



North Warwickshire Borough Council

Rule 6 Statement

Appeal by Hodgetts Estates

**Land north-east of Junction 10 of the M42 Motorway / north of the A5
Dordon, North Warwickshire, B78 1TB**

PINS Ref: APP/R3705/W/24/3336295

LPA Ref: PAP/2021/0663

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1. Introduction

Summary

- 1.1 This Rule 6 Statement provides North Warwickshire Borough Council's Statement of Case in relation to the appeal lodged by Hodgetts Estates against the Council's non-determination of the outline planning application referenced PAP/2021/0663. It summarises the case that the Local Planning Authority will present to the Public Inquiry in respect of this appeal submitted under Section 78 of the Town and Country Planning Act 1990.
- 1.2 The Council formally considered the planning application at its Planning and Development Board meeting on 4th March 2024 as if it had been the determining Authority. It resolved that it would have refused planning permission.
- 1.3 Three reasons were identified.
 1. *The proposal does not accord with Policy LP4 of the North Warwickshire Local Plan 2021 together with policies DNP1 and DNP4 of the Dordon Neighbourhood Plan 2023 in that it does not maintain the separate identities of Tamworth and Polesworth with Dordon. This is because its scale, character and appearance significantly reduces the physical and visual separation between these settlements. It is considered that the benefits of the proposal as outlined by the applicant do not outweigh this significant harm as the requirements of Local Plan Policy LP6 and LP34 are not fully demonstrated.*
 2. *The application site lies outside of any settlement boundary as defined by Policy LP2 of the North Warwickshire Local Plan 2021 and is thus within the open countryside. The proposed development would result in a range of significant adverse landscape and visual effects which fail to respect or*

respond positively to the key characteristics of the surrounding area. The proposal is thus contrary to Local Plan policies LP1, LP14 and LP30 together with Policies DNP1 and DNP4 of the Dordon Neighbourhood 2023 as supplemented by the National Planning Policy Framework 2023.

3. *The applicant has failed to demonstrate that the development would not result in an unacceptable impact on both the strategic and local highway networks or that the development can be accommodated in a manner that would not cause increased danger and inconvenience to highway users, including those travelling by sustainable modes. On this basis the proposed development would result in a severe impact on the road network contrary to policies LP23, LP27 and LP29(6) of the North Warwickshire Local Plan 2021 and para 115 of the National Planning Policy Framework 2023.*

1.4 In summary, the Council's case is that the appeal site is not an appropriate location for the proposed development, in that it does not accord with strategic spatial planning and other policies in the Development Plan as identified above. The Council has considered the benefits of the proposed development and afforded weight to these under other Development Plan policies. However, in the final planning balance, the Council's assessment is that they do not outweigh the harms caused for the purposes of Section 38(6) of the Planning and Compulsory Purchase Act 2004.

- 1.5 A significant factor in this assessment has been that the position on highway matters has not been resolved, as the two relevant Highway Authorities concerned – National Highways and Warwickshire County Council - retain "holding objections". As a consequence, the weight that can be attributed to highway matters cannot be reasonably assessed. The Council will alert all parties should this situation change.

- 1.6 This Statement of Case sets out the matters which the Council will rely on in advancing its case through the evidence to be presented by its witnesses. A Landscape witness will identify the harms caused to the spatial planning policies and to the landscape. A Planning witness will address the weight to be given to the benefits set out by the appellant and a Planning Officer will deal with other development considerations as well as setting out the reasons for the Council's assessment of the final planning balance.
- 1.7 National Highways will appear at the Inquiry as a Rule 6 Party (termed "Highways Rule 6 Party" hereafter). It is understood that its witness(es) will present highway evidence in respect of its holding objection referred to above.
- 1.8 The Dordon Parish Council, Polesworth Parish Council and Birchmoor Community Action Team will jointly appear as a Rule 6 Party (termed as "Local Rule 6 Party" hereafter). It is understood that they will present evidence in respect of the impact of the proposed development on the spatial planning policies.
- 1.9 The Council will describe the appeal site with particular reference to its general location, its setting and the nature of the surrounding development. These matters will also be dealt with in the Statement of Common Ground and in the respective Proofs of Evidence. At this stage the Council wishes to highlight the setting of the appeal site within a sizeable open landscape surrounded by built development.

2. The Appeal Proposal

- 2.1 The Appeal proposal was submitted on the 2nd December 2021 and was accompanied by an Environmental Statement.
- 2.2 It is an outline planning application for the development of land within Use Class B2 (general industry), Use Class B8 (storage and distribution) and Use Class E(g)(iii) (light industrial) together with ancillary infrastructure and associated works including an overnight lorry parking facility with its ancillary infrastructure and associated works. Details of the proposed access arrangements are submitted for approval in full, with all other matters reserved for later determination.

3. Development Plan Policies

- 3.1 The Council will define the Development Plan. This is made up of the North Warwickshire Local Plan 2021 (“the Local Plan”) and the Dordon Parish Neighbourhood Plan 2022-2033– December 2023 (“the Neighbourhood Plan”).
- 3.2 The Council considers that the following Local Plan policies are relevant to its case:
- Policy LP1 (Sustainable Development); LP2 (Settlement Hierarchy), Policy LP4 (Strategic Gap), LP5 (Amount of Development), LP6 (Additional Employment Land), Policy LP11 (Economic Regeneration), Policy LP12 (Employment Areas), LP14 (Landscaping), Policy LP15 (Historic Environment), LP16 (Natural Environment), LP17 (Green Infrastructure), LP21 (Service and facilities) LP22 (Open Spaces and

Recreational Provision), LP23 (Transport Assessments), LP25 (Railway Lines), LP26 (Strategic Road Improvements A5), LP27 (Walking and Cycling), Policy LP29 (Development Considerations), LP30 (Built Form), LP33 (Water and Flood Risk Management), LP34 (Parking), LP35 (Renewable Energy and Energy Efficiency), LP36 (Information and Communication Technologies) and Policy LP39 (Employment Allocations).

3.3 The Council considers that the following Local Plan policies are the most important in the determination of this case.

3.4 Policy LP1 has three sections. This first sets out that planning applications that accord with Development Plan policies will be approved unless other material considerations indicate otherwise. Where there are no relevant policies, or the most important ones are out of date, then applications will be determined in accordance with the presumption in favour of sustainable development. The second section sets out the objective of securing quality development and a number of matters are identified against which to assess whether a proposal satisfies this outcome. In particular, one of these is to be consistent with the approach to place making as set out in development management policies including demonstration of a high quality of sustainable design that positively improves an individual settlement's character, appearance and the environmental quality of an area. The final section deals with the provision and delivery of appropriate infrastructure related to a development proposal.

3.5 Policy LP4 defines a Strategic Gap on the Local Plan Policies Map. The purpose of this Gap as set out in the policy, is to maintain the separate identity

of Tamworth and Polesworth with Dordon in order to prevent their coalescence. The policy states that development which has a significantly adverse effect on the distinctive, separate characters of Tamworth and Polesworth with Dordon will not be permitted. Any effects will be considered in terms of the physical and visual separation between these settlements.

- 3.6 Policy LP6 indicates that significant weight will be given in decision making to supporting economic growth and productivity, where evidence demonstrates an immediate need for employment land, or a certain type of employment land within Area of A of the West Midlands Strategic Employment Sites Study 2015 (or successor Study) which cannot be met by forecast supply or allocations. It identifies three pre-requisites - achievable and appropriate access to the strategic highway network; reasonable accessibility by a choice of modes of transport and that it is otherwise acceptable, taking account of nearby living conditions.
- 3.7 Policy LP14 relates to landscape and expects development to conserve, enhance and where appropriate restore landscape character. Particular reference is made to the North Warwickshire Landscape Character Assessment of 2010.
- 3.8 Policy LP29 identifies a number of development considerations against which all development proposals are to be assessed. Criterion (6) requires the provision of “safe and suitable access to the site for all users”.
- 3.9 Policy LP30 introduces a set of criteria against which design issues can be addressed. It requires all development, in terms of its layout, form and density

to respect and reflect the existing pattern, character and appearance of its setting. In particular, development proposals should harmonise with both the immediate setting and the wider surroundings, as well as make use of and enhance views into and out of the site.

3.9 Policy LP34 contains a section on lorry parking and indicates that in recognition of the Borough's strategic location and demand for lorry parking, weight should be given to lorry parking provision and facilities in decision making.

3.10 The Council considers that the following Neighbourhood Plan policies are relevant to its case:

Policy DNP1 Sustainable Development, Policy DNP2 Protecting the Natural Environment and Enhancing Biodiversity, Policy DNP4 Protecting the Landscape Character, Policy DNP5 Creating a Local Green Network, Policy DNP7 Reducing the Risk of Flooding, Policy DNP8 Achieving High Quality Design, Policy DNP10 Renewable Energy, Energy Efficiency and Low Carbon Technologies, Policy DNP12 Supporting the Local Economy, Policy DNP14 Development Contributions

3.11 The Council considers the following Neighbourhood Plan policies are the most important in the determination of this case.

3.12 Policy DNP1 sets the policy framework for development in Dordon and identifies eleven criteria on which this should be assessed so as achieve sustainable development. Criterion (b) indicates that development proposals will be supported which maintain, the sense of space, place and separation on the land to west of the

Parish taking into account the amenity of Dordon Residents. Criterion (f) says that it should be well located in relation to public transport and local services, and (g) says that there should be the promotion of active travel.

3.13 Policy DNP4 says that development proposals should be designed to take account of the landscape, landscape character and topographical setting of the neighbourhood area and its urban environment, which contribute to the distinctive character of the Parish. In particular, it aims to protect key views, retain a sense of space, place and separation. Key views are identified and the policy says that the views of the Strategic Gap are long and wide. It acknowledges that the provision of Strategic Local Plan policies LP4 and LP6 shall have priority.

4. Other Relevant Material Planning Considerations

4.1 The Council will refer to many of the following documents as material planning considerations.

a) National Planning Considerations

The National Planning Policy Framework 2023 – (the “NPPF”)

The National Planning Practice Guidance – (the NPPG”)

b) Local Planning Considerations

Air Quality and Planning Guidance – Supplementary Planning Document - Adopted September 2019

A Guide for the Design of Lighting Schemes – Supplementary Planning Guidance – Adopted September 2003

Dordon Design Guidance and Code March 2022

Local Development Scheme for North Warwickshire July 2023

North Warwickshire Local Plan - Annual Monitoring Report – up to 31 March 2023

c) Landscape Matters

North Warwickshire Landscape Character Assessment and Capacity Study August 2010

NWBC Meaningful Gap Assessment – 10 August 2015

Assessment of the Value of the Meaningful Gap and Potential Green Belt Alterations. LUC
(January 2018)

Guidelines for Landscape and Visual Impact Assessment, third edition (2013)

Landscape Institute TNG 06/19 Visual Representation of Development Proposals (2019).

d) Employment Matters

Coventry and Warwickshire Housing and Economic Development Needs Assessment
November 2022

West Midlands Strategic Employment Sites Study (Phase One) – 2015

West Midlands Strategic Employment Sites Study (Phase Two) – May 2021

Draft Employment Development Plan Document – Scope, Issues and Options 2024

e) Design Matters

The National Design Guide 2021

The National Model Design Code 2021

f) Highways Matters

Design Manual for Roads and Bridges DMRB

Department for Transport - Building Sustainable Transport into New Developments (2008)

Strategic Road Network and the Delivery of Sustainable Development - Department of Transport Circular 01/2022

Chartered Institution of Highways and Transportation Planning for Walking (2015)

Warwickshire Local Transport Plan 3 (2011-2026)

Warwickshire Local Transport Plan 4 (2022-2026) Adopted July 2023

The National Survey of Lorry Parking – DfT January 2018

The National Survey of Lorry Parking - DfT September 2022

Future of Freight: A Long Term Plan – DfT November 2021

g) Appeal References

Appeal Reference - APP/R3705/W/18/3196890 Land south of Tamworth Road and to west of the M42 – 150 dwellings for Taylor-Wimpey - appeal dismissed.

Appeal Reference - APP/R3705/W/15/3136495 Land south- east of the M42 Junction 10, Tamworth, Warwickshire – Employment provision for St Modwens - appeal allowed.

Appeal Reference - APP/R3705/W/23/3327296 - Land west of Hams Hall roundabout and south of Marsh Lane, Curdworth, B76 0AA – a 200 HGV parking area for Caesarea Development – appeal dismissed.

The Council reserves the right to refer to other relevant documents as appropriate and relevant.

5. The Council's Case

- 5.1 This application for outline planning permission seeks approval in principle for a development which will change the use of land from agriculture to a commercial employment and HGV parking use on a site that is explicitly identified in the Development Plan as a Strategic Gap. The purpose of this Gap is set out in Local Plan Policy LP4 and that is to maintain the separate identity of Tamworth and Polesworth with Dordon in order to prevent their coalescence. The proposal will close this Gap physically, spatially and visually. It will also cause other harms - in particular harm to the character of the landscape and visually. The Council will evidence the significant harms caused to the Strategic Gap and to the landscape.
- 5.2 The appellant's case is that there is an immediate need for the proposal - both for additional employment provision and for HGV parking. In this regard he refers to Local Plan policies LP6 and LP34. The Council will assess the weight that it affords to these matters.
- 5.3 The Council will evidence its conclusion of the final planning balance in that it considers that the weight to be afforded to the appellant's case does not outweigh the significant harms caused.
- 5.4 The Council will evidence its case through the following sequence of issues:
- a) The adverse impact of the proposal on the purpose of maintaining the Strategic Gap.**
 - b) The adverse impact of the proposal on other matters, but particularly on the character of the landscape and visually.**
 - c) Whether the proposal would have a detrimental impact on the strategic**

and local highway network.

- d) Whether there are likely to be any other harms caused**
- e) The weight to be given to the appellant's case under Local Plan policies LP6 and LP34.**
- f) The final planning balance.**

a) The adverse impact of the proposal on the purpose of maintaining the Strategic Gap

5.5 The Council will show that the Development Plan carries full weight and is not out-of-date. The Council will introduce Local Plan Policy LP4. A Strategic Gap is defined within this policy for land between Tamworth, Polesworth and Dordon. Policy LP4 is a spatial planning policy which explains how the separate identity of these settlements is to be maintained. In short, development proposals will not be permitted where they significantly adversely affect the distinctive, separate characters of these settlements. The Dordon Neighbourhood Plan Policies DNP1 and DNP4 reflect this objective.

5.6 The appeal proposal is located wholly in the Strategic Gap.

5.7 The Council will explain the background to the adoption of this Gap within the 2021 Local Plan, with reference to similar spatial planning policies in earlier Development Plans to substantiate its geographic extent and the approach to development management within it.

5.8 The distinctive characters of the named settlements within Policy LP4 will be identified. The character and appearance of the Gap and its setting will be described.

5.9 The Council will show through its Planning and Landscape Witnesses, that the proposed development would have a significant adverse impact on the Gap, physically, spatially and visually, such that it would not accord with the requirements of Local Plan Policy LP4 and the Dordon Neighbourhood Plan policies DNP1 and DNP4. In particular, reference will be made to the scale, character and appearance of the appeal proposal and how these factors significantly reduce the physical and visual separation between the named settlements.

5.10 The Council understands that the Local Rule 6 Party will provide a Statement of Case and a Proof of Evidence to the Inquiry in which it will support the Council's position.

b) The adverse impact of the proposal on other matters, but particularly on the character of the landscape and visually.

5.11 The Council will introduce Local Plan Policy LP14 which requires new development to conserve, enhance and where appropriate restore landscape character. There is explicit reference in this Policy to the Landscape Character Assessment of 2010. The Council will identify the relevant landscape character assessment in which the appeal site is located and describe its characteristics and the landscape management strategies relevant to the area.

5.12 The Council will also refer to Local Plan Policy LP1 which requires new development, amongst other things, to demonstrate a high quality of sustainable design that "positively improves the environmental quality of an area".

5.13 Reference will also be made to Local Plan Policy LP30 which requires all development, amongst other things to, “reflect the existing pattern, character and appearance of its setting”. The Dordon Neighbourhood Plan Policies DNP1 and DNP4 will also be described.

5.14 The Council will show through its Planning and Landscape Witnesses how the appeal proposal does not accord with the requirements set out in these Policies, thus causing material adverse landscape and visual harm. In particular, the evidence will show how the proposal fails to respect or respond positively to the key characteristics of the site and its setting.

c) Whether the proposal would have a detrimental impact on the strategic and local highway network.

5.15 The Council will refer to Local Plan Policy LP29 (6) which says that development should “provide safe and suitable access to the site for all users”. Additionally, reference will be made to The National Planning Policy Framework 2023 at paragraph 115 which says that “development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe”.

5.16 The Council describe that the vehicular access from the site is directly onto the A5 which is part of the Strategic Road Network (SRN). The Council will evidence the statutory consultation responses received from National Highways (NH) and from Warwickshire County Council. The former, NH, made a series of eight “holding

objections” at various stages during the course of the consultation on the proposals – from 31st December 2021 to 22 September 2023. The Council will refer to these and to the latest response. This advised that further information was required and that a 6-month extension was needed. This will expire on the 22 March 2024.

5.17 The Council will also refer to the sequence of responses from the Warwickshire County Council Highway Authority (WCC). The Council will outline the objection which refers to a potential detrimental impact on safety and the operation and capacity of the local highway network.

5.18 The Council will conclude that in light of these responses, it has not been shown that the appeal proposal would have no detrimental impact on the SRN.

5.19 Additionally, the Council will describe the significance of the A5 in terms of the delivery of the strategic housing and employment allocations set out in the Local Plan. It will explain that the response from NH in respect of this speculative application is thus of particular significance to the Council.

5.20 In these circumstances, the Council’s position is that it is unable to address the proposal’s conformity with Local Plan Policy LP29(6). As a consequence, at the present time, it takes the position that it does not.

5.21 The Council understands that the Highways Rule 6 Party will provide a Statement of

Case and a Proof of Evidence to the Inquiry to explain its position.

5.22 The Council reserves the right to alert all parties should it be notified of a change in NH's position before the Inquiry and reserves the right to respond through the submission of a Supplementary Statement should this be required.

d) Whether there are likely to be any other harms caused.

5.23 The Council will introduce evidence to show that it does not consider that other significant harms can be demonstrated. This will include reference to harms to heritage assets; to flooding and drainage matters, loss of agricultural land and to other development management considerations such as impacts on neighbouring residential amenity, access to a range of transport modes and the provision of energy efficient buildings. The Council will provide evidence to show that the proposal would deliver a net bio-diversity gain.

5.24 The Council will acknowledge that suitably worded planning conditions can be agreed to cover mitigation measures such as the design of the buildings, the range of facing and roofing materials, as well as for the specification of a detailed lighting strategy.

e) The weight to be given to the appellant's case under Local Plan policies LP6 and LP34.

5.25 The Council will identify the employment provisions and allocations within the Local Plan by reference to policies LP5 and LP39.

- 5.26 It will also introduce Local Plan policy LP6 which deals with the delivery of potential additional employment land over and above the allocations for local need set out in policy LP39.
- 5.27 The Council will explain the background to the inclusion of Policy LP6 in the Local Plan. In particular, it will reference and outline the content of the 2015 West Midlands Strategic Employment Sites Study (WMSESS) and bring matters up to date in respect of “successor studies” mentioned in the Policy. It will confirm that at the time of preparing this Statement, no successor study has been published.
- 5.28 The Council will argue that requirements for employment land to meet any wider than local needs which might be identified in the updated WMSESS should be resolved through an appropriate plan-led approach. It will outline how it proposes to do so. It will refer to and describe the purpose of the “Draft Employment Development Plan Document – Scope, Issues and Options” which has been published in February 2024 for consultation along with a comprehensive Call-for-Sites for both housing and employment provision.
- 5.29 The Council will update the Inquiry with the outcomes of this consultation as it is scheduled to end before the date on the Inquiry.
- 5.30 The Council reserves the right to alert all parties should it be notified of the publication of successor WMSESS before the Inquiry and reserves the right to

respond through the submission of a Supplementary Statement should this be required.

5.31 The Council will also show why it does not consider that the appeal proposal is one that evidences “an immediate need”.

5.32 Its planning witness will also show lack of compliance with two of the three requirements set out in Policy LP6 - an unproven achievable access to the strategic highway network and its unacceptability in respect of other Development Plan policies, particularly LP4 in respect of the Strategic Gap.

5.33 Notwithstanding these matters, the Council will acknowledge that the appellant’s case does carry weight by virtue of its location within the Area identified in the WMSESS and Local Plan Policy LP6.

5.34 The Council will refer to Local Plan policy LP34 respect of lorry parking. The Council will acknowledge through the wording in this policy that there is a need for lorry parking in the Borough and that weight should be given to this part of the current proposal. The Council will argue that it does not follow that that should lead to support for the proposal as a whole.

f) The final planning balance

5.35 The Council will evidence its assessment of the final planning balance and thus why it resolved that it would have refused planning permission had it been the

determining Authority. It will acknowledge that there are benefits to the proposal in that its location is within an area identified in Local Plan Policy LP6 as being one that is relevant to meeting employment needs greater than local needs and that in respect of Local Plan policy LP34 there site is relevant to the location of HGV parking. The Council will acknowledge that these benefits carry weight.

5.36 However the Council will argue that this particular site is not appropriate as the site requirements set out in Policy LP6 are not satisfied. In particular there would be substantial harm to the Policy requirements of LP4 in that the proposal would not accord with the purposes of defining the Strategic Gap or with the requirements set out in policies LP1, LP14 and LP30 requiring the proposals to restore landscape character; to integrate appropriately or to harmonise with their immediate setting and wider surroundings. Moreover, the Council will argue that the proposal does not evidence an immediate need. Additionally, there is substantial weight afforded to the objection from National Highways.

5.37 The Council will argue that the cumulative level of harm caused outweighs the recognised benefits.

6. Planning Conditions

6.1 Without prejudice to its case, the Council is preparing a schedule of planning conditions with the appellant and the Highways Rule 6 party. These will be presented to the Inquiry.

7. Section 106 Matters

- 7.1 Similarly, the Council is discussing the Heads of Terms of Section 106 Agreement with the appellant. These are anticipated to include a financial contribution towards securing improvements to local bus services to support the forecast demand arising from the development; measures to secure on and off-site landscaping and green infrastructure together with its maintenance, off-site highway improvements and finally to outline the measures to promote manufacturing skills and training for the local population to access employment opportunities on the appeal site.
- 7.2 The Council will evidence how these draft Heads of Terms are compliant with the statutory requirements for Section 106 Obligations.
- 7.3 The Council at this point would draw attention to the fact that given the current responses from National Highways and the Warwickshire County Council as Highway Authority, they have not raised Section 106 matters during the course of the planning application to date, save for the public transport element referred to above. The reference above to off-site highway improvements is thus a preliminary acknowledgement that such works may be required by NH if it removes its objection.

8. Conclusions

- 8.1 The Council has considered the application as if it had been the determining Authority. It has concluded that it would have refused planning permission for the reasons set out in paragraph 1.3 above. It recognises that there are benefits associated with the proposal and that these would satisfy the objectives of

Development Plan policies. On the other hand, there are substantial harms caused to strategic spatial planning policy and other policies. The cumulative weight of these harms is considered to outweigh those benefits.

8.2 The Council will explain that the Development Plan is up to date and that it defines a Strategic Gap in which the appeal site is located, setting out its strategic purpose and the criteria that might allow development within it. The substantial harm to its purpose, character and appearance will be set out. Additionally, highway matters have not yet been resolved and the Council will explain that it cannot reasonably be expected to conclude that there would not be highway harm caused in particular to the Strategic Highway Network.

8.3 The Council will argue that the requirements of the relevant policies supporting the proposed benefits - LP6 and LP34 - are weakened by the doubt as to whether the proposal meets an immediate need.

8.4 Taking into account all of the factors for and against the proposal, it is considered that the proposal would be contrary to the Development Plan and the NPPF when taken together as a whole.