access to both rail and road networks. Rail transport can then be exploited to help reduce the volume of HGV loads which might otherwise be associated with industrial development on a site of this scale. Little or no reconfiguration of the rail sidings or main line access would be required to unlock these opportunities.
- The main line passing the site carries broadly the same level of third-party passenger and freight traffic as in the latter years of the Daw Mill colliery operations, which despatched up to 8 trains per day from the site. As it is unlikely that any new use of the site would generate such a large volume of freight trains, sufficient main line capacity should therefore exist to handle new rail freight traffic generation anticipated to and from the site.
- In summary therefore, Government policy and commercial interest supports the development of rail-linked sites for industrial use, to reduce the burden and dependency on road transport. As suitable rail-linked sites are in short supply, the existence of the Daw Mill site within the manufacturing centre of



34 Lisbon Street, Leeds LS1 4LX
T +44 (0)113 220 6190 F +44 (0)113 243 9161 E rpsid@rpsgroup.com W rpsgroup.com

the Midlands, and at the centre of the Strategic Freight Network, represents a significant opportunity for B2 industrial use and associated employment. The main line has latterly provided capacity for a much larger volume of freight trains traffic from the site than would be anticipated from any new B2 uses. The existing main line connections complement the other existing utility connections into site, whilst the on-site sidings can support a range of B2 industrial uses with little or no reconfiguration.

On this basis, we trust that the deliverability of rail served manufacturing on the site can now be agreed.

Highway Impact

A revised Transport Assessment has been prepared to assess the traffic generation and highway impacts of the amended Proposal.

It identifies that the proposal would lead to an increase in the overall number of traffic movements associated with the site when compared with the former colliery operation (3,296 daily as compared to 1,600, or 744 in the busiest hour compared to 611). This is a consequence of the nature of the proposed development, which will provide comparably more jobs than the colliery operation in 2008 (1,606 compared with 677 at the colliery in 2008).

However, the revised Transport Assessment also identifies that the amended Proposal would lead to a significant reduction in the number of HGVs generated when compared with the former colliery operation (112 per day as compared to 300). Furthermore, the amended Proposal would result in a significant reduction in the HGV generation compared to the original, predominantly B8 Proposal (112 per day as compared to 377). The type of HGVs would also change, from predominantly large HGVs, to medium sized goods vehicles.

With regards to highway impact, the revised TA identifies that, even with the reduction in traffic as a consequence of the Colliery's closure and without taking the Proposal traffic into account, the junctions at Fillongley, Furnace End and Coleshill will be very congested by 2024. They are forecast to operate at 138%, 108% and 126% of capacity respectively, when 85% is typically taken as the acceptable level. As a consequence of this, it is inevitable that Warwickshire County Council will have to act to introduce improvements that will deal with the high level of accidents and the lengthy traffic delays. Given the limited alternative options, it is assumed that such improvements will involve installing traffic signal control at the junctions. Harworth Estates could provide a contribution to such schemes, if/when they are progressed should they prove necessary and relevant to the proposed development.

Taking account of the necessity to provide these highways improvements, the revised Transport Assessment demonstrates that the proposed development accords



34 Lisbon Street, Leeds LS1 4LX
T +44 (0)113 220 6190 F +44 (0)113 243 9161 E rpsid@rpsgroup.com W rpsgroup.com

with the principle of NPPF and concludes that it would be unreasonable to refuse the development on transport grounds.

Flood Risk

A revised Flood Risk Assessment has been prepared, following a meeting with the Environment Agency on 2 September 2014 to address the matters they raised in their letter of 11 August 2014.

The revised Flood Risk Assessment has been prepared in accordance with a methodology which has been approved by the EA in principle, and demonstrates that the site could not possibly flood during the worst case flood event taking into account of climate change and even if the culvert that runs beneath the site were completely blocked.

With respect to the retention of the culverts, the culvert survey shows that it is several metres below ground level throughout its length, with a minimum 5.41 m and maximum 8.92 m of made ground above the culvert soffit level. Accordingly, opening up or daylighting of the culvert to existing bed levels (6.57 m below ground level to 10.38 m below ground level) with battering back of banks to a safe, stable slope would sterilise a large area of the proposed development site, dislocate the development from the railhead, and require the removal of thousands of cubic metres of colliery waste to an appropriate licensed waste disposal facility.

Notwithstanding the unnecessary cost, on a practical level this would effectively render the site undevelopable. We note that at our recent meeting with the EA it was confirmed that in such circumstances the EA would not seek the opening up of the culverts.

In addition, it would place areas of the site within flood risk zone 2 or 3 from the present flood zone 1, as demonstrated by culvert blockage modelling reported in the RPS revised FRA report of October 2014. The culvert survey of September 2014 indicates that the culvert is in good structural condition.

Accordingly, in due course it is anticipated that the EA will remove their objection to the proposed development.

Nature Conservation

Warwickshire Wildlife Trust objected to the Proposal on 28 July 2014, based upon the need for species surveys identified in the Phase I Habitat Survey, and because they consider that the redevelopment of the site should result in a net gain in biodiversity.

The preparation of the species surveys identified by the Phase I Habitat Survey have been ongoing for throughout the relevant survey seasons and have only recently been concluded. The various species surveys identified by the Phase I Habitat Survey are submitted alongside the amended Proposals for your consideration.

Importantly, the Proposal will not lead to significant harm to biodiversity, and as such, is acceptable in accordance with Framework paragraphs 108 and 119.

Noise

In response to the Council's Environmental Health Officer (EHO) comments as set out in an email on 6 October 2014, the RPS Noise team have prepared a response, which is submitted alongside these amendments to explain why those comments are incorrect.

An Addendum to the original Acoustics Assessment has also been prepared to assess the impacts of the proposed amendments on noise sensitive receptors (NSRs). It concludes that the noise exposures at all NSRs are below the Significant Observed Adverse Effect Level (SOAEL) and that the conclusion of the original Acoustic Assessment remains:

"8.7 The requirements of the [National Planning Policy Framework] NPPF paragraph 123 are that 'Planning policies and decisions should aim to: avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development; and, mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new development, including through the use of conditions'. The results of this assessment indicate that significant impacts (i.e. effects above the SOAEL) will be avoided. The report includes suggested mitigation measures in accordance with Best Practicable Means to minimise other adverse noise impacts. On this basis and with regards to noise, the proposed development is commensurate with the requirements of the NPPF.

8.8 The requirements of saved policies ENV9 and ENV11 of the [North Warwickshire Local Plan] NWLP 2006, which refer to noise, are commensurate with the requirements of paragraph 123 of the NPPF. On the basis of the above, the proposed development is commensurate with the requirements of NWBC policy."

Alternative Uses

The Council's letter of 15 July 2014 sought clarification as to why the site was not proposed to be redeveloped for either residential development or for manufacturing development.

In respect of residential development, the applicant would be prepared to explore the potential of the site, especially in the context of the national housing crisis and the substantial shortfall in housing need neighbouring authorities such as Birmingham and Tamworth. Indeed the site would have the potential to provide a sustainable residential led mixed use development that potentially could co-exist with rail



34 Lisbon Street, Leeds LS1 4LX
T +44 (0)113 220 6190 F +44 (0)113 243 9161 E rpsld@rpsgroup.com W rpsgroup.com

connected employment. Nonetheless, it is understood that the Council would not support housing development on the site.

With regard to the delivery of manufacturing employment at the site, the application as amended, now proposes to delivery 41,080 sq. m of B2 development to take advantage of the opportunity provided by the sites unique attributes and location in the west midlands and the heart of the strategic rail freight network.

Mineral Safeguarding

It is understood that Warwickshire County Council accept that the site will not prevent the winning of minerals. It is therefore assumed that this satisfactory addresses the issue.

Conditions and Planning Agreement matters

We can confirm that the applicant would accept the imposition of conditions which enabled the site's rail infrastructure be made available to the proposed employment. The following condition based upon those imposed recently by the secretary of State on the Strategic Rail Freight Interchange permission at Radlet Aerodrome is suggested for your consideration.

"The rail connection and sidings at the site shall be managed and maintained such that they remain available and operational to serve the B2 employment units herby permitted."

With respect to highway improvements, should Warwickshire County Highways be able to demonstrate that the proposed development would lead to the need for additional junction capacity in addition to the improvements required in any event, Harworth Estates would be prepared to provide a contribution towards those additional requirements. It is anticipated that any such requirements would be most likely secured through the provisions of s106 agreement the details of which would need to be agreed in due course.

In terms of training requirements, we note that the occupiers of the site will most likely undertake their own staff training. In addition, it is expected that the skills of the labour market through its association with the manufacturing and mining sectors will be attractive to potential B2 occupiers. That said, the applicant would be prepared to make a contribution towards provision of training of local people who find work at the site. The details of that contribution and the triggers for it can be agreed and secured through the provision of s106 agreement in due course.

Timescale to Determination

In light of the above, we trust that you now have everything necessary for you to recommend the application favourably to the Planning Committee. In this respect we have previously agreed that the application shall be considered at the Planning