



North Warwickshire Borough Council

Rebuttal

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. This is a rebuttal to evidence provided by the appellant in this appeal. The rebuttal mainly covers the Planning Matters Proof of Evidence by Mr Hann (CD-D28/A). It also, covers some rebuttal of the Landscape Visual and Strategic Gap Matters by Mr Smith (CD-D30/A).

2. In numerous elements of the proof of evidence of Mr Hanns Proof (para 1.2.7, 1.2.33, 1.2.36 – D28/A) indicates the site as the joint best performing site for strategic scale employment in the WMSESS Phase 2 Study (I2). However, this study is based on a policy off assessment meaning it has no regard to planning policy, planning constraints or other planning matters. It is just a commercial assessment of where operators would most like to develop. The Northwest quadrant of Junction 10 of the M42 is one of the few motorway junctions areas which has not been developed and so it is plainly a desirable location from a commercial perspective. The WMSESS is therefore just that: an assessment of commercial desirability. It is not an assessment of the planning merits of each site and therefore the weight attributed to it in a planning context such as this is limited. The Study did not actually consider the planning merits of each of the sites across the study area.

3. Para 1.2.8 indicates that the site is rail served, but there are no obligations put forward by the appellant to indicate that they or potential occupants will be obligated to use such facilities. Indeed, the proposal are very much road focussed as evidence by the desire to include within the proposal a lorry parking facility. See para 5.46 and 5.47 of Dorthy Barratt's Proof of Evidence (CD-D24/A) with reference to this element for further consideration of the issue of rail served and how wide the area covered by this definition.

4. Para 1.2.11 I would contest the view that there is an acute need for HGV parking in the area. In fact, the most update evidence from National Highways September 2023 (CD-I3) indicates the lorry parking demand is only moderate in North Warwickshire. There are areas where there is much higher demand. Therefore, to define the issue as acute bearing in mind this evidence and the provision of

additional facilities at the MSA (Motorway Services Area) is exaggerated. See para 5.39 and 5.40 of Dorothy Barratt's Proof of Evidence.

5. Mr Hann's Proof of Evidence in Para 1.2.34 asserts that the Strategic Gap policy LP4 is a less onerous than the Green Belt Policy. This assumption is incorrect. These are two completely different policy tests and require completely different assessments when it comes to decision making. The appeal site is within the Strategic Gap covered by policy LP4. This requires an interpretation of the policy in accordance with language used read in its proper context. The test to accord to this policy is that the "Development proposals will not be permitted where they significantly adversely affect the distinctive, separate characters of Tamworth and Polesworth with Dordon." (my emphasis) This means that if there are such significant adverse affects, then the proposal is contrary to the policy. There is no caveat or exception.

6. This is an entirely different test for assessment of a proposal in the Green Belt. In the Green Belt there is a policy which seeks to prevent inappropriate development to which substantial weight must be given. But this can be overcome by an applicant demonstrating very special circumstances. This means that a proposal can conform to Green Belt policy if very special circumstances can be demonstrated.

7. In addition, it is to be noted that during the forthcoming development of the EEDPD a wide range of criteria will be used to assess sites. This will include consideration of all the site constraints, its location, access, neighbouring uses, if the site is in the Green Belt/Strategic Gap, if it is brownfield or green field. Sites will also be considered through the accompanying Sustainability Appraisal considering a wide range of economic, environmental, and social factors. This assessment process forms part of the sieving process for allocating sites. It is not as simple as saying a site outside of the Green Belt will automatically trump a site in the Green Belt.

8. In para 1.2.37 Mr Hann and Mr Smith do agree that the scheme “comprises a large development in the gap”. It is therefore strange that the assessment concludes that the scheme of this size does not lead to significant adverse harm to the distinctive, separate characters of Tamworth and Polesworth with Dordon. Within Sam Oxley’s proof it is clear that the physical and visual separation will be significantly adversely affected by the proposal (CD-D25/A chapters 4 and 5) and reiterated in my proof (CD-D23/A - para 3.63).

Benefits of the scheme

9. In terms of the significant benefits delivered by the proposal, Mr Hann’s proof summarises the significant benefits delivered at para 1.2.41 that the proposal will create in the range of 1,000-1,400 full time equivalent jobs, however there is no identified occupier of the proposed unit or units. The number of jobs indicated in this proof is different to the earlier information (CDA6 – para 12.3.3) where it was indicated that 776 to 1295 net additional jobs would be created. In a recent study by Locallis (page 2 – Key points – CD-I58) it indicates that in North Warwickshire and Corby there is a high proportion of people working in industries at highest risk of automation. This is indicated by the table on page 8 where it is concluded that automation could impact on circa 17,316 jobs (38.6% of the workforce) in North Warwickshire. Once again it cannot be demonstrated that the proposal will provide a resilient high skilled occupier that automation would not impact on, in fact it is more likely that the development if allowed would provide similar logistical recruitment that matches the existing jobs market.

10. It is claimed that the provision of 10,000 sqm of floorspace targeted at small-medium sized enterprises (SME’s) is a significant benefit. However, to meet the requirements of LP6 for an immediate need for employment land or certain type of employment land is required. Yet this part of the proposal could be accommodated in a number of different locations. Indeed, within evidence from Mrs Barratt (CD-D24 para 5.8-5.23) there are number of available sites coming forward through the Local Plan allocations for example E2 and E3 within the vicinity of the site which could provide space for SME’s.

11. In terms of the environmental and social benefits outlined, the 10,000 new trees to be planted across the scheme are primarily required to attempt to reduce the impact of this very large development in the Strategic Gap. This is also the case for the provision of 6.5 hectares of off-site green infrastructure. The provision of 6.5 hectares of “off-site green infrastructure” is provided to reduce views from Dordon onto this currently open land.
12. This would also leave a further 35.16 hectares remaining within the control of the appellant. The Appellant is promoting this wider area for employment and other uses through the local plan process.

Tilted Balance

13. Paragraph 1.2.45 of Mr Hann’s Proof of Evidence indicates that the tilted balance applies. He relies on this to make his case in favour of the proposal. In other words, he believes the proposal should be given planning permission on the basis of applying the tilted balance. He claims the tilted balance applies because there are no relevant development plan policies relating to the proposal: see paragraph 11(d). It is difficult to understand what he is arguing here because he seems to refer both employment and logistics policies being absent. However,

- (i) Firstly, with regard to employment policies there very plainly are policies supporting employment development in the development plan.
- (ii) Secondly, logistics is a form of employment development.
- (iii) Thirdly, there does not need to be either employment or logistics policies in place for there to be relevant policies in the development plan: see *Paul Newman Homes Ltd v SoSHCLG* (21/01/2021 CD-K18).

14. The adopted Local Plan is far from silent in terms of relevant policies the adopted North Warwickshire Local Plan. It indicates through policy LP2 - settlement hierarchy where development should be guided. Policy LP5 provides clear

evidence on the amount of employment development required, making it clear that a minimum of 100 hectares of employment land (subject to policy LP6) will be required. The Local Plan is far from silent in respect of the additional employment land, as it includes policy LP6. This policy was caveated with two elements, that significant weight will be given where evidence demonstrates an immediate need for employment land or a certain type of employment land.

15. The Planning Inspector to the Local Plan came to the same conclusion in respect of the Local Plan and concluded:

*“it is the role of a local plan to set out an appropriate, proportionate and justified strategy to guide decision-taking rather than to make specific provision for each and every eventuality or scheme that may arise. Subject to incorporating **MM40** the Plan would fulfil that function in respect of employment land provision, or a certain type thereof. Nevertheless, given the sectoral predominance of logistics and associated lorry parking pressures, weight should be given to schemes that make associated provision. Consistency with national policy in that respect would be achieved via the incorporation of **MM83**.” (para 184 CD-F15) (my emphasis)*

It is clear from the Mr Bristow’s Report (CD XX) the adopted Local Plan is far from silent on the matter of logistics and policy LP6 provides a sufficient strategy along with other policies in the local plan.

16. At paragraph 14.1.8 Mr Hann makes the same point and claims the tilted balance is engaged. He claims “the Local Plan is absent and silent” on specific policy to deliver strategic and logistics land to meet identified need. He also says the fact the emerging Employment DPD is at an early stage and cannot be afforded any weight means that Local Plan is “absent and silent”. This is unfortunate for two reasons. Firstly, he is using the wording from the old 2012 version of the NPPF, which is 5 versions ago. He is also wrong in law as explained in the Paul Newman Homes case.

Plan-making

17. In respect of the content of Mr Hann in respect of the EEDPD para 1.2.47 the approved LDS indicates the Plan will be submitted by June 2025. It is likely that it will take approximately 18-24 months to its adoption. I profoundly disagree that this will not provide any sites or policy in respect of additional employment.
18. As Mrs Barratt contest's NWBC has a strong history of plan-making and employment provision, this has ensured the provision two Strategic Employment sites at both Birch Coppice and Hams Hall, both of which include rail interchanges. Expansion of both of sites were dealt with in the run up to the Regional Spatial Strategy and the adoption of the Local Plan 2021.

Development Parameters

19. Para 5.2.7 of Mr Hann's proof indicates that the application has been submitted in outline "to allow flexibility for it to meet specific occupiers' needs", however as an outline application and with parameters of the development limited to the description of development as 100,000 metres squared, including up to 10,000 metres squared it is required to demonstrate that the development has an immediate need for this amount or certain type of employment land. There are no conditions within the Statement of Common Ground (D13 – Appendix C), that link to a demonstrated size of unit, other than the potential for smaller SME's unit which can be accommodated and disaggregated onto smaller sites elsewhere. Personally, I don't agree that it is 'typical' for instance Omega Zone 8 St Helens - APP/H4315/V/20/3265899 (CD-K19) was submitted as an outline and full planning applications. This was based on the fact that the details part of the application was for a specific end user TJ Morris (para 6.11). A recent development at Junction 11 Mercia Park North West Leicestershire reference 18/01443/FULM was submitted as a hybrid application (CD-I99).
20. Para 5.2.13 of Mr Hann's proof outlines that the appellant would convert the remaining arable fields to species-rich grassland (i.e. pasture). The proposal is for a wildflower meadow and another element to be a community orchard, this does

point to my proof of evidence to the extent to which will this lead to an additional loss of agricultural land (para 5.5 CD-D23/A).

Impact of Local Plan and Infrastructure

21. Page 36 of Mr Hann's proof under "Supporting and helping to facilitate the delivery of the Local Plan" indicates that "the appeal proposal can provide a notable infrastructure boost – up to 80% of the Local Plan could be accommodated at Junction 10 of the M42". However, there is no evidence that the allocations of the Local Plan most notably H4 Land East of Polesworth and Dordon and H5 Robeys Lane will be prejudiced in any way without the M42 junction improvements. In fact, it is the case the appellant's scheme would not stop any development providing similar mitigation. None of the appellants land is required for the improvement for the local plan case. This local plan enabler evidence is further forwarded in para 12.4.7 and 12.4.8 of the proof, indicating the proposal would help facilitate development in the long term. It is Mr Hann's view, that his client will provide the mitigation by the development of an unallocated site within an area of land designated as a Strategic Gap.

22. Will the proposal prejudice or enable the provision of the local plan allocations? If we take Robeys Lane scheme indicated as site 12 and 13 in Appendix A (CD-D23/B) of my proof. The local plan allocates this land for the provision of 1270 dwellings minimum. This proposal has no objections from any of the Highway Authorities - Highways England, Warwickshire County Council or Staffordshire County Council subject to mitigation on the B5000. This proposal has been amended to ensure that the development does not impact on the Strategic Gap, however the development is not being prejudiced by any issues with the A5. In respect of H4 land to the east of Polesworth and Dordon this an allocation of a minimum of 2000 dwellings. No formal application has been submitted, however there have been extensive discussions over the last few years with the applicant with National Highways and Warwickshire County Council, this includes detailed discussion of master planning. Most recently pre-application discussions have been had with a named developer to bring forward the site in association with the

landowner. In terms of H1 Land at Holly Lane, this site already has outline planning permission and development is already taking place on part of the site. Finally, H2 Whittington Lane there has been significant consultation on the site and an application is imminent.

23. In terms of the highway improvements and mitigation forwarded by the appellant as a benefit, it must be remembered that the site is required to comply and demonstrate that it meets the requirements of LP6 Additional Employment Land. It is clear to be acceptable in planning terms that the 3 criteria of policy LP6 must be demonstrated. In this regard points i) and ii) of this policy require access to the strategic highway network and that the site is reasonably accessible by a choice of modes of transport.

24. It is therefore actually the reverse of what has been indicated by Mr Hann and Dr Bunn, in that at present 30% of the Local Plan traffic, such as H4, could be delivered prior to the need for any improvements. The appellants have also suggested a trigger point assessment for any of the improvements and mitigation to the M42 and A5 junction (CD-D13 Appendix C - suggested condition 23 Appellant) which would limit mitigation/improvements on a phased approach. The impact on the local plan allocations by allowing this appeal scheme and delayed mitigation would mean that any additional mitigation would have to be provided much earlier in the phasing of the allocated sites. Thus, allowing the appeal could well prejudice the delivery of the allocated sites rather than enable them. This is set out in para 6.3 and 6.7 of my proof (CD-D23/A).

25. There is much play on the “Active travel proposals” provided as part of the scheme (page 38 of Mr Hann’s proof). However, these improvements are requirement of the local plan policies needed to ensure that the scheme can be policy compliant. For instance, LP6 which is the most fundamental policy for the scheme requires that the site is reasonably accessible by a choice of modes of transport, therefore rightly the scheme has had to provide walking, cycling and public transport improvements. Without these facilities the proposal would be contrary to this criteria, yet the weight attributed these are “very significant”.

26. This is the case for many of benefits forwarded in Mr Hann's proof including bus service provision, training, education and skills elements, bio-diversity net gains etc. These are all provided as a requirement of policy in the development plan, this is outlined in section 9 of my proof where actually weight attributed to these factors in support of the application are limited in the overall planning balance (para 11.5, 11.8 CD-23/A).

27. Para 8.3.12 Mr Hann refers to para 85 of the Framework, however a recent judgement clearly demonstrates that the weight to be attributed to this is a planning judgement for the decision maker (para 55 of CD-K14).

Strategic Gap

28. In terms of the Strategic Gap evidence there are three appeal decisions that are referred to in para 10.3.8 of Mr Hann's proof reference (CD-K15-17). These planning appeals range from 100-170 dwellings, these developments are major applications, however not as significant in scale of the appeal site which equates to around 32 hectares. In all these cases, which were all allowed, the titled balance was engaged. The impact on the gaps are not comparable either in their openness or significant extent into the gaps.

29. In the appeal at Clyst Road Topshaw (CD-K15) the position of the M5 motorway was a notable consideration for the Inspector who considered that the actual and perceived coalescence would not be adversely affected. It would also lead to a relatively narrow encroachment into the wider open area.

30. In appeal at Moorfields Willaston Cheshire (CD-K16) the nature of the Green Gaps policy NE4 was a historic saved policy from 2011 RLP (Replacement Local Plan), some policies within it were saved by direction. The Inspector limited the weight that could be attributed to policy in light of inconsistency with the Framework at the time (para 28 and 35). The emerging plan proposed to allocate a number of sites within areas covered by policy NE4, which further reduced the weight the Inspector

attributed to the policy. In para 47 of the Inspectors report, he concluded that the appeal site would come slightly closer to Rope than as exists. It is pertinent that there was limited intervisibility between the two settlements either. In conclusion, it was considered that the separation would not be diminished. It is clear from this appeal that the weight attributed to the Green Gap policy was reduced and the impact on the perception of coalescence had already happened, this is not the case in respect of the land at north of the A5. The clear open views of the land give both physical and visual separation between Tamworth and Polesworth with Dordon, which are a significant consideration of the appeal.

31. In respect of the Shaw Drive and Glebe Road Grimbsy Appeal (CD-K17), the Strategic Gap separates Grimbsy and New Waltham, the Inspector considered that policy NH9 was not consistent with the Framework and would therefore only attribute limited weight. Para 30 of the decision indicates that the land is largely contained and there are characteristic indentations within adjacent settlements which if allowed the proposal would replicate. In para 33 of the decision, it was concluded that the incursion into the Strategic Gap was only small and would not be discernible. Again, that is not the case in this instance, where there will be large noticeable incursions into the Strategic Gap going eastwards towards Dordon.

32. As indicated in both Sam Oxley's proof and my proof, the most relevant considerations of the Strategic Gap policy in the Inspector's report of the Local Plan (CD-F15) which firstly indicated that the evidence base used in assessing the Strategic Gap was a reasonable and proportionate approach based on the evidence (para 236). This was a robust interrogation of the Strategic Gap designation by Mr Bristow, this is despite the critical evidence of the appellant put forward against the Meaningful Gap Evidence Base (CD-G24). The weight attributed to the Local Plan Inspectors report is significant. As forwarded by Sam Oxley and myself there are two significant appeal decisions (CD-K1 and K2), which were decided prior to the adoption of the local plan. There is certainly greater weight now to the development plan and policy LP4 and the St Modwens appeal (K2) certainly emphasise the importance of the land to the north of the A5.

33. Mr Smith in his landscape evidence para 2.41 summarised evidence used in the

local plan examination by Nicholas Person Associates (G24) which indicated that the Meaningful Gap Assessment (G2) was “fundamentally flawed” (CD-30/A). However, the Inspector of the Local Plan (para 238 CD-F15) concluded that “*There are slight differences in the value attributed to different areas comparing the 2010 Landscape Character Assessment with the 2015 and 2018 studies. However, considered collectively they represented a reasonable and proportionate approach at a plan-making stage.*” (my emphasis) The Inspector did not conclude in his report of July 2021 that the study or studies (G1, G2 or G3) are out of date despite a contrary view from Mr. Smith (para 2.44 D30/A), it is far from the contrary they represent reasonable and proportionate approach.

34. In respect of the comments about footpaths (para 3.14) across the Strategic Gap there are significant amount of improvements to the Public Rights of Ways and permissive paths that cross the site west to east. The off-site improvements to the footpath would equate to nearly 3500m (CD-B15). with surfacing yet to be agreed. They will segregate and divide the blue land within the control of the appellant. In terms of any lighting of cycle routes para 3.15 of Mr. Smith's proof, I would draw reference to my Proof of Evidence para 4.6 CD-D23 and the response from Active England (CD-G27).

35. Para 10.4.8 of Mr Hanns Proof indicates that any further encroachment into the Strategic Gap will be mitigated by the Appellant's ownership, however this is not the case. The planning obligation submitted with the appeal only provide 6.5 hectares of land for the purposes of Bio-diversity net gain and to mitigate landscape harm. There is no obligation not to develop any of the remaining land within the appellant control which is substantial some 35 hectares. Only some 15% of the appellant remaining land will be controlled through the proposed planning obligation.

36. The extent of the obligation indicates that in perpetuity the pink land will be provided. However, the extent of this is far from meaningful, it only extends from the edge of Dordon for around 100 metres (CD-D16) towards the appeal site.

37. It is clear from Mr Hann's Proof of Evidence that the development is “large in scale”

(para 10.4.12 CD-D28/A). It is recognised that the site of 32 hectares is a significant development which will impact on the Strategic Gap, landscape and visuals amenities.