

IN THE MATTER OF LAND SOUTH EAST OF JUNCTION 10, M42

CLOSING SUBMISSIONS
ON BEHALF OF NORTH WARWICKSHIRE BOROUGH COUNCIL

Introduction

1. The Appellant puts forward a proposal to develop a site in the open countryside by creating an industrial and warehouse estate.
2. There is and could not be any dispute that the proposal is in conflict with policy NW2 of North Warwickshire's Core Strategy 2014. Mr Barnes agrees that because of the conflict with that policy, the proposal does not accord with the development plan as a whole. The starting point for consideration of this appeal is therefore that, as indicated by the development plan, it should be refused.
3. In order to overcome this conflict, the Appellant seeks to rely on a need case. The Borough Council does not dispute that there is a general need for employment floorspace in its area or that the provision of industrial and warehouse space on the appeal site would bring with it economic benefits.
4. However, if a need exists, but is capable of being met elsewhere, the weight to be given to the need is reduced (*Trusthouse Forte (1987) 53 P&CR 293*). That is the position here. Furthermore, even if there is a need over and above that identified by the Council in its emerging Local Plan, the appeal site is simply not an appropriate location on which to meet that need.

Reason for refusal one

5. The application was refused permission for two reasons. The first was as follows:

“The proposal does not comply with the North Warwickshire Core Strategy policies NW2, NW9, NW12 and NW19 which are fundamental to providing for new development, directing this to appropriate locations and to protecting the identity of

settlements and the character of the Borough. The Proposal is considered to be a significant departure from the Development Plan, that by virtue of its location and the scale of the development would result in substantial harm to the separate identity of Dordon, and to the maintenance of a meaningful gap between Dordon and Tamworth.”

6. Policy NW2 of the Council’s Core Strategy sets the settlement hierarchy and is fundamental to the borough’s spatial vision. The reasoned justification explains that “The Spatial Strategy is a key component of the Core Strategy for delivering a sustainable way of living and working and considering the appropriate distribution of development”¹. It identifies the places where development will be appropriate. Any development that does not fall within those locations is considered by the Council to be inappropriate. It will not comply with the Council’s spatial vision and the pattern of development that it has developed based on how the Borough functions and the impact of surrounding cities and towns². There is not ‘some’ conflict with NW2, as Mr Barnes sought to persuade you. The proposals conflict with that fundamental policy. A development that does not comply with policy NW2 is inappropriate and harmful and must be contrary to the development plan as a whole such as to trigger the presumption that permission be refused.

The Meaningful Gap

7. The settlement of Dordon extends south of the A5³. The town of Tamworth extends south of the A5. Those are incontrovertible facts. If the appeal scheme is allowed, there will be no longer be a gap, let alone a meaningful gap between the settlements. Other than the small extent of land over the gas pipeline, there will be continuous development between them. Tamworth’s western edge and Dordon’s eastern edge will join and effectively merge. That is the very thing that policy NW19 seeks to prevent.
8. Policy NW19 provides that any development to the west of Dordon must maintain a meaningful gap between Dordon and Tamworth. It doesn’t say that any development west of Dordon and to the north of the A5 must maintain such a gap and nor is there

¹ Core Strategy, paragraph 6.2

² Core Strategy, paragraph 6.2

³ See the settlement boundaries on the Proposals Map

anything in the policy itself or its reasoned justification to indicate that it is intended to apply only to the north of the A5. The CS Inspector saw on the main diagram considered in the CS examination that the Council intended the policy to apply both north and south of the A5. He visited the area himself as part of the examination. He did not introduce any amendment to the policy to suggest that it should only apply to the north. He did not favour a blanket presumption across the entire area because he recognised that some areas were less sensitive – in particular, the land identified in the Sustainability Appraisal, namely that lying between Tamworth and the M42, and their development would be more likely to retain the important character boundary between Tamworth and Dordon. The Council agrees that the land to the west of the M42 at junction 10 is less sensitive and indeed has allowed employment development at Centurian Park as well as housing development in that very area, between Tamworth and the M42.

9. Notwithstanding that amendment to the Core Strategy, the Inspector found to be sound a policy requirement that *any* development to the west of Polesworth and Dordon should maintain a meaningful gap. The proposal before you is for a development to the west of Dordon, notwithstanding Mr Barnes' efforts to persuade you otherwise. It lies in the area described by the 2006 Local Plan Inspector (who was considering land both to the north and south of the A5, which the Council was proposing as an area of restraint) as 'a relatively narrow swathe of open land between Tamworth and Polesworth and Dordon' and if allowed, the scheme would lead to the complete erosion of the gap between those settlements.
10. For you to find that this scheme accords with policy NW19, you must be prepared to discount the fact that Dordon extends to the south of the A5, in spite of the fact that the settlement boundary on the proposals map extends to those southern properties. Any other finding compels you to the conclusion that this scheme will cause the settlements to merge. The physical gap between them will be no more.
11. There may still be a gap to the north of the A5 but that does not detract from the fact that parts of Tamworth and Dordon will be joined by continuous development. I urge you to look again at Figure 8 in Mr Williams's Appendix E and at the aerial photograph

in ID11 and to consider how this appeal can possibly be said to maintain a meaningful gap between the settlements.

12. Other than the pure physical erosion of the gap, the effect of the appeal scheme would be to erode the visual perception of any gap between the settlements. The appeal site is currently an open arable field, visible from the A5 and from Trinity Road and it plays an important role in preventing the visual perception of continuous development from Tamworth to the west through to Birch Coppice and Dordon to the east. Once sites DOR10 and DOR11 are developed, the Birch Coppice business park will be contiguous with Dordon's settlement boundary.

13. Currently, the experience of a road user or pedestrian travelling east along the A5 is that of travelling through the built up residential area of Tamworth, past Centurian Park (on the right) with its extension (currently under construction) taking it right up to the M42 motorway, and past Relay Park on the left, crossing the motorway junction and immediately finding yourself in quite different surroundings. Mr Williams' viewpoint E2 makes the point. As you come off the roundabout, you see a sign welcoming you to Warwickshire and you immediately see to your south an open field with a vegetated mound beyond. You can just about make out Birch Coppice beyond, but there is an open landscape in the foreground of your view to the south. As you move on (and as shown in Mr Williams' viewpoint E3), you then see more open land to the north. This is exactly what North Warwickshire's Core Strategy seeks to achieve and indeed identifies as a key priority. The preface to the CS explains "The key priority is to keep the rural nature of the Borough and to ensure that when entering North Warwickshire, it is clearly defined as being rural, with a high quality environment". The spatial strategy at paragraph 3.2 of the CS makes the very same point "The rural character of North Warwickshire will be retained and reinforced to ensure that when entering the Borough it is distinctive from the surrounding urban areas". Mr Williams does not consider this entrance point into North Warwickshire to be 'rural' but his view does not accord with that set out in the CS, as endorsed by Inspector Thickett. The CS provides, at paragraph 7.35 that "The area on the western side of Dordon plays an important role in maintaining the separation between Tamworth and Dordon thus ensuring, when entering North Warwickshire along the A5, that area retains its rural character". Indeed, it does and the open land to the south of the A5 is key to retaining the separation and

ensuring that the area retains a rural character, that a meaningful gap is maintained and that there is a distinction from the urban area of Tamworth.

14. The Appellant's view is that if the appeal scheme is allowed, it will appear as an adjunct or an obvious extension to the built up area of Tamworth. The impression will therefore be that Tamworth has for the first time, breached the boundary of the M42 and broken into the rural entrance to North Warwickshire. When account is taken of the further employment sites along the A5, the visual receptor will not be able to tell where Tamworth ends and Dordon begins. That is true of those travelling along the A5 by car, bicycle and foot as well as those viewing the area from the public open land at Kitwood Avenue, and from footpaths both to the north and south of the A5. Users of Trinity Road will no longer have views of the open field but will be surrounded on both sides by large buildings, hardstanding and access roads. You will consider these view points on your site visit, noting that the Council does not accept that it is only the land to the north of the A5 that plays a role in the visual perception of a gap between the settlements. The land to the south also plays a part in the perception of openness and separation between them. As Mr Williams points out, the built up form of Birch Coppice and further employment allocations enclose the A5 with little or no visual permeability to the south. If the appeal is allowed there will be no visual permeability to the south and the A5 will be entirely enclosed by built form.

15. Both the actual and perceived physical and visual gap will be significantly eroded if you allow this appeal. Taking into account the permitted and allocated housing on the Tamworth golf course and the allocated employment sites adjacent to Birch Coppice, and looking at the aerial photograph at ID11, it is apparent that there will be a U-shape of development from Robey's Lane in Tamworth, down to the south west of junction 10, across the motorway to the south east of junction 10, extending into Birch Coppice down to the railway, across to Lower House Lane and Gypsy Lane and up Long Street into the northern part of Dordon. The separate identities of Tamworth and Dordon will not be respected and the settlement character of Dordon will certainly not be positively improved. As such, the proposed development is contrary to policies NW12 and NW19.

Reason for refusal two

16. The second reason for refusal is that:

“The provision of a significant amount of additional employment land, for which the need is not evidenced at this time, would compromise the objectives of the Development Plan and the core planning principle set out in the National Planning Policy Framework 2012 that planning should be genuinely plan led and based on co-operation to address larger than local needs”.

17. There is a need for employment land to be identified and delivered in North Warwickshire to meet the needs that will arise over the coming years, and that is precisely what the Borough Council is doing in its emerging Local Plan.
18. The amount of employment land that is likely to be required over the Local Plan period to 2031 is 97ha. That is the figure identified by the Council’s reputable consultants, GL Hearn, having considered labour demand and past take-up scenarios in the original 2013 ELR and 2014 Note and having considered labour supply scenarios and up-dated the past take-up scenarios in their 2016 Addendum. GL Hearn’s email provides their view that the figure identified is a gross land requirement which includes allowance for landscaping, access and car parking. In that regard, it is the same approach as it took in the 2013 ELR.
19. The Council’s Core Strategy identified a need for a minimum of 58ha of employment land between 2011 and 2029. That was a gross figure and was accepted by the CS Inspector on that basis. During the CS examination, Mr Leaver disputed much of the work carried out by GL Hearn and sought to persuade the CS Inspector that a higher requirement should be identified. He argued that past take-up rates should be used. He argued that the distinction between local and regional was arbitrary and unjustified. He argued that an allowance should be made for the loss of existing employment land. The CS Inspector, having heard from GL Hearn and from a wider range of interests than are represented in this appeal, did not agree with him on any of those points. Far from being put off, Mr Leaver seeks to recycle those same arguments in this appeal. I invite you to accept that Inspector Thickett was correct to reject Mr Leaver’s arguments and to reject them also. I further invite you to accept, as Inspector Thickett did, in 2014 that the assessment of GL Hearn is robust.

20. In the absence of regional spatial planning, a number of studies have looked at demand for employment sites across the Midlands, but none of them have said where that need should be best met. Tamworth has asked North Warwickshire to meet some of its housing and employment needs and it has agreed to do so and is in the process of agreeing a Memorandum of Understanding to provide 8.5ha towards Tamworth's needs with Lichfield seeking to accommodate the remaining 5.5ha, in addition to the housing needs that it is accommodating from Tamworth. Birmingham City Council has recently approved its Local Plan and its housing needs have crystallised. North Warwickshire has agreed to meet some of those needs and has completed a MoU with Birmingham which makes provision for both housing and an uplift to employment land. No other local authority has asked North Warwickshire to accommodate employment needs. Indeed, the Coventry and Warwickshire Employment MoU, which has been approved by the leaders of Coventry, North Warwickshire, Nuneaton and Bedworth, Rugby, Stratford-on-Avon and Warwick provides that North Warwickshire is not required to meet any of the employment needs arising from Coventry.
21. Given that no other local authority is asking North Warwickshire to accommodate its employment needs, and there is no regional plan directing strategic employment sites to North Warwickshire, and no employment study indicating where the strategic sites would be best placed, there is an absence of clear evidence as to where in the region the strategic needs would be best met, whether they should be met in North Warwickshire, and if so how much.
22. In spite of the absence of a clear steer that it should provide additional employment land above that required to meet its local needs and a proportion of Tamworth's needs, North Warwickshire has, according to the Coventry and Warwickshire Chamber of Commerce, grasped the nettle of growth in its draft Local Plan. It is proposing to allocate 39ha of land over and above that required to meet local needs. It has identified a further 24.8ha of land to meet needs that may arise over the Plan period at MIRA⁴. In total it has identified 63.8ha of developable employment land over and above that required to meet its local needs over the plan period.

⁴ Paragraph 15.9 of the draft Local Plan, p.76

23. One of those sites – at Hams Hall - will be suitable to meet the needs of a strategic logistics employer. Since the Core Strategy was adopted the Council has also granted permission for some 70ha of employment land at Birch Coppice and Core 42. In the West Midlands Strategic Employment Sites Study 2015 those 70ha were only considered to constitute part of the potential supply rather than being immediately available. In 18 months, they have gone from potential supply, to immediately available even in the absence of a site allocations plan. This is clearly a local authority that takes a positive and proactive approach to development in the right location. Mrs Barratt gives a number of examples of the Council allowing development on sites that are proposed for allocation even in advance of an adopted site allocations policy. It can be expected to take a similarly positive approach to development proposals on other sites proposed for allocation, even in advance of the Local Plan’s adoption.

24. This is not a local authority that has been sitting on its hands since the Core Strategy was adopted. Even during the CS examination the Inspector recognised that “the Council should be commended for stepping up and agreeing to accommodate some of Tamworth’s needs. NWBC has produced a Core Strategy that (when modified) will address identified needs and it would be wrong, in my view, to penalise the Council by suspending the examination until the specific needs of others are known...The Council has proposed a main modification which commits it to...an early review of the Plan should it be demonstrated that any unmet need should be accommodated in the Borough”.

25. When it did become apparent that neighbouring authorities would not be able to meet their own needs, North Warwickshire reacted quickly and proactively to those developments. Instead of ploughing on with its own plans to meet its own needs, it has agreed to accommodate housing and employment from Tamworth. It has also agreed to accommodate housing to meet Birmingham’s needs which have crystallised recently with the approval of its Local Plan. While Birmingham does not consider there is a need for North Warwickshire to accommodate any of its employment needs *per se*, in order to ensure an appropriate balance between the higher housing delivery and employment growth, North Warwickshire’s draft Local Plan seeks to deliver some 97ha of employment land as indicated in the agreed MoU.

26. Work currently being carried out by the West Midlands Combined Authority and its Land Commission is looking at ways in which to meet the needs for employment land to meet the aspirations of the Strategic Economic Plans. As Mr Leaver explained in his evidence in chief, that work will consider the shortage of employment land in the greater Birmingham area and will provide pointers as to where that need should be met. That work will be important in identifying whether that strategic need should be met in North Warwickshire. However, the Borough Council gave a commitment to the CS Inspector that it would review its CS if it became apparent that it would need to accommodate the housing needs from other local authorities, and it is honouring that commitment rather than delaying until the Land Commission's assessment is available. Should that work identify a need for North Warwickshire to provide more strategic employment land then you can be reassured that it will do everything possible to meet that need. Its record is an impressive one - just two years after adopting its CS it has triggered a review and it will do so again should the need arise.
27. The Appellant argues that it is already clear that Area A requires more strategic land. But Area A has seen high take up of strategic sites partly because such sites have been available in that area, not least at Birch Coppice and Hams Hall. Other areas are now or are likely in future to compete with those sites. The CS Inspector recognised this and pointed to the findings of the Black Country and southern Staffordshire RLS Study which showed that there were other suitable areas in the region that would compete with North Warwickshire⁵. That is why, when looking at regional or strategic demand "a regional perspective is required" (see paragraph 47 of the CS Inspector's report).
28. That perspective is notably absent from Mr Leaver's evidence. He tells you much of the demand across the West Midlands but very little of the available supply. The demand that he relies on to support the Appellant's case is the demand for strategic logistics sites. Looking at the supply of regional logistics sites, at Magna Park, less than 20 miles from the appeal site, planning permission was granted in July 2016 for some 80ha (1 million square foot) of B8 floorspace. There are two further live applications for 88ha

⁵ CS Inspector's report, paragraph 45, p.10

and 200ha of B1 and B8 floorspace at Magna Park. A total consented and potential site of 368ha for strategic B1/B8 floorspace⁶.

29. Development consent was granted for the East Midlands Gateway in January 2016, which will provide 6 million square foot of new B8 distribution and storage buildings and a strategic rail freight interchange. The developable area of the site is 178ha and it lies adjacent to junction 24 of the M1, less than 30 miles from the appeal site⁷.
30. Peddimore has been allocated in Birmingham's Development Plan as a strategic employment site with 71ha of B1, B2 and B8 development. That site is some 10 miles from the appeal site. The Secretary of State has issued a direction that the Council take no further action in respect of the plan to allow him to consider concerns raised regarding a proposed housing allocation, but the direction was not made in respect of the Peddimore allocation⁸.
31. Just considering those three sites, there is a total consented supply of 105 ha of strategic employment land; an allocation of 80ha and two live planning applications for 288ha. In total some 473ha of current or potential strategic employment land all within a 30 mile radius of the appeal site. There are quite clearly alternative sites available in close proximity and more across the Midlands that have realistic prospects of being developed to meet the need relied upon by the Appellant in this appeal, which is the need for regional logistics sites.
32. There are also alternative sites within North Warwickshire to meet the need for employment land, that are preferable in planning terms to the appeal site. The Council has explained to you why those sites are realistic alternatives to the appeal site.
33. The Rush Lane site has a planning permission that has been implemented. Borrowing from the NPPF definition of a 'deliverable' site in the housing context, as the Appellant

⁶ GL Hearn Addendum, April 2016, p.15

⁷ GL Hearn Addendum, April 2016, p.14

⁸ GL Hearn Addendum, April 2016, p. 14

has done, sites with planning permission should be considered deliverable unless there is clear evidence that they will not be delivered. There is no such evidence. There may be many reasons why the development has not yet taken place, but part of the Rush Lane site is being actively marketed and there there is no clear evidence that the other part will not come forward. The Coleshill Hall Hospital site is another site with planning permission. The IM Group HQ was built there is 2007/8 and since then there has been some uncertainty as to the effect that HS2 would have on the site, which explains the relative inactivity since then. It is now clear that HS2 will require the demolition of the existing building but IM own a considerable amount of land around that site and in accordance with the statement from Brandon Lewis MP in his letter to the leader of North Warwickshire Council, it will work proactively and positively with applicants including IM, who are seeking permission for replacement buildings. The demolition of the existing building as a result of HS2 and the need for a replacement are a very good set of candidate circumstances to establish the very special circumstances necessary for allowing development in the Green Belt on the adjacent land owned by the IM Group.

34. In respect of the land west of Birch Coppice and the playing fields south of Dordon, it is simply not credible to suggest that the presence of the allotments and playing fields will prevent these sites from coming forward in the next 15 years. Mr Leaver approached the question of deliverability in quite the wrong way – thinking that it required a guarantee or certainty that a site would be developed. Of course, there can never be such guarantees and even in respect of housing the NPPF does not require it. Mr Leaver seems to have discounted these sites on the basis that they could not be guaranteed to come forward, because the presence of allotments and playing fields cannot legitimately be said to render their prospects of development over the next 15 years unrealistic. Discussions have already taken place with allotment holders who have expressed a positive interest in proposals to relocate to the north. The owner of the proposed relocation site has expressed an interest in negotiating a land swap with the Council in order to relocate the playing fields and allotments to the north of the A5, as confirmed in Hodgetts Estates of today (ID24). Once the covenant on the playing field land expires in 2018, that site will be extremely attractive to the market and the presence of playing fields is unlikely to act as a serious impediment to development.

35. There are 42ha of land available south of MIRA. MIRA has control of that land and has expressed a keen interest in having all of it allocated for employment use. As recently as last week MIRA was engaging in discussions with the Council about the southern site and considering potential access arrangements into that site. Improvements to the A5 have recently been carried out to mitigate the impact of the northern development and have provided excess capacity and Mrs Barratt's early discussions with Highways England indicate that there is unlikely to be any highways bar to bringing forward that development. Mr Leaver expresses concern about whether occupiers can be found for the site but the developer is confident of this and the Council is keen to diversify its employment provision so as to increase skills and education and the MIRA development provides it with the perfect opportunity to realise this aim.
36. Hams Hall is currently in the Green Belt but has been found to perform poorly in respect of Green Belt functions. It is proposed for allocation for employment use and that allocation would remove it from the Green Belt. It is also the subject of an extant planning application and negotiations are currently taking place between the Council and the applicant as to a s.106 agreement. Mr Leaver accepts that this would provide an attractive location for regional logistics businesses and he has not identified any impediments to its development. There is, at the very least, a reasonable prospect that it will come forward during the plan period.
37. The ALDI site has previously been proposed for allocation and has therefore been subject to a Strategic Transport Assessment which did not identify any concerns as to HGV use of the bridge or any impediments to its development. There is no reason to believe that the delivery of this site over the plan period is unrealistic.
38. The Appellant may say that these sites are not as attractive to the market as the appeal site, and that may be so, but you should not allow this appeal because you think it is the most attractive location to businesses. That would be an entirely market led approach that would ignore the importance of good spatial planning. The correct approach for you in determining this appeal is to consider whether the acknowledged conflict with the development plan and harm caused by the development are outweighed by the need for employment land. If that need can realistically be met elsewhere, then the weight to afford the need will be much reduced, even if those other sites may not be as attractive

to the market as the appeal site. It is not a matter of you applying weight to allocations in the emerging Local Plan but rather of considering whether there is a realistic prospect of alternative sites coming forward (both within and outwith North Warwickshire) to meet the need for employment land. In short, there are.

39. Even if you consider that the need over the plan period may be more than the 97ha identified by GL Hearn, you can be confident that the Council will identify suitable sites to meet any additional need identified by the Local Plan Inspector. Furthermore, even in advance of the Local Plan examination, applications for employment proposals that do not conflict with the development plan – such as those on sites in or adjacent to the Market Towns – will be considered favourably by the local planning authority,
40. In just two years the Council has proactively sought to increase its employment provision over that required of it by any other authority and has identified sufficient sites to not only meet, but exceed that requirement. The Council does not invite you to come to a conclusion as to the particular numerical requirement for employment land over the plan period, or indeed as to the supply. That will be the role of the Local Plan Inspector. While that process often takes place in housing appeals that is because of the implications of not having a five year housing land supply in terms of the presumption in paragraph 49 of the NPPF. There is no requirement for a five year supply of employment land and no presumption arises in the absence of such a supply. For that reason, you do not need to reach a conclusion as to the balance of need and supply.
41. You should, though, consider whether the need for employment land, having regard to the availability of alternative sites both within and outside North Warwickshire is sufficient to outweigh the harm caused by this development. It is the Council's case that it is not.
42. The appeal site has not been identified as a potential employment site in the draft Site Allocations Plan 2014, or even as a reasonable alternative in the accompanying Sustainability Appraisal, and it is not proposed for allocation in the emerging Local Plan. One of the core planning principles set out in the NPPF – the first of those core principles – is that planning should be genuinely plan-led. North Warwickshire is committed to that principle and its emerging Plan has led to the identification of other,

better and sufficient sites to meet the employment needs and to the rejection of the appeal site.

43. There is a need for the delivery of additional employment land, but the appeal site is simply not the place in which to meet that need. It is the Council's case that regardless of the need to provide premises for industrial and distribution uses, this is not an appropriate site on which to meet that need.

The Planning Balance

44. As with any planning application, there is a duty to determine this appeal in accordance with the development plan unless material considerations indicate otherwise.
45. The proposal is to site a large industrial estate on an unallocated site in the open countryside. It is contrary to policy NW2 which is the Core Strategy's fundamental policy. It is also contrary to policies NW9, NW12 and NW19. The proposed development is clearly contrary to the development plan when it is considered as a whole, as the Appellant recognises. As a result, permission should be refused unless the harm that it causes and the conflict with the development plan are outweighed by other material considerations.
46. In exercising that balancing exercise, full weight should be accorded to the Core Strategy policies and the conflict with those policies. The appellant is wrong to argue that the development plan is silent or out of date. It is neither absent nor silent (*Bloor v SSCLG* at 35 – 64). I invite you to adopt the approach of Mr Justice Lindblom in *Bloor Homes East Midlands v SSCLG* [2014] EWHC 754 (Admin) as indeed you must, and to find that “a plan cannot be regarded as ‘silent’ if it contains a body of policy relevant to the proposal being considered and sufficient to enable the development to be judged to be acceptable or unacceptable in planning terms”⁹. There are quite clearly policies in the Council's Core Strategy against which this proposal can be considered, in particular policies NW2, NW9, NW12 and NW19.

⁹ See paragraph 48 of Lindblom J's decision as well as paragraphs 42 - 47

47. Nor are the policies relevant to this appeal out of date. The fact that planning permission may have been granted for some development, such as at Birch Coppice, that does not accord with policy NW2 does not render the policy out of date by any means. Development may always be permitted in spite of a conflict with the development plan, if there are material considerations justifying a departure from the plan.
48. Mr Barnes is not able to point you to a single decision in which a need for employment land has rendered development plan policies or development boundaries out of date. There is no equivalent to paragraph 49 of the NPPF in respect of employment land and the Inspector must deal with the situation as it currently exists, in which the appeal site is a greenfield site in the open countryside outside any settlement boundary (*Waterside Park* appeal, paragraphs 34 – 37 and *Gallagher v SSCLG* at 21, 25, 27 and 40). It may be that development boundaries will be revised in future but there is no guarantee that the appeal site will fall within a settlement boundary or be allocated for development, and in fact every indication that it will not. You must therefore determine this appeal on the basis that the appeal site is in the open countryside and that it conflicts with policy NW2, which is consistent with the NPPF.
49. Policy NW9 identifies a minimum requirement of 60ha. It is not out of date. There is evidence that if the housing to be accommodated in North Warwickshire is to increase then an increase in employment land provision above the minimum of 60ha may be appropriate, but that housing has not yet been provided in North Warwickshire and is unlikely to be so provided in advance of the Local Plan's adoption. In that sense, the additional employment need to which the draft Local Plan is directed is yet to arise and neither the evidence underpinning the Council's draft Local Plan or the proposed increase in employment land have yet been tested through the Local Plan examination. Just because things may change in the future does not render policy NW9 out of date now, particularly given that it only sets a minimum requirement. If Mr Barnes' approach was correct, then virtually every local planning authority collecting evidence and bringing forward new development plans to meet growth anticipated over the next plan period would find their existing plans immediately out of date. That would hardly be an incentive to local authorities to proactively move on with new development plans

as new needs emerge, which is precisely what the government encourage them to do in national policy.

50. The key question is whether policies NW2, NW9, NW12 and NW19 are consistent with the NPPF. There is no dispute that they are. The Council considers them to be consistent with the NPPF; the Core Strategy Inspector found them to be consistent and there is no suggestion in any of the Appellant's written evidence that they are anything but consistent with the NPPF. As such, they should be accorded full weight.

51. The emerging policies in the draft Local Plan should also attract some limited weight. While the Plan is at a relatively early stage of preparation, it carries forward the Core Strategy policies – amended where necessary to accommodate the growth agenda that the Council has embraced. The Core Strategy, draft Site Allocations Plan and draft Development Management Plan have all been subject to consultation and feed into the emerging Local Plan. This proposal is contrary to both existing policies and emerging Plan policies LP2 (the settlement hierarchy policy) and LP5 (the meaningful gap policy).

52. Some weight should also be accorded to the Meaningful Gap Assessment. It is an evidential document that has been prepared by planning officers based on an assessment of various land parcels between Tamworth and Polesworth and Dordon, has been consulted upon and revised following that consultation and has been endorsed by the local authority's planning committee. The reasons it records for proposing the inclusion of Area 9 in the area of meaningful gap are perfectly appropriate: it identifies the area as flat, open and visible from the A5 and Trinity Road; it points out that it is framed by Centurian Park to the west and Birch Coppice to the east; it explains that the area contributes to the major open and rural gateway into North Warwickshire and that significant development in the area would effectively merge the settlements of Dordon from Wilnecote to Birch Coppice¹⁰. All of those are appropriate matters for you to take into account, and while you must form your own view as to the role played by the appeal site in maintaining a meaningful gap, this assessment must carry some weight in the determination of this appeal.

¹⁰ Meaningful Gap Assessment, Appendix I to Mrs Barratt's proof

53. In order to achieve sustainable development, economic, social and environmental gains should be sought jointly and simultaneously¹¹. The Appellant accepts that the location of the proposed development into the open countryside will cause harm to the environmental strand of sustainable development, which must weigh against the development. Should you accept that the proposal fails to maintain a meaningful gap, then the Appellant accepts that this is a further environmental harm that must weigh against the development.
54. If a meaningful gap is not maintained, the development will not constitute a high quality development that positively improves the character of Dordon¹² and will be contrary to policy NW12. A development which is not of high quality design must undermine the social strand of sustainable development. While Mr Barnes was reluctant to accept this, paragraph 7 of the NPPF defines the social role of sustainable development to include the creation “of a high quality built environment”. A development that does not achieve that purpose is harmful to the social element of sustainable development. Government policy, through the NPPF exhorts decision makers to refuse planning permission for development of poor design that fails to take opportunities to improve the character and quality of an area and the way it functions¹³. I invite you to find that while the creation of jobs is a positive social aspect of this development, the failure to provide a high quality development must count against it in social terms.
55. Against the harms, you must weigh the advantages of the proposal in providing employment land and the economic benefits that flow from that. This will clearly be an attractive site to the market and will make a contribution towards meeting recognised needs. However, the weight to attribute to those benefits should be reduced on the basis that there are realistic prospects that the need can be met on other sites.

¹¹ Paragraph 8, NPPF

¹² XX Mr Williams

¹³ Paragraph 64, NPPF

56. It is the Council's case that the benefits of the development do not outweigh the harm caused by the development or the conflict with the development plan, such as to displace the presumption against this development in accordance with s.38(6) PCPA 2004. On that basis, you are invited to dismiss this appeal. Even if you find, contrary to the Council's case, that the development plan is absent, silent or out of date, the Council invites you to find that the adverse impact of allowing this development significantly and demonstrably outweigh the benefits, and accordingly, to dismiss this appeal.

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22nd September 2016