

**APPEAL BY St MODWEN DEVELOPMENTS LIMITED**  
**RE: LAND TO THE SOUTH EAST OF JUNCTION 10, M42, TRINITY**  
**ROAD, WARWICKSHIRE**

**CLOSING SUBMISSIONS ON BEHALF OF THE APPELLANT**

**1. Introductory Matters**

- 1.1 It is not often at an inquiry that one has to have extensive cross examination on what on earth the LPA's case might be. The first RfR seemed relatively clear – ie that the land use harm alleged related to an alleged substantial impact upon the separate identity of Dordon and the erosion of the meaningful gap between Dordon and Tamworth in conflict with NW19. However, at various points in XX DB seemed to want to recast her case to allege that the problem was that the appeal site is located in the open countryside and therefore in breach of NW2. Eventually a clear position was reached which was that the first reason for refusal did not give rise to a freestanding allegation of harm by virtue of countryside location (NW2) or design (NW12), and that the alleged breach of NW9 more properly related to the second reason for refusal despite not being cited.
- 1.2 Similarly the second reason for refusal was less than clear. In XX DB readily accepted that the LPA was not making a prematurity case. Similarly in opening IT made it clear that the LPA accepted that a need case had been made out. Rather the LPA's case seemed to be (at least during XX) that there is a need for additional employment land but that the LPA consider that the need is better met by sites which have been identified in the emerging LP.
- 1.3 The lack of clarity in the LPA's case reflects woolly thinking throughout its evidence, both as to the extent of the need, the merits of alternative sites, the

weight to be afforded to emerging policy and the extent to which land use harm has been proven rather than asserted.

- 1.4 Taking a step back from the LPA's position there are a number of points which strongly point in favour of the grant of permission:
- (i) there is an acknowledged immediate need for additional large sites of the type proposed, and in the location proposed to meet strategic needs<sup>1</sup>;
  - (ii) there is a clear shortage of sites to meet strategic needs in this area<sup>2</sup>;
  - (iii) there is a need to meet up to 14Ha<sup>3</sup> of employment land to meet Tamworth's needs outside of TBC, and TBC consider that the appeal site is particularly well placed to meet that need<sup>4</sup>;
  - (iv) the requirement in the emerging NWBC LP for additional employment is too low. It is agreed that the 91 Ha figure in the draft should be 97 Ha and on the Appellant's case even that figure is too low (the methodology is misguided and it excludes consideration of strategic sites);
  - (v) the supply side of the employment provision in the emerging NWBC is overstated. 8.5Ha has been double counted<sup>5</sup>, and the contributions from a number of sites has been over-stated;
  - (vi) the need for additional employment land is so acute that it has led to the the LPA contemplating green belt release and to do so well in advance of the emerging LP progressing to an advanced stage in the process;
  - (vii) as against that the LPA contend that the effect of the proposals would harm the gap between Dordon and Tamworth, to the point of apparently coalescence. Such a proposition is without merit:
    - it is based upon an assessment which is inherently flawed;
    - it assumes that Dordon includes Birch Coppice which it plainly doesn't;

---

<sup>1</sup> Report of Head of Planning into Hams Hall application

<sup>2</sup> ibid

<sup>3</sup> From a minimum requirement of 32 Ha

<sup>4</sup> N3 25 – the SOCG between StM & TBC

<sup>5</sup> the land west of the M42 has been included in the commitments and the allocations.

- it places reliance upon an emerging policy designation which can only carry the most limited weight;
- it ignores the fact that a meaningful gap will plainly remain, not least because the most sensitive land west of Dordon, north of the A5 will remain unaltered;
- if it were true then the residents of Dordon (including the PC) would no doubt be up in arms about the proposals, whereas, in fact there is not a single local objection from the settlement whose identity is claimed to be on verge of being seriously harmed;
- the LPA has so overstated the case as to undermine its own credibility, to suggest that Dordon will in future be perceived as a suburb of Tamworth is risible;
- the LPA has also undermined its position that that land to the south of the A5 is important to protect to preserve the 'gap' by its own actions of encouraging the expansion of Birch Coppice, especially along the A5 frontage.

1.5 There are no technical objections to the proposed development. There is agreed (based on the Hams Hall report to committee) to be an immediate need for large scale employment land release such as to surmount the even higher<sup>6</sup> burden of green belt release; and the LPA has in the past been willing to countenance the release of employment sites in the open countryside based upon need. Moreover it is simply not appropriate to wait for the local plan to advance further, and it is agreed that there is no prematurity reason for refusal.

1.6 In short the case in support of allowing the appeal is an overwhelming one, and the case against the proposals is deeply unconvincing, based upon an overstating of harm, and an underplaying of need<sup>7</sup>. It remains baffling to the Appellant how

---

<sup>6</sup> Higher than that of NW2 and NW19.

<sup>7</sup> As well as a claimed reliance upon alternative sites (either committed or proposed to be allocated) that do not pass the tests of PPG of suitability, availability and deliverability.

green belt release could be contemplated to meet a need that would be better served by the appeal site in a location which is supported by an adjacent local authority. The case in favour of the appeal is overwhelming.

## **2. Meaningful Gap**

### **2.1 History**

2.1.1 Back in the late 1980s, at a time when Birch Coppice was no more than an unused colliery site divorced from Dordon the Polesworth and Dordon LP was adopted which included a policy identifying an area of restraint to the north of the A5. At that time the land to the south of the A5 was all but undeveloped (East of the M42) and yet still it was differentiated by the policy makers of the time from the land to the north.

2.1.2 In the first iteration of the district wide local plan that AoR was rolled forward and geographically extended to the south, including much of the area that became Birch Coppice but excluded the colliery itself<sup>8</sup>. In 2003 consent was granted to create the rail freight head notwithstanding it was within the AoR. When the local plan was then reviewed in the mid 2000s the AoR was subject to a variety of objections (detailed at N3 27); which led to the LP Inspector deciding that the designation was inconsistent with national guidance in PPS7 comprising, as it did a local landscape designation without a robust justification. Accordingly the designation was removed from the plan.

2.1.3 The LPA then tried again to promote a designation in the emerging CS in 2012. The first iteration of what became NW19 included a policy preclusion against other than small scale development within the “meaningful gap” and the key diagram illustrated that the gap would be between Dordon/Polesworth and Tamworth but running both sides of the A5<sup>9</sup>. That was robustly rejected by the CS Inspector as having been insufficiently evidentially justified and the notation on

---

<sup>8</sup> N3 27 §3.4

<sup>9</sup> XX of DB

the key diagram and the policy preclusion were recommended to be removed as MMs which would otherwise render the CS “unsound”<sup>10</sup>.

2.1.4 It follows that the emerging LP is now the third time in just over a decade that the LPA has attempted to promote a policy designation across a specific geographical area to restrict development between the three settlements and south of the A5. On the previous two occasions the Inspector’s have been unconvinced that the need for such a designation has been properly evidenced, which should mean that for this third attempt to promote such a policy that all the more scrutiny should be brought to bear upon the LPA’s purported justification.

2.1.5 What is even more interesting is that at the time of the 2006 LP Inspector’s consideration that the LPA sought to remove land from the designation comprising what is now DOR24 (Centurion Way), DOR22, the southern most extension of Birch Coppice and even land north of the A5 and immediately to the west of Dordon extending all the way to the point opposite DOR22. It follows that that the LPA’s case to the 2005 LP Inspector was quite different to that which is now being pursued via the MGA. It is also notable that areas of land which were part of the gap in the mid 2000s were consented for major employment development. Moreover the still undeveloped DOR22 with a large road frontage along the A5 was part of the gap in the first iteration of the LP, but hasn’t even been considered as part of any of the areas of land covered by the MGA by the LPA (despite receiving three honourable mentions in despatches in the area 9 text).

## **2.2 NW19**

2.2.1 The correct policy approach is therefore to consider policy NW19 within the four corners of the Core Strategy and not in the light of the later draft designation under policy L5 (see below). As a development control policy it asks a decision maker to assess:

---

<sup>10</sup> CS Inspector’s report §21 (RB appx9)

- is the policy relevant to consider (ie is the proposed development west of Polesworth and/or Dordon?
- does the proposal adversely impact upon the “separate identities of Polesworth and Dordon and Tamworth”; and
- does the proposal maintain a meaningful gap between Polesworth/Dordon and Tamworth?

2.2.2 The policy is not a preclusion on development of whatever scale between Tamworth on the one hand and Polesworth/Dordon on the other; and it does not ask whether or not the proposals will reduce the extent of open land between them. Rather it calls upon the above judgments as to whether the above two development management “tests” are met.

2.2.3 It follows that the test of compliance with NW19 is not about change, but only change which gives rise to either of the above two “harms”.

2.2.4 What has been a thoroughly bizarre twist to the application is the LPA’s thesis that the policy is not talking about the gap between Dordon as defined on the proposals map and Tamworth, but between Dordon as now expanded by Birch Coppice. Such a proposition does not appear in any documentation before the MGA (see below) and even the MGA read properly doesn’t seek to equate Dordon and Birch Coppice as part of the same “Greater Dordon” settlement, but identifies them separately (see for example §10.2 of the MGA). However it seems to have entered the LPA’s thinking that in order to justify the existence of designating a “gap” on the south side of the A5 that it is compelled to argue that Dordon encompasses Birch Coppice, since without that conclusion the application of the policy undermines the development pressures that are expressly referenced in area 9.

2.2.5 With respect the proposition that policy NW19 should apply not to Dordon as defined but to “Greater Dordon” or Dordon with Birch Coppice is untenable on

any reasonable approach to the interpretation of the development plan. The CS did not revisit the settlement boundaries which remain those established in the 2006 LP. In the proposals map of the 2006 plan Dordon is identified by its own settlement boundary and Birch Coppice is a free standing allocation which is physically separate and to the SW of the settlement of Dordon. True enough consent has now been granted for development in phase 3 which brings the boundary of Birch Coppice up to that small part of Dordon which lies to the south of the A5, but the proposals map of the adopted DPD does not define Birch Coppice and Dordon as even contiguous, let alone the same settlement<sup>11</sup>.

2.2.6 Indeed as AW points out it doesn't even make sense to consider Birch Coppice as an employment allocation on the edge of Dordon, nor as an adjunct to the main settlement. Birch Coppice is almost 150% of the land area of Dordon proper and is physically distinct from it both in form and location. Whilst the M42 is wider the A5 is at grade and operates as a serious division between Dordon proper and the industrial estate.

2.2.7 In XX IT sought to argue that the Appellant's were being inconsistent in arguing that the appeal site would be an adjunct to Tamworth and a logical extension to the town since the M42 would act as a greater separator. With respect that is wholly wrong, and the difference is quite clear from anyone who has been to site. The M42 is in cutting and is far less of a division than the A5 is, nor is there anything of the disparity in size between the appeal site and Tamworth compared to Birch Coppice and Dordon. Moreover it is not just the Appellant who has reached the conclusion that the appeal site would operate as a logical extension to Tamworth – that is the conclusion of TBC itself<sup>12</sup>.

---

<sup>11</sup> §7.87 of the CS endorses that the A5 acts as a separator of Birch Coppice and and the small number of houses on the south from the remainder of Dordon proper.

<sup>12</sup> Letter of January 22<sup>nd</sup> N2-22

2.2.8 Indeed it is a little odd that the LPA have sought to challenge this conclusion since its case is that the development of the appeal site will extend the built up part of Tamworth closer to Dordon (see IT opening §5), and yet repeatedly in XX DB contended that it would be perceived as a “free standing” development in the open countryside divorced from any settlement. Odd that a free standing development in the open countryside unrelated to any settlement could also perform the role of coalescing two of them!

### **2.3 L5 & the MGA**

2.3.1 Policy L5 of the emerging LP introduces a preclusive policy which presumes against all but small scale development within a geographically designated area. It is essentially an attempt to reintroduce a policy approach which has been twice rejected by inspector’s as being evidentially unjustified. It is to be found in a plan which is at the earliest stage of production and even DB accepted that it was a raging certainty that it would be the subject of objection when the plan is consulted upon. As policy it cannot be afforded more than the slightest weight.

2.3.2 Of more relevance is the fact that the LPA now claims to have a robust evidence base upon which it relies. Indeed not only is it said to be capable of plugging the evidential gap of previous failed attempts to introduce this policy, but it is said to be so robust that it enhances the weight to be afforded to policy L5 since it has been consulted upon. With respect both propositions are misguided.

2.3.3 When it was first published for consultation the MGA included elements which read as if they would comprise development control policy and it did not include the section which is now principally relied upon entitled “Geographical proximity/Narrowness of Gap”. Both were the subject of objection by StM (and others) as a result the methodology was amended in the final version to include what is now relied upon by the LPA as its qualitative assessment of the gap. The “policy” aspect of the MGA was dropped and following a pre-action protocol



letter it was formally conceded by the LPA that the MGA was not policy but merely evidence to inform the emerging LP.

2.3.4 As it is the document is hopelessly confused. It repeatedly confuses sensitivity in the sense of protecting identity of settlements with landscape sensitivity, despite not being founded on any sort of landscape appraisal. It includes obviously irrelevant elements as part of its assessment (infrastructure, heritage etc) as well as within its recommendations which plainly have infected its conclusions<sup>13</sup>. Its assessment categories are then followed by a traffic light system of appraisal without any indication as to what the outcome of the green, amber and red actually are or how they might affect the conclusions. And the whole exercise seriously deviates from best practice in the many authoritative pronouncements on this issue<sup>14</sup>. Indeed, the document also seems to pass judgment on the acceptability of DOR22 in at least 3 places despite the fact that this former part of the adopted AoR wasn't even part of the study! As an exercise it is hopelessly confused, provides unreasoned judgments and is methodologically unsound. And yet it is the foundation of DB's conclusions on the first RfR.

2.3.5 By contrast AW has undertaken a systematic quantitative and qualitative assessment based upon a desktop and then on site analysis whose conclusions are clearly and transparently set out in a manner which reflects best practice. Indeed for all of the XX put to AW at no point was it suggested that his methodology was intrinsically flawed. Whilst that does not make his conclusions right, it nonetheless means that by comparison far more weight should be afforded to AW's exercise which meets good practice and builds upon the uncriticised LVIA, than to the methodologically flawed MGA *which is the LPA's only evidence*.

---

<sup>13</sup> The recommendations about area 10 appear to be founded on a heritage issue as well as a gap issue, area 7's recommendations include agricultural land quality and recreational value etc.

<sup>14</sup> AW appx – PAS, LUC Oxford Green Belt methodology.

## **2.4 The Assessment of Harm**

- 2.4.1 At the heart of AW's assessment are the notions that what is being considered is the separation of the settlement of Dordon and Tamworth and not the industrial estate of Birch Coppice and Tamworth. That essential difference explains much of the difference of views between the LPA and AW. AW's approach has the attraction of being based upon the words which are actually used in the policy. It is consistent with the proposals map, and it is even consistent with the wording of the confused MGA which uses Birch Coppice and Dordon to mean different things; just as the CS inspector used those two terms to mean different areas.
- 2.4.1 If the LPA's interpretation is right then a policy which doesn't even mention Birch Coppice is looking to protect a gap to the west of an industrial estate to assist in protecting its separate character from Tamworth. With respect the point is absurd.
- 2.4.2 The idea is rendered even more absurd by the LPA's actions. Over the last decade it has granted consents which have allowed Birch Coppice to grow into a commercial leviathan. In particular it has outgrown the physical area of Dordon itself and it has been consented to encroach right up to the A5 and the boundaries of Dordon. Of more relevance is that sites are being allocated all along the frontage of the A5. Indeed a far greater length of the A5 frontage between Dordon proper and Tamworth is being proposed to be developed as part of Birch Coppice than is proposed by the appeal proposals, including the hypotenuse of DOR22 extending a finger of Birch Coppice westwards.
- 2.4.3 Had it truly been the case that an equally important gap lay between Dordon and Tamworth on the south side of the A5 than the north then the LPA's behaviour in this regard would have been incomprehensible.

- 2.4.4 The reality is that the reason why Birch Coppice has been allowed to grow and to take up so much of the southern A5 frontage is because it is not this area which is critical to maintaining the separate identity of Dordon and Tamworth. Stepping back from the case and in particular looking at the aerial photos (ID11), and mentally overlaying the developed and allocated areas of Birch Coppice the points is obvious: if the south of the A5 was as important to this policy aim as the north then what on earth have NWBC been playing at for the last 15 years?
- 2.4.5 In fact, whether viewed from the A5 or from the PROW network, or even from the public open space on the west side of Dordon, it is very obvious on the ground that the land to the north of the A5 is what provides the meaningful gap between Tamworth and Dordon, and that will be undiminished by the proposed development. Indeed it is notable that the LPA has had to go so far as to allege actual coalescence will occur if the appeal is allowed – thereby pitching their case in such a way as to suggest that the large, highly visible area of land between the two settlements will no longer form a “meaningful” gap so as to make their separate identities legible to an impartial observer.
- 2.4.6 With respect that cannot be rationally correct – if this appeal is allowed and a development comes forward proposing large-scale employment or residential development north of the A5 adjacent to Dordon it is inconceivable that the policy response of DB to the application would be that such a proposal does not offend NW19 since there is no longer a meaningful gap between the settlements, and that Dordon no longer has a separate identity. Viewed in that context the LPA’s point is obviously wrong-headed and in reality is that there would be reduction in openness to the East of Tamworth but that is not what the policy test actually is.
- 2.4.7 That is not to say that development along the south of the A5 is irrelevant to the issue of whether the meaningful gap is prejudiced or that it couldn’t impinge upon the separate characters of the settlements (properly understood). A fact that AW expressly accepts (proof §5.1.5). Had the proposal involved development to the

back of pavement of unremitting industrial sheds then there would plainly be a major change to the perceived character which would have an influence beyond the land to the south and impinge upon the character of the land to the north. However that is not what is proposed.

2.4.8 Contrary to IT's proposition that travelling into NWBC from the junction 10 roundabout results in an immediate feeling that one is entering a rural area, the true position is that at this point in the West Midlands road network that the primary influence is major roads infrastructure. The roundabout is elevated, there is large signage, the roads are lit and the A5 is an elevated 4 lane dual carriageway. To the south there is an open view over the appeal site (behind the large roundabout approach sign) directly to the slag heap beyond. Yes, it may have been landscaped over time but it is still an obvious huge manmade landform in the direct line of the viewer. To the north of the slag heap as one comes around Birch Coppice comes increasingly into view signalling a very non-rural context to the A5. However there is a remarkable contrast with the land to the North. The landform dips and then rises, and as one proceeds there is a clear view of the east side of Tamworth and the west side of Dordon. The landform and land use of this parcel of land plainly and obviously forms a meaningful gap between the two and will continue to do so.

2.4.9 In future to the south, immediately upon exiting the roundabout travelling eastwards there would be a generous bank of landscaping providing the green foreground to the appeal proposals. Those buildings will not be invisible, but neither will they have anything like the prominence of some of the buildings on the Birch Coppice Industrial Estate at present. That set back, together with the landscaping and the gap created by the pipeline means that any influence upon the separating function of the land to the north will be avoided.

2.4.10 That is not to decry that there will be change, and indeed to some, an unwelcome change, but it is misguided to suggest that the harm will be beyond loss of the countryside and some of the short term views.

2.4.11 Indeed had the position been otherwise then it is inconceivable that there would not have been a hue and cry from the residents and Parish Council of Dordon. One need only ask whether DB seriously thinks that an application in the NE quadrant of the M42:A5 junction would have raised a similar wall of silence from Dordon to know that the land to the south has a very different function to the land to the South.

2.4.12 That then leaves the single point which was put repeatedly in XX that the effect of the proposals would be to create a “continuous line of built development along the south of the A5 between Dordon and Tamworth”. AW rightly repeatedly took issue with that proposition, pointing out that there would be an almost continuous line of “stuff” along that frontage, which would be for the most part Birch Coppice, then an allocation (DOR22) then a 145m gap and then a generous belt of landscaping in keeping with the infrastructure context. Yes there would be change, and no doubt unwelcome change which could be said to weigh in the balance against the proposals (in that countryside would be transformed) but the change would not be to remove a meaningful gap, nor to render Dordon a suburb of Tamworth.

### **3. Employment Land**

#### **3.1 Need**

3.1.1 The demise of RSS has undoubtedly complicated how cross border issues are addressed in an area with such inter-dependence as the West Midlands. It is readily accepted that the burden placed upon a small LPA such as NWBC is a high one, and that there may be a political disconnect between its desire to minimise land release and the recognition that employment generators will be

strongly attracted by the M42, the A5 and the existence of rail freight terminals such as that at Birch Coppice.

3.1.2 It is no part of StM's case to criticise the LPA for grasping the nettle and accepting that it has to accept cross border needs from elsewhere in the region. However, it is clear from this inquiry that there has been a serious underplaying of need at every level.

(i) Large Strategic Sites

3.1.3 Firstly PL has provided a detailed, and largely uncontested proof that there is a substantial need for additional regional/strategic land releases. That is evident from a variety of sources, namely:

- the WMSESS: within Area A there is only a 3.7 year supply<sup>15</sup>;
- the report to committee on Hams Hall, Sept 2016, p4/155;
- the report of the Inspector into the Birmingham LP EIP<sup>16</sup>;
- the CBRE 2015 Coventry and Warwick ELS;
- the GL Hearn ELR 2013 and the ELR Addendum 2016 §5.36;
- the letter from the Chamber of Commerce<sup>17</sup>.

3.1.4 In XinC DB sought to argue that the 97Ha<sup>18</sup> in the emerging LP encompassed that need, notwithstanding that the first part of §7.48 of the RJ to the emerging LP says precisely the opposite. However when she was taken carefully through the GL Hearn Addendum 2016 report<sup>19</sup>, she was forced to accept that it expressly did

---

<sup>15</sup> Based on PL's up to date assessment that remains the position. In XX IT drew attention to the larger supply based on looking at the whole West Midlands, which, with respect in no way qualifies the acute need to be applied to the need within Area A (M42 corridor). Neither does the fact that there is no 5 year supply take matters further, As PL pointed out – the Birmingham Inspector into the LP, the former RSS panel, JLL, PBA and Cushman and Wakefield all draw attention to 5 years as an appropriate yardstick of whether there is a sufficiency of immediate supply. Thus this is an authoritative yardstick, and no other yardstick has been proposed by the LPA. It is difficult to see where these lines of XX (which don't arise from DBs evidence) take the LPA other than IT skilfully trying to create a case.

<sup>16</sup> PL appx 31 §115 & 125

<sup>17</sup> ID1

<sup>18</sup> corrected from 91Ha – see ID8

<sup>19</sup> especially §6.53

not do so since it excluded sites over 20Ha from its assessment of margin in its 4 scenarios.

- 3.1.5 Thus the LPA is in a somewhat odd position. It was told by the CS Inspector that its CS wasn't sound absent a commitment to review its CS on receipt of evidence of the need for additional RLS from the above studies. And yet now that evidence is to hand it is expressly planning not to provide for it in its emerging LP. Instead in the report to committee on Hams Hall it has resolved its willingness to countenance GB release because of the seriousness of the need.
- 3.1.6 It may very well be that both the Hams Hall site and the appeal site might be needed to meet the ongoing need, but it is somewhat startling that the LPA appear to have agreed to discount the non-GB appeal site as an alternative location to meet the need *because it is at appeal*. With respect if the need is such as to outweigh the substantial harm that arises by virtue of inappropriateness, together with any other harm (including to the green belt purposes), then it is incomprehensible how the release of the appeal site could be resisted solely because of a lower threshold of alleged harm.
- 3.1.7 The short point is that even if there was no other basis to evidence need in this case that the need case for the appeal site is an overwhelming one. What is astounding is that nothing is imminent to seek to meet that need on a regional basis. It had been thought that the WMSESS would be followed by a part 2 report which would identify sites, but the Commissioning body has now gone and the report hasn't been commissioned. In answer to the Inspector's questions DB indicated that this is a matter on the agenda for the Gtr Birmingham officers working group or the combined authority but the work is at an early stage and there is no indication as to when NWBC will discover what proportion of that regional need should be directed to it – and yet there is an explicit recognition in the Hams Hall report that such need exists and should properly be accommodated in NWBC.

(ii) Tamworth's need

3.1.8 In the January 2015 letter sent by TBC to NWBC supporting this application TBC expresses locational support for the appeal site helping to meet its need for 14Ha of land being met outside of its district. It describes the site as being the only site which has been identified which could meet that need in any strategic work – a position which DB told the inquiry (with some ill-grace) remains unaltered.

Moreover in the May 2015 SOCG<sup>20</sup> TBC stated that the appeal site was particularly well located to meet the need.

3.1.9 In the only MoU which has been signed with regard to TBC's needs, in October 2014, it was agreed that 14Ha of employment land should be provided outside of the Borough of Tamworth. In January 2015 LBC adopted its plan without making any such provision, so it has then logically fallen to NWBC to make up the slack.

3.1.10 NWBC to its credit has accepted that it is duty bound to accept a proportion of that displaced need. However it has done so in a very odd manner. Firstly it has sought to point to a site which was already consented at the time of the TBC letter and the SOCG in May 2015 (land West of the M42) which it now states is to be attributed to TBC's needs. Odd, because presumably TBC would have been aware of the StM's site west of the M42 at the time that they were repeatedly endorsing the appeal site as being well placed to meet its needs. And odd since merely attributing a site to TBC's needs by a policy pronouncement doesn't actually do anything to meet those needs.

3.1.11 NWBC have not then accepted that there remains further land to find to meet TBC's needs. Rather it is sought to pursue a revised MoU, which DB confidently told the inquiry is agreed by TBC, but without any evidence to substantiate it. The suggestion is that TBC's needs will continue to go unmet until such time as LDC

---

<sup>20</sup>

N3 25



start a review of their plan having, presumably, first agreed to take 5.5Ha<sup>21</sup> Moreover she confidently asserts that TBC's needs are encompassed in the uplift in the employment requirement to 97Ha from 58Ha, but she was completely unable to identify how much of that uplift is actually attributable to TBC. In opening I suggested that the approach of NWBC was "not transparent". In reality it is wholly unsatisfactory – little wonder TBC have so far not signed up to agreeing to count already consented land to make up some of the deficit in its employment land needs.

3.1.12 The point doesn't even end there since the need for the additional 14Ha from TBC is a figure relating to the developable area and not a gross figure in terms of the overall site area, whereas the 8.5 Ha of the land West of the M42 is a gross figure. The net figure is around 5.3 Ha so that it makes up for less than ½ of the need even if it were appropriate to count the site.

3.1.13 The reality is that there is an obvious need for additional employment land which is immediately required to meet the needs of TBC and which were promised would be met by adjoining LPA's and hasn't yet been identified in whole or part. This too makes a compelling case for the release of the site which has been supported by TBC since January 2015 and is "...particularly well placed..." to meet that need. Moreover the same letter goes further and notes that no other site(s) has been identified to meet that need – as DB rightly accepted no further work in that regard has been done to address that issue – all that has moved on is a draft MoU from NWBC that seeks to direct 5.5Ha to Lichfield who have submitted perhaps the most equivocal document that has been produced to this inquiry (ID20).

(iii) The Need identified in the emerging LP

3.1.14 The emerging LP in policy L6 identifies that a requirement of 'around' 90Ha is to be planned for. The text advises that the correct figure is 91Ha, and following the

---

<sup>21</sup> The draft MoU says 6.5Ha.

criticism from Regeneris it is conceded that the figure should be 97Ha. That figure is based upon a labour supply assessment of the proposed housing allocations in the emerging LP, which in turn, it is accepted includes housing need from the wider Birmingham HMA. The figure does not however include an allowance for larger Regional Logistic Sites (defined as in excess of 20Ha<sup>22</sup>), but does include some wider than local needs.

3.1.15 However it is a misguided figure. Firstly the Addendum report itself provides two figures – the 91 (97) Ha figure which is relied upon in the emerging LP based upon a labour supply methodology and a past take up of non-strategic sites figure of 110Ha. No preference is expressed in the Addendum report for either and no justification has been provided by the LPA for choosing the lower.

Secondly, the approach of placing reliance upon the labour supply derived figure is strongly challenged by Regeneris as being a misguided approach in any event which deviates from the approach of the PPG which advises that labour supply, demand and past take up methods should all be considered<sup>23</sup>.

3.1.16 Even the labour supply figure is problematic since it relies upon a balanced in: out commuting picture for the new housing without a shred of evidence that this is realistic, but much evidence showing that the borders of NWBC are porous to other districts, rather than being an island. Finally no resilience or headroom approach has been included in the figures to allow for market signals, as is required by guidance. This is all the more important given all of the market evidence before the inquiry.

---

<sup>22</sup> Though the point is a bit odd since both Baddesley Colliery and Birch Coppice were said to be excluded on this basis even though the latter comprises a number of smaller individual developments which are individually much less than 20Ha. The unit size of 20,000sq ft (1,850sqm) threshold in the 2013 ELR is a more meaningful level of division.

<sup>23</sup> Somewhat weakly GL Hearn in its note says that regard was indeed had to all three methods by reference to the 2013 ELR, the 2014 note and the 2016 Addendum, thereby missing the point that all three methods were not considered on a consistent base date.

3.1.17 It follows that that LPA have chosen the lowest possible figure with no resilience and based on a deeply problematic methodology. Yes of course that is a matter to be tested at the LP examination, but the point is that the LPA are wrong to place reliance upon that figure in support of the proposition that it has identified sufficient land to meet needs and that the release of the appeal site should therefore be resisted, despite all of the pro-growth pronouncements of NPPF.

## **3.2 Supply**

### **3.2.1 Delivery of the Appeal Site**

3.2.1.1 At the outset of XX, and in one of the few answers which did not start with “but” DB readily accepted that StM’s have a good local track record of delivery of employment land and that if PP is granted then she did not challenge the proposition that the site would be rapidly brought forwards for development, in a location which for reasons which are described below are particularly well suited to the market. That can be contrasted sharply with other components of supply identified by the LPA.

3.2.1.1 Should PP be granted then St M’s can be assumed to be likely to bring the site to market as rapidly as Centurion Park and to be delivering jobs and economic benefits within short order. Indeed PL considers that the site will be rapidly developed since it will be meeting an immediate need. In reality it will therefore bridge the gap until the LP preparation catches up with the market, and it is hoped that the various public sector bodies come together to agree how need beyond local need can be met. It is startling indeed that DB invites dismissal of this appeal on the basis that she accepts that there is a need at every level<sup>24</sup> but that things are being done, albeit that there is nothing imminent on the regional need, Tamworths needs wont be met until LDC progress their plan further, and

---

<sup>24</sup> The need for additional RLS is recognised by her and the HoP in the Hams Hall report; the need for Tamworth is agreed to be unmet – even if the as yet unsigned MoU comes to fruition it is no more than an agreement that LDC will try to see what it can do, it is not an agreement to actually allocate a site; and the local need is agreed by DB to be in immediate deficit by over 8Ha even before any of PL’s criticisms of the supply side of the equation are made out.

NWBC's LP wont be approaching submission until spring of next year (assuming no slippage).

### 3.2.2 Components of supply

3.2.2.1 For some of the components of supply, such as the two extensions to Birch Coppice (also lying along the A5 between Dordon and Tamworth and collectively having a greater road frontage than the appeal site), there are substantial constraints which might be overcome within the plan period but which mean that the sites are not going to come forward any time soon, or not at all.

3.2.2.2 For others the LPA's reliance upon them at this stage of the plan is obtuse.

3.2.2.3 Thus, the 8.5 Ha site west of the M42 has been included in both the commitments and the allocations side of the equation in the dLP– an obvious error which means that as well as understating the requirement (policy L6 states 90, whereas the true figure should be 97) by 7 Ha, the supply side has been overstated by 8.5Ha. That results in a discrepancy which is close to the developable area of the appeal site.

3.2.2.4 The second point to make about the supply side of the equation is the “apples and pears point”. That is to say that the LPA are guilty of mixing datasets to reduce the residual need. That is to say that the draft LP is counting a probable RLS site (Hams Hall<sup>25</sup>) as part of supply against a requirement which explicitly does not include that need<sup>26</sup>. That is an exercise in woolly thinking which deducts an RLS site from a non-RLS requirement. In ReX IT asked if Hams Hall was a strategic site having regard to the approach of GL Hearn in the Addendum ELR and, rightly DB unequivocally said that it was, because it was an extension of an existing RLS site. That is entirely consistent with §6.44 to 6.48 of the Addendum ELR where what has been considered is the total size of site rather than the

---

<sup>25</sup> Though the same point must apply with equal force to the proposed allocations at Birch Coppice which are extensions to a strategic site

<sup>26</sup> As accepted explicitly in XX by DB and which appears obvious from both §7.48 of the emerging local plan and §6.39 of the Addendum ELR.

individual plots – ie it cant be rationally argued that a 20Ha extension to a RLS to meet RLS needs is not a strategic site. What is odd is that exactly the same logic applies to the Birch Coppice extensions which are also proposed as extensions to a strategic site. That doesn't mean that those sites shouldn't be allocated, but rather that the local:regional division which underpins so much of the LPA's approach is wrong-headed. If Hams Hall is a RLS then it should not be counted in the supply against a requirement which excludes a component for RLS – it would be as if one were deducting general market housing from a need figure for affordable housing.

3.2.2.5 The third general point to make in respect of the supply side of the equation is that the LPA have taken the total gross site area in respect of each of the allocations. However, in deriving the 97Ha requirement GL Hearn have made it very clear that they have derived a generalised developable area based upon a factoring of their derived floorspace requirements (see §7.40 2013 ELR N3-5). If every allocation and employment site did not have structural landscaping, or balancing ponds or overly long accesses or simply odd shaped red edges then that would not matter. However, PL rightly pointed out that this is simply not the case. Thus the developable area of the appeal site which is to be equated to the exercise undertaken by GL Hearn is not 25.4Ha but rather 18.9Ha. Similarly Coleshill Hospital has a plot coverage of 5% not 30% (which is assumed in the GL Hearn study – relevant to office development). The resultant requirement figure, based upon a labour supply methodology is not to be equated to gross site areas in the sense of red edges sites, but the developable parts of those sites. That means that an exercise should have been done for the different components of supply to determine what the developable areas actually area – *which simply has not been done*. The effect is to materially overstate the supply side of the equation.

3.2.2.6 Before turning to the site specific concerns it is evident therefore that the supply side of the equation has been overstated and that the deficit is therefore much greater than the 8.6Ha deficit admitted by the LPA (ID8). Before turning to

concerns over some of the specific components of supply it is appropriate to address the point made in XX by IT who sought to suggest that this is an exercise which is far more appropriately dealt with through a LP examination, inferentially suggesting that it shouldn't be done in a s.78 appeal. If that is submitted then it is wrong, since it is analogous to the same point which was unsuccessfully argued in the context of housing need in the Shottery case<sup>27</sup>.

### 3.2.3 Site specific issues<sup>28</sup>

3.2.3.1 **Coleshill** is consented for office development which plainly restricts its ability to meet needs. Furthermore, it is now agreed that the site is grossly affected by HS2. That doesn't just mean that the developable area of the residue is substantially reduced<sup>29</sup>, but the access wont be created until the accommodation works have taken place to construct HS2 which will hopefully be within the lifetime of the local plan, but wont be any time soon. Even had there not been a significantly reduced land area and a serious delay in delivery, the site already had serious problems. Save for the IM (Subaru) headquarters office building on site none of the rest of the 1994 permission has been taken up for many years (long before HS2 was a twinkle in the eye of the last Secretary of State). It is very much a secondary location in market terms reflected by its languishing on the market for

---

<sup>27</sup> Stratford on Avon DC v Secretary of State for Communities and Local Government [2013] EWHC 2074 (Admin), per Hickinbottom J. at §42 and 43  
*"[42]Equally, in deciding on the housing requirement for the district on the evidence before him and for the purposes of the particular planning application he was considering, the Inspector was not seeking to (and did not in fact) bind the Council, or another inspector or the Secretary of State, as to the housing requirement figure in other applications or appeals. The relevant housing requirement figure in another case would depend upon a separate exercise of judgment on the basis of the evidence available in that other case, at the time of the relevant decision, including relevant policy documents such as the local Core Strategy at whatever stage that process had reached....[43]Having, rightly, taken the view that he had to assess the housing requirement to enable him properly to determine the appeal in accordance with both the NPPF ..., the Inspector's approach to determining that figure is unimpeachable..."*

<sup>28</sup> Coleshill, MIRA and Hams Hall are all posited as claimed alternatives, with the emphasis upon Hams Hall. For the reasons that I address in this section none are capable of being relied upon to meet an immediate need, but in any event on PL's evidence there is need for Hams Hall and the appeal site and much much more to come close to the yardstick of 5 years of deliverable sites within the M42 corridor area of the WMSESS.

<sup>29</sup> Information from LPA as to its claimed yield still pending at the time of writing

years. Whilst it is true that IM might own lots of green belt land close by, frankly so what? That is not proposed to be allocated, it has no permission and it could only properly be released as part of a plan review if exceptional circumstances are demonstrated<sup>30</sup>. Whilst regard should of course be had the fact that the site has a partially undeveloped permission – it is wholly unrealistic to count the site as being part of the LPA’s overall supply in the unqualified manner which has been propounded in the draft plan. The approach of PL is obviously to be preferred.

3.2.3.2 Both **Hams Hall** and **MIRA** are new sites. MIRA is completely new whereas Hams Hall was identified for an energy use in the draft allocations DPD. After a torrid period of XX DB properly accepted that only limited weight could be afforded to the allocation of MIRA in the draft LP and only “slightly more” weight to Hams Hall<sup>31</sup>. The reliance upon both as “better” because the council has identified them in a plan which is at the very earliest point of preparation is an unconvincing reason to reject the appeal in preference to those sites. And moreover, the LPA’s reliance upon those sites to make up the deficit in the identified need is also questionable.

3.2.3.3 MIRA is identified for 18.4 Ha of B1 and B2 in the emerging LP with a firm preclusion on non-ancillary B8. That can be contrasted with the evidence which underpins the draft LP which shows that there is a need for less than that in the Addendum ELR<sup>32</sup> (approximately 16 Ha<sup>33</sup>) and there is nothing like a need for 42Ha, notwithstanding that this is the site which the LPA seem to rely upon in meeting its identified deficit (see LPA’s position in the third column of the final table ID8 which shows a deficit of >8Ha assuming all of its supply). It also follows that it cannot meet the need for RLSs.

---

<sup>30</sup> That is emphatically not addressed in the letter from Brandon Lewis dated 18<sup>th</sup> March 2015 (ID21), which does not relax green belt policy and relates only to replacement buildings. In fact the IM offices are understood to be relocating to Blythe Valley Business Park. It does not open the door to replacement land which has permission and which is undeveloped.

<sup>31</sup> Although its identification for an energy use in the defunct allocations DPD hardly assists in demonstrating that consultation has in fact taken place on the site for the uses proposed.

<sup>32</sup> Figure 20

<sup>33</sup> Which would be addressed by both the office permission at Coleshill and the MIRA site.

3.2.3.4 The MIRA allocation may reflect a laudable aspiration to widen the skills base of the LPA workforce. However it is a proposal to expand an already stalled technology park whose delivery has not been strong. It is unrealistic to suggest that 42 Ha will be delivered over the plan period, and frankly even 18Ha (2Ha in excess of the identified need) looks optimistic. Even then the Phil Jones Associates suggests that there will be highway constraints to address which haven't yet been resolved even in an IDP.

3.2.3.5 For Hams Hall, the site is in the adopted GB. That is no small thing. It is agreed with DB that this is a higher policy hurdle than NW19, and yet the same evidential need for the site is the key aspect<sup>34</sup> of VSC that is being relied upon to support the site before members.

3.2.3.6 Whilst it may be that Hams Hall might be released for development that could only happen if either there is a resolution to grant and the site is not recovered by the SOS or is recovered and consented; or unless it is eventually allocated. However, mere support in principle by the LPA is only the start of the process, which it follows may not be complete until well into next year and may still not end up in the release of the site. It is nothing like immediately available and until the plan progresses much further or until it is consented (which is emphatically not imminent) then reliance upon this component of supply is misguided.

3.2.3.7 For Aldi and the Birch Coppice allocations the position is the verdict that is available in the Scottish criminal courts of "not proven". It is accepted that the sites are appropriate in principle for employment use however there is a singular dearth of information in relation to each to enable this inquiry to form a

---

<sup>34</sup> DB didn't accept that this was the key aspect but that must be logically the case since the mere identification of a site in GB as a draft allocation cannot of itself comprise exceptional circumstances for releasing it from the GB. The circularity is obvious and thus the same must be true in considering VSC. Identifying a site can't be part of VSC. Similarly the development of the site is inappropriate development in GB and significant harm arises by reason of inappropriateness. That the site performs GB functions to a lesser degree than other sites may result in less harm but can't comprise a reason to outweigh that harm!



meaningful view on the likelihood of their coming forward within the plan period (or indeed at all). What is abundantly clear is that these are not sites which are immediately available.

Aldi – this is owned by Aldi and is exclusively available for their expansion. It is not available to the wider market and there is no information as to when it might be brought forward if ever. What is known is that there are critical highway constraints that have resulted in the stalling of planning applications to the north of the bridge over the railway which leads to the A5. In response to a planning application for 620 units WCC have objected and seem to require a new railway bridge to be constructed alongside the existing road. It may be that Aldi are on the verge of coming together with the owners of that land to pay for the bridge and to “do a deal” with Network Rail who will view themselves as being in a ransom situation. However there is literally no evidence to substantiate such a position. It therefore remains an unsurmounted constraint to development with no evidence as to when resolution might take place.

For the allotments south of the A5 there is a formal statutory process to pursue which is archaic and convoluted and hasn't yet been commenced<sup>35</sup>. There is the need for the Secretary of State's consent and an evidence gathering exercise which has barely begun. The height of the evidence is that a meeting has taken place with the allotment holders who are willing to consider the future – but frankly so what – that isn't agreement and what else would they say. No alternative site has been identified and no consent sought or granted. It is no more than an identified constraint to development which may one day be resolved but is nowhere near being so.

Similarly points are made in respect of the playing fields south of Dordon. But even DB accepted that discussions are even less far advanced with the occupiers and it will not be for at least a further 2 years before a preclusive covenant is

---

<sup>35</sup> ID24 letter from Hodgetts confirms that the process of discussions upon which it seeks to rely to substantiate a potential “land swap” took place in 2014. Which hardly inspires confidence that there is an ongoing process with an imminent resolution. Moreover, in its 2014 reps to the Core Strategy, paragraphs 2.5 and 2.14 and Policy Emp3 suggests that there is a viability concern over the viability of re-providing the playing fields, casting a still further concern over the appeal site.

lifted. Again – one day there may be a resolution but there is no meaningful evidence that it is near.

3.2.3.8 For the Dosthill site there may be evidence of a permission having been implemented though the documentation is far from satisfactory. However like the majority of the Coleshill site nothing has happened to bring the site forwards for years. It is strongly submitted that without more evidence to support realism that this is also an unproven component of supply that should be discounted.

### **3.2.4 Conclusion on Supply**

3.2.4.1 Overall therefore there are huge problems with the supply which properly understood is far less than the LPA contend, and comes nowhere close to meeting even its underpitched need of 97Ha in the Local Plan. More importantly there is an almost trivial level of sites which are immediately available and capable of meeting immediate needs, with the Hodgetts parcel of Birch Coppice phase 3 being the only realistic significant parcel – and that isn't even counted as part of the LP's supply! Since there appears to be little or no disagreement that there is an immediate need for additional employment land then it is firmly submitted that the draft LP supply lacks the necessary resilience to provide that supply. In summary:

- there has been a mixing of apples and pears – ie a requirement fixed by excluding past take up on strategic sites, but a supply which includes a large strategic site;
- the requirement is assessed on a developable area basis, but the supply is based upon an assessment of gross/red-edged area;
- the resilience of the commitments is questionable since it relies heavily upon Dosthill and Coleshill;
- the resilience of some of the allocations is questionable in terms of their deliverability;
- on DB's evidence the supply has been wrongly calculated in the dLP, and unless one (wrongly) includes all of MIRA even on the LPA's case there

is an immediate deficit in supply (ID8 table 5 – 8.6Ha), against meeting a requirement which it has also got wrong by 7Ha (compared to draft policy L6).

3.2.4.2 That of course relates to a need for the plan period. However it demonstrates that there is a serious problem with the LPA's supply position even before it is tested and moreover there are doubts over almost all of the its identified components of supply at the very outset of the process.

### **3.3 Locational Advantages**

3.3.1 What is stark is that the LPA has been immensely successful at bringing forward large scale employment generators over the last 5 years. Most LPA's in the UK would no doubt be extraordinarily envious of NWBC and in particular the immense success of Birch Coppice. What is odd, stepping back from the complexities of the above arguments is that the LPA has decided that things must change, despite the above overwhelming evidence that the demand and need for sites remains strong<sup>36</sup>.

3.3.2 The immediate area of Birch Coppice is proximate to the A5 and the M42 and continues to have a rail freight interchange which has capacity for additional freight (see letter of support in appx XX of PL from the operator. Extensive land releases have taken place to the immediate south of Dordon to create an industrial estate in the space of less than 15 years that is 150% of the land area of the settlement, transforming the area south of the A5 and yet it is said that the development of a far smaller frontage at the far end close to the M42 will cause harm to Dordon.

3.3.3 The locational advantages of the site are explained in detail by PL at §9.10 all of which make the proposals highly attractive to meeting the identified needs, in

---

<sup>36</sup> It is self evident that Birch Coppice has been instrumental in transforming the local economy from its former reliance upon the defunct colliery.

contrast to the supposed allocations, all of which suffer from significant delivery issues.

- 3.3.3 That there is not a single objection from a resident of Dordon, nor the PC other than on traffic grounds is not just telling – it is obvious. The change south of the A5 has happened, there will remain a huge gap north of the A5 and a meaningful gap south of the A5, albeit diminished, just as it has been lessened by the LPA over the last 15 years. But there will be continued exploitation of the obvious geographic benefits of the existing infrastructure in the heart of England. Not to meet the substantial demand which lies behind this application, given those attributes would be deeply misguided absent the most powerful of reasons (such as major technical constraints or, say green belt designation).

#### **4. Policy**

- 4.0 Feeding the above into the contested policies:

##### 4.1 NW2:

- 4.1.1 The LPA's allegation of harm in the first reason for refusal is not that the proposals are promoted in the open countryside in a location which is inconsistent with the settlement hierarchy of the adopted LP. The harm relates exclusively to the offence to the second part of policy NW19. However at points in her XX, and again in her ReX, DB sought to expand her case by suggesting that there was indeed harm arising from a conflict with the spatial strategy of the CS.
- 4.1.2 In XX she appeared to step back from this point when it was pointed out to her that exactly the same argument would apply the consent that was granted in 2014 at Centurion Park, the consent for phase 3 at Birch Coppice, the application at Hams Hall and the proposals at MIRA. It may be reflected that a conflict with NW2 isn't even hinted at in the report on Hams Hall.

4.1.3 All of those examples should make it abundantly clear that the need for additional employment land together with the revised spatial strategy of L2 in the emerging plan renders policy NW2 out of date<sup>37</sup>. That is to say that the needs identified in the emerging policy L6 means that the need case which underpins the policy approach of the CS is in need of review.

4.1.4 The appeal site, unlike MIRA, Hams Hall, Coleshill Hall or even phase 3 of Birch Coppice lies immediately adjacent to the settlement of Tamworth (as extended by the development at Centurion Park). Whilst it may be unwelcome to recognise it on the part of the LPA, the appeal proposals are not only well related to a major trunk road, a motorway, a rail freight head and a large centre of population, but they are also within category 2 of the emerging hierarchy of the draft LP by being immediately adjacent to Tamworth. In spatial terms the proposals are a far better fit than all of the allocations in the draft plan.

4.2 NW9:

4.2.1 This policy is plainly out of date on the basis of superceded evidence of employment need in the 2016 Addendum to the ELR. In the Inspector's questions DB seemed to think that because the figure of 60<sup>38</sup> Ha is a minimum and that the new minimum requirement of L6 is 90<sup>39</sup> which is greater than 60 that NW is still up to date. With respect that is plainly wrong.

4.2.2 The minimum requirement in the draft policy (as corrected) is now 67%<sup>40</sup> higher than it was in the CS. That renders the latter policy target woefully out of date. Parenthetically it also renders the settlement boundaries and allocations in the

---

<sup>37</sup> XX was put on the basis that there was a parallel with the Hollingbourne case (Gallagher v SOS [2016] EWHC 674). With respect she is wrong, in that case a challenge was made based upon the conclusion that a countryside protection policy should carry significant weight. That is wholly uncontroversial. What is different in this case is that the spatial strategy policy (NW2) and the development plan boundaries which give expression to that are demonstrably out of date in the circumstances of this case. The cases are wholly different, and the analogy drawn by IT is misguided.

<sup>38</sup> Subsequently reduced to 58Ha.

<sup>39</sup> Though in fact it is now corrected to 97Ha – see ID8.

<sup>40</sup>  $(97-58) \div 58 \times 100\% = 67\%$

saved policies of the 2006 LP woefully out of date. Not only were they designed to meet the development needs up to the end of the plan period of 2011, and not only were they rendered out of date by the increased development needs of the 2014 CS, but they have now been rendered even more out of date by the yet further increased need arising from the draft requirements of L6.

4.2.3 Finally it is a little odd to understand how this policy is said to be breached by the actual land use harm which is alleged in the first reason for refusal (which relates to compromising a spatial gap). The second part of the policy cross refers to the spatial hierarchy in NW2 which is not the land use harm which is said in the text of the RfR to arise. With respect to the author of the report to committee there appears to have been something of an issue with the clarity of thought underpinning the drafting of the 1<sup>st</sup> RfR!

4.2.4 Thus, whilst it is accepted that there is tension with the spatial strategy of the CS (and therefore NW2 and the cross reference in NW9) it is firmly submitted that these comprise out of date policies which are more than outweighed by the substantial benefits of the proposals.

4.3 NW12:

4.3.1 Little needs to be said about this policy which was agreed by both AW and DB to be a policy whose breach or compliance is dependent upon the conflict or compliance with NW19.

4.3.2 That is to say that a policy which breached NW19 can be taken not to comprise high quality design, but if there is no breach of NW19 DB does not allege that a high quality design to comply with NW12 cannot be achieved under this policy.

4.4 NW19:

4.4.1 This is addressed above in depth. On the evidence of AW this is a policy which is simply not breached. However, it is conceivable that the Inspector might come to

the view that there is some degree of impact under policy NW19. If so the position is not binary – there is a requirement to assess the degree to which harm arises to the separate character of Dordon. That is to say that if AW’s evidence is not accepted that does not mean that there is only the binary conclusion that DB must be right that coalescence would occur between settlements. If the position is that the Inspector concludes that there is some non-catastrophic erosion of the gap then that policy breach is still more than capable of being outweighed by the substantial benefits which arise in this case.

#### 4.5

4.5.1 That is to say that even with some policy support some limited harm to the environmental component of sustainable development would in any event be more than outweighed by the substantial local contributions to the economic and social components of sustainable development that would arise from helping to meet an immediate need. Thus conflict with an out of date spatial strategy and mild conflict with a gap policy is more than capable of being outweighed by the substantial (and uncontested) local economic benefits set out in the Regeneris report produced by RB at his appx 16<sup>41</sup>:

- a positive contribution to the supply and delivery of employment land, where there is a clear shortfall in supply, and a demonstrable need at every level of assessment
- the generation of significant employment opportunities across a range of sectors, types and skill levels through the construction (around 430 person years) and operational (up to around 1,650 net additional jobs) phases, in a location closely related to areas of deprivation.
- associated Gross Value Added to the local economy (about £70 - £90 million).
- creation of a high quality sustainable development, protecting and enhancing the natural, built and historic environment, creating a high

---

<sup>41</sup> reported RB §5.128

quality built environment within an accessible parkland setting, with uses that will meet the needs and support the well-being of the community.

- ecological enhancement, diversification, and habitat creation, improving the current, generally unremarkable, value of the site in this regard.

4.6 The relevance of §14 of NPPF.

4.6.1 All of the above means that permission ought to be granted based upon a standard s.38(6) balance. A fascinating debate took place in XX with RB, which may have been mentioned by IT again in closing about the extent to which RB is right that the development plan is out of date based upon the case of *Bloor Homes v SoS* [2014] EWHC 754. There is no doubt that Lindblom J. qualifies his conclusions (unsurprisingly) by reference to the circumstances of the case, and there is equally no doubt that insofar as he provides an interpretation of §14 that it is binding upon subsequent decision makers. However, it is wholly wrong to suggest that the case is authority for the proposition that a development plan is “silent” in §14 only if there is no policy at all in the development plan. Rather it is firmly submitted that the approach is that the plan is silent about the crucial determinant policy issues in a given case.

4.6.2 In this case the plan is demonstrably silent on how it addresses non-local needs. The LP Inspector considered that this deficit in the CS could only be made good if a formal review was committed to in the plan:

*“...[the main modification]MM42 introduces a commitment to review the Core Strategy should these studies identify a need for more RLS floorspace in the Borough”*

That is precisely what has happened in the conclusions of the WMSESS – thus the point is explicitly not dealt with in the CS, and the plan is silent on how those needs (if subsequently proven). Ironically despite the publication of the acute need in the WMSESS the recently published draft LP does not address that need.



## **5. Conclusion**

- 5.1 The demise of regional planning does not mean that the need for more than local employment land to be provided for goes away. It is accepted that authorities such as NWBC are doing the best that they can to address such concerns and that they won't know how much they are required to provide until formal agreements are reached with all relevant authorities. However the CS Inspector didn't say that provision of land should await the outcome of mutual agreement but rather the results of the studies which had then been commissioned. Those studies include the WMSESS which has now reported and concluded that there is an acute and immediate need for additional land in Area A (the M42 corridor). The appeal site is exceptionally well placed to meet that demand, as well as "particularly well placed" to help meet the overspill demand from Tamworth and also to help to make up the deficit in demand identified in the draft LP.
- 5.2 However one cuts it – there is a need for the appeal site at every level of consideration which clearly and demonstrably outweighs the limited harm which arises.
- 5.3 As for the proposition that such benefits are to be diminished because of the availability of alternative sites – the proposition fails as a matter of fact. Hams Hall if one day consented or allocated could then help to meet RLS need, but it is in the green belt at present and the policy hurdle is a far higher one than the appeal site – it is very obviously not an alternative. Indeed even with Hams Hall on PL's evidence there is still a need for RLS development so even if consented it wouldn't comprise an alternative. MIRA is an optimistic allocation for B1(c) and B2 which is only a draft allocation in the very earliest stage in a draft local plan. Even beyond NWBC, of all of the sites in appendix H of DB's proof only Peddimore is in same area A and it is in a plan which is draft and stalled (the Birmingham LP). Thus it is simply not right that there are sites to meet the need for employment land now.

- 5.4 NWBC are to be congratulated for having grasped the nettle to date by granting consents to ensure that the M42 corridor deficit hasn't worsened since the conclusion of the WMSESS was completed, but they are now proposing to turn the tap off pending an as yet unknown point in time when regional agreements are reached and as yet uncommissioned studies have been published. With respect that is the antithesis of good planning.
- 5.5 The planning balance weighs strongly in favour of the appeal proposals, there are no technical reasons to withhold consent. The implications are serious and the need acute at every level and the harm is limited. It is respectfully, but forcefully submitted that the appeal proposals comprise sustainable development which should be consented without delay.

Kings Chambers  
36 Young Street  
Manchester  
M3 3FT

*Paul G Tucker QC*  
*22<sup>nd</sup> September 2016*