

LAND NORTH-EAST OF JUNCTION 10 M42

NORTH WARWICKSHIRE

OPENING SUBMISSIONS ON BEHALF OF THE APPELLANT

Introductory Matters

1. This is no more than a brief overview of the appeal scheme and the case for the Appellant. This appeal is against North Warwickshire Borough Council's ('NWBC') failure to determine an outline planning application pertaining to land north-east of junction 10 of the M42 motorway, North Warwickshire ('the site') for:

'Outline planning permission for development of land within Use Class B2 (general industry), Use Class B8 (storage and distribution) and Use Class E (g)(iii) (light industrial), and ancillary infrastructure and associated works, development of overnight lorry parking facility and ancillary infrastructure and associated works. Details of access submitted for approval in full, all other matters reserved.'

2. The application was submitted in outline in December 2021 to meet what was considered by JLL to comprise an immediate need for additional 'Big Box' logistics – but the application was mired in the weeds of technical highways issues. It seems to have taken the focus of this appeal to secure the agreement of National Highways, WCC and SCC that the site can be satisfactorily accessed and that traffic can be satisfactorily accommodated on the local and strategic highway network. Happily, there is now agreement as to this, as well as the fact that the site is an accessible one for the proposed uses.
3. The Appellant's submission from that outset is that the appeal site is a blindingly obvious one to meet the well recognised need for such uses, occupying the final quadrant of the M42/A5

junction from even the briefest perusal of the documentation it should be obvious that the appeal site benefits from an array of specific locational benefits and was unsurprisingly recognised as joint top-performing site in the West Midlands Strategic Employment Sites Study 2021 ('WMSESS 2021')¹ when assessed against a range of criteria including motorway/trunk-road access, Local Plan allocations, statutory designations, public transport, flood risk, ground conditions, ecology, topography, proximity to existing settlements and air quality.

4. That study was intended to inform the sort of exercise that in a world of sensible regional planning would have no doubt led to this site being identified as being a suitable one to accommodate the substantial and continuing need for such uses within the region. As it is the revocation of regional planning has led to the hope that individual LPAs will now engage together to seek to address that need. Unhappily that just hasn't happened, and there is no sign of that happening any time soon.
5. Crucially, within Area A referred to by LP6 and Area 2 in WMSESS 2021, the appeal site is the only developer promoted site out of 11 sites assessed that is located outside of the Green Belt². Mr Collinson in his rebuttal seems to suggest that there is policy equivalence between the protection afforded by the Strategic Gap policy LP6 and the inclusion of land within the Green Belt. With respect he is hopelessly wrong in that regard. Paragraph 146 of NPPF advises that if a LPA is promoting the release of a site then exceptional circumstances will not occur unless a LPA can "*...demonstrate that it has examined fully all other reasonable options for meeting its identified need for development.*". Noting that the test for VSC is higher than the test of exceptional circumstances – that means that before GB can be released then there is precondition to demonstrate that the need cannot reasonably be met on other non-GB land. Strategic Gap and GB are not equivalent in terms of their policy protection and a case run which seeks to argue that point is wrong in law.
6. Thus, before turning to any of the other 10 sites assessed in the WMSESS 2021 study (or any other GB site) there is a policy obligation to conclude that the appeal site is not a "reasonable alternative" to meet the need for Big Box logistics.
7. If the appeal is allowed, the scheme would bring significant benefits – economic, social and environmental. In summary, these are³:

¹ Appendix 1 Cushman & Wakefield Employment Land Study May 2024 (C&WELS) Para 3.80 and Figure 11 on page 35 CD-D29/C and CD-I2

² Mr Hann PoE para 1.2.7 CD-D28/A; Mr Smith PoE para 6.28 CD-D30/A

³ Mr Hann PoE para 1.2.41 CD-D28/A

- i) Provision of desperately needed employment land in the location and of the scale that it is needed to help drive investment, productivity, and economic growth in the UK.
 - ii) Creation of in the range of 1,000 to 1,400 Full-Time Equivalent new jobs; well-located and highly accessible in respect of nearby settlements.
 - iii) GVA of up to £104.2 million annually in perpetuity to the West Midlands economy, focused on North Warwickshire and Tamworth.
 - iv) Up to 100,000sqm of mixed-use modern employment floorspace, including provision of up to 10,000sqm (and a minimum of 5,000 sqm) of floorspace targeted at small-medium sized enterprises.
 - v) Multifunctional ancillary Hub Office, for training and education purposes and communal cycle parking/showers/changing facilities.
 - vi) Up to 150 space overnight lorry parking facility and associated welfare.
 - vii) Co-location and timing of new employment opportunities in proximity to residential development would align with the delivery of major new housing sites at Polesworth with Dordon (site allocation H4) and Tamworth (site allocation H5), in the adopted North Warwickshire Local Plan.
 - viii) Infrastructure improvements to Junction 10 of the M42 motorway and the A5 between Tamworth and Dordon, including an improved footway/cycleway along the A5.
 - ix) Over 9ha of on-site publicly accessible green infrastructure (over 30% of the total site area), including extensive landscaped buffers.
 - x) Over 6.5ha of off-site green infrastructure incorporating native woodland and hedgerow planting and a community orchard, along the route of the existing and enhanced PRow network.
 - xi) Over 8.5km of new and enhanced on and off-site public footpaths, bridleways and footway/cycleway routes to improve connectivity, sustainable commuting modes, the promotion of active and healthy lifestyles and access to nature.
 - xii) A new publicly accessible fitness trail, incorporating hydraulic and other outdoor gym equipment.
 - xiii) Substantial biodiversity net gains, largely as a result of the +15.5 hectares of new habitats including native woodlands, a community orchard, shrublands, mixed hedgerows, wildflower meadows, wetland wildflower meadows and species rich grassland; and
 - xiv) Approximately 10,000 new trees to be planted across the scheme and other ecological features.
8. Crucially the proposals will meet the immediate need for additional Big Box logistics of a strategic scale which was not addressed in the adopted LP, and which will not be met, within

NWBC unless and until the not yet emerging Employment DPD allocates suitable site(s) – a prospect which Mr Collinson rightly ascribes as having no weight as policy as matters stand. It will be recalled that LP6a (LP6 in the adopted Local Plan) was recommended to be introduced by the LP examiner following the Examination which began as recently as 2018 as the means to address the need for strategic sized development; a need which was confirmed by the 2021 WMSESS. It is staggering that in 2024 the LPA is still asking the decision maker to ‘wait until the development plan process catches up’ and arguing – in the absence of any strategic level agreement to meet strategic needs – that the need doesn’t have to be met in NWBC. Especially in light of large scale employment land for B8 logistics use class having reached ‘0’ (zero) years’ supply in 2021/22, according to their own annual monitoring reports.

9. To the North in NW Leicestershire an almost identical policy in its adopted LP (EC2) has resulted in outline Big Box schemes being consented north and south of the junction of the A50 and the M1, neither of which had an identified occupier and both of which were outline consents. Furthermore, over the last 8 years in NWBC alone, at least two large scale logistics sites have received consent to outline applications⁴ on the basis of evidence presented identifying immediate need for new employment sites. The reason is that in the vast majority of cases occupiers will only be willing to sign up to any scheme once planning certainty is achieved – so saying that because the scheme is speculative means that it doesn’t meet an immediate need is, with respect misguided and flies in the face of the evidence.
10. What is perhaps even dafter is to say that because there is a lead in time to enable occupation that the development cannot meet an ‘immediate need’. The need is ongoing and has been immediate for some time, even if there is a gap between consent and occupation. A point which is beautifully exemplified by the LPA’s own call for sites exercise which expressly characterises “immediate need” as delivery in the first 5 years of the Employment DPD.
11. In addition to the above benefits, the proposal will deliver the mitigation scheme devised by the LPA at the time of the adoption of the LP to enable the delivery of transport infrastructure that is needed to deliver the local plan strategy. WCC have submitted a ‘rebuttal proof’ which seems to take issue with this proposition on the grounds that the work produced by Dr Bunn has been based upon the TRANSYT model not WCC’s preferred Paramics model. However the point goes nowhere – NH, who are responsible for the SRN have agreed the inputs, modelling and

⁴ Ironically the St Modwen’s scheme (CD K2) was resisted at appeal by NWBC on the basis of a lack of need and an impact upon the Meaningful Gap – whilst the Council accepted on the near contemporaneous Hams Hall GB scheme (CD I106) resolved to grant in Nov 2016 that it “needed to act” on exactly the same evidence base.

mitigation for the Local Plan Scenario to which the addition of the Appeal site is added. The fact that the appeal scheme will deliver that mitigation is an obvious benefit of the scheme, even if not all of the housing allocations would have to deliver all (or even any) of the mitigation.

12. That is not to say that there are not adverse impacts which arise from the proposals, however, the Inspector will hear from the Appellant's witnesses, who will demonstrate that the substantial benefits of the scheme are nowhere near to be outweighed by the limited dis-benefits. Indeed, it is the Appellant's firm position that even without the added substantial benefits the scheme is policy compliant.

Putative Reasons for Refusal

13. There are three putative reasons for refusal.
14. The first reason relates to the impact of the proposal on the Strategic Gap and its alleged non-compliance with LP4 of the North Warwickshire Local Plan 2021 ('the Local Plan'). It asserts that the requirements of LP6 and LP34 of the Local Plan are not '*fully demonstrated*'.
15. It suffices to say, at this juncture, that the evidence on the issue of employment need, within NWBC's evidence, is not only deficient to rebut the Appellant's clear evidence of need, but – it seemingly seeks to invent gloss on policy, offers misleading analysis and demonstrates a lack of understanding of the appeal proposal's unique ability to deliver buildings of scale and of bespoke layout⁵.
16. The evidence put forward by NWBC demonstrates an overly simplistic understanding of the Big Box employment land and a misunderstanding of the employment land market for which the site is proposed⁶.
17. The Inspector will hear from Mr Binks and Mr Turner, who will provide compelling commercial and technical evidence on the matters of employment need and demand, as well as the significant locational appropriateness of the site from a commercial perspective.

⁵ Rebuttal PoE Mr Turner p7;8;11 CD-D40

⁶ Rebuttal PoE Mr Binks p15 para 2.46; p6 para 2.11 CD-D41

18. Mr Turner's evidence will focus on the studies that have been referred to and summarised in the Employment Land Study prepared by Cushman & Wakefield⁷ (a key document in evidencing employment need, and which updates the JLL study that was submitted with the application). He will demonstrate that this study is the most up to date evidence base available, which establishes that strategic employment land for industrial and logistics Big Box development is a specific and distinct market segment of the overall employment land market and in addition that there is an immediate need for such land regionally, sub-regionally and locally⁸.
19. In respect of the appeal site – it will be demonstrated the need in the location is a particularly acute example of the systemic failing of the planning system to act on the evidence available for a significant period of time.
20. The Inspector will also hear from Mr Binks in respect of the issue of Big Box development and immediate need from the market perspective.
21. He will emphasise that the appeal site possesses an almost unique set of attributes; is suitable for the specific market segment for which it is proposed; and represents an outstanding opportunity which stands out regionally, sub-regionally and locally⁹.
22. Professor Coleman, in turn, will address the economic need for the development. In 2024 the UK economy has a particular reliance upon ensuring that such development is brought forward to meet demand, especially in locations which can be rail served, and especially within this crucially important part of the West Midlands.
23. The Appellant will demonstrate that LP6 of the Local Plan – is expressly aimed at supporting employment needs not otherwise addressed in the plan i.e. in particular for strategic employment land, is clearly engaged. Both of its criteria – the geographical element and the need criteria having been satisfied. The need is not only immediate now, it is long overdue being addressed. Furthermore, each of its three criteria are also met.
24. The LPA seems to argue that complying with LP6 is incapable of resulting in the grant of PP within the GB or Strategic Gap. With respect that is a deeply misguided approach to the

⁷ Appendix 1 of the proofs of Mr Turner and Mr Binks) CD-D29/C

⁸ Mr Turner PoE para 1.2 CD-D29/A

⁹ Mr Binks PoE para 7.3 CD-D29/B

interpretation of policy. The LP Inspector and the LP itself rightly says that compliance with this policy doesn't 'automatically' override other policies. Rather it is a first step in a process that requires consideration of other relevant policies – to determine whether the s.38(6) assessment means that development should or shouldn't be granted. Meeting the terms of LP6 would be a factor in the overall assessment of VSC for a GB site; and for a Strategic Gap site, meeting LP6 is part of the judgment which would include whether LP4 is met or if not, to what extent it is breached. LP6 does not trump LP4, but neither does LP4 trump LP6, consideration of both are an essential part of the overall planning judgment – were it otherwise then LP6 would be robbed of its purpose.

25. What is of particular note is that for all of the information that DB has kindly provided to the inquiry – there is still no clarity as to whether or not the LPA are alleging whether the identified need for Big Box logistics can be met on any of the presently forecast supply or allocations within NWBC – which is what its own policy enjoins it to address. With respect the WMSESS 2015 and 2021 should have adequately answered that question already.
26. So far as LP34 is concerned – the Inspector will hear from Mr Hatfield, who will demonstrate, in detail, that there is significant lorry parking need as well as the locational suitability of the site.
27. Mr Hatfield's evidence will illustrate that there is significant deficit of HGV parking capacity in the West Midlands region generally and an urgent need for additional overnight lorry parking provision in the M42 J10 area in particular. He will also demonstrate there to be a clear shortfall in appropriate HGV parking capacity in the Tamworth area, particularly along the A5 corridor.
28. Overall, the support of LP34 is engaged.
29. The NWBC's current position in respect of this issue, amongst other deficiencies, contradicts the requirements of NPPF¹⁰, appears to conflict with advice which the Council's planning officers provided to its Planning and Development Board in 2019 (concerning an employment park development at Peddimore where the authority was provided representations on that scheme)¹¹; is contrary to the quantitative and qualitative analysis presented by the Appellant in

¹⁰ Rebuttal PoE Mr Hatfield para 4 CD-D42

¹¹ Rebuttal PoE Mr Hatfield para 7 CD-D42

suggesting the need for lorry parking ‘*is not at critical level*’¹² as well as misapplies and misinterprets DfT’s National Survey of Lorry Parking, Part 2, as explained by Mr Hatfield.¹³

30. As to the Strategic Gap policy itself, LP4 is not a policy which precludes major development in the gap (as the LPA had tried to promote), nor does it presume against anything which would diminish the openness of land within it (as GB policy would). Rather its aim is to seek to prevent the coalescence of Tamworth with ‘Polesworth with Dordon’ – which plainly would not happen in this case. It seeks to achieve this objective by ‘not permitting development which would “*significantly adversely affect the distinctive and separate characters*” of Tamworth on the one hand and PwD on the other. That doesn’t mean avoid any adverse effect, nor keep land open, but rather requires an overall judgment as to whether or not there would be a *significant adverse affect* upon *the distinctive and separate characters* of the two settlements. Seeing a bit more of one settlement a bit closer to the viewer doesn’t mean that there is a significant effect; let alone does it mean that the settlements will no longer possess separate and distinct characters. Still less does it mean that because there is an effect shortly after construction that one should disregard the medium and long term effect of landscaping that will substantially reduce any such effect for most of the lifespan of the proposed development.
31. The Inspector will hear from the Appellant’s witnesses that the provision of employment on land adjoining the M42 and opposite Tamworth Logistics Park will mean that in character terms the development will have a closer affiliation to Tamworth, which is a larger town where commercial development on its East side defines its character. It would be read as being part of the commercial development which has grown on the edge of Tamworth around the motorway junction and in no way will it seem to be an extension of Polesworth/Dordon¹⁴. Employment development to the South of the A5 may have come much closer – but as Ms Oxley is at pains to point out that what counts in preserving the gap is the land north of the A5. As to which there will be a substantial 777m evident gap, reinforced by planting between the edge of Dordon and the marginally nearer edge of Tamworth.
32. Whilst the baseline is 2024, it should of course be remembered that such gaps between settlements evolve over time. Before industrial scale open cast mining came to this area Tamworth and the then tiny hamlet of Dordon were literally miles apart separated by fields, with extensive woodland. Over time the industrial mining came and went, leaving obvious scars

¹² Rebuttal PoE Mr Hatfield para 10 CD-D42

¹³ Rebuttal PoE Mr Hatfield para 17 CD-D42

¹⁴ PoE Mr Hann p85 para 10.2.12 CD-D28/A

on the landscape; Watling Street became dualled and in the mid-1980s the M42 was extended up to the East of Tamworth. Industrial development has growth south of Dordon and around the East of Tamworth. And as a result, this area is very different to the world as it was before WW2. Even within the land to the N of the A5 now described as the Strategic Gap a large Hall complex known as Hall End Hall existed until well into the C20, and Birchmoor was only a field. That is not to diminish the role that the area of the Strategic Gap fulfils, but rather to put it into context. It is an area of open land that is the area of land which is not built upon after a century of development around it. Its existence fulfils a gap function – but that doesn't mean that if some of it was lost to development that there would necessarily be a 'significant adverse' effect upon the separate character of the settlements. To the contrary – that question requires a careful and dispassionate examination of the role that the resultant land will fulfil.

33. On JS's evidence the resultant land would still fulfil a similar role in keeping the settlements separate – visually and perceptibly. The change will be seen, the change may be unwelcome, but the overwhelming majority of the land between Tamworth and PwD will remain undeveloped.
34. Ultimately, Strategic Gap is not and cannot be treated as Green Belt, where its fundamental role is its openness, and where substantial (adverse) weight is in principle given to inappropriate development. LP3 applies and in principle presumption against inappropriate development in the GB. The restriction in LP4 only applies where there would be significant adverse effect on the distinctive and separate characters of the two settlements¹⁵.
35. Mr Smith's evidence demonstrates that the appeal proposals maintain a clear physical and functional gap which allows one to experience leaving one settlement and arriving at another, whether travelling by vehicle, by bike, by wheel or on foot.
36. His analysis is that the resultant sense of separation between settlements relies on much more than a 'scale rule' approach to measuring distance between settlements since the character of the places and the intervening land needs to be taken into account, basing his analysis upon the well-recognised "Eastleigh Principles".
37. Overall, the Appellant will demonstrate that the development proposal accords with LP4. In according with LP4 it also accords with DNP1 and DNP4 of the Neighbourhood Plan.

¹⁵ I.e. Tamworth & Polesworth with Dordon (it does not include Birchmoor)

38. In respect of the second reason for refusal – landscape and visual impact, the Appellant will demonstrate, that whilst the appeal proposal, which comprises built development on greenfield land, will result in some localised landscape and visual harm – but with the adoption of mitigation measures this harm will reduce over time as planting matures. Furthermore, there are public benefits arising from the proposal that would enhance the retained land and its associated landscape character¹⁶.
39. It should be emphasised – the appeal proposals are concentrated on an area of the site directly adjacent to the motorway junction that is already strongly influenced by large-scale commercial built form with a diverse palette of colours and textures, noise and lighting associated with the industrial uses and motorway¹⁷.
40. Against this baseline and landscape context within which the site sits, Mr Smith will argue that the potential landscape and visual effects, individually and cumulatively would be localised, with significant effects by year 15 focused upon the appeal site itself and right of way across the agricultural land to the east of the appeal site. By year 15 and thereafter there would also be no significant visual effects for residential receptors at Birchmoor or Dordon, and no significant effects for vehicle users on the road network around the site.
41. Overall, it will be demonstrated the appeal proposals accord with LP4, LP14, LP30 and DNP4.
42. The third reason related to highways.
43. The Inspector will hear from Dr Bunn in respect of highway matters. Dr Bunn’s evidence will demonstrate the appeal proposals accord with Local Plan Policy LP23, LP27 and LP29. It will show that (i) the proposals would not result in an unacceptable impact on highway safety; or (ii) would the residual cumulative impacts on the road network be severe.
44. The Inspector will note that National Highways have now agreed that (i) the Transyt models were acceptable; (ii) the impact of the appeal proposals was acceptable; and (iii) the site access

¹⁶ Mr Hann PoE para 12.3.6 CD-D28/A

¹⁷ Mr Hann PoE para 12.3.7 CD-D28/A

and the proposed mitigation measures were acceptable in principle¹⁸. The remaining issues can be addressed by condition.

45. The Transyt modelling approach and the results have also been agreed by Warwickshire County Council¹⁹ and Staffordshire County Council²⁰.
46. The only issue outstanding relates to whether the site access and proposed mitigation measures are acceptable in road safety terms. Discussions are in progress with National Highways on the GG104 Risk Assessment and a Stage 1 Road Safety Audit is in progress²¹. However, NH's fair approach is that whilst it would have been preferable to resolve these points in advance – they are nonetheless content for those matters to be addressed by condition.
47. Overall, the third putative reason for refusal is robustly addressed.
48. The issue of agricultural land impact was not raised during the application process or listed as a putative reason for refusal. But the matter has been raised by the joint Rule 6 Party.
49. A statement providing agricultural land evidence has been prepared by Tony Kernon of Kernon Countryside Consulting²². Mr Kernon confirms that the agricultural land quality of the site is mostly Grade 2 with an area of subgrade 3b and area of non-agricultural land. It is therefore accepted that as with so much of the agricultural land locally that this land is best and most versatile, and that the loss of the developed area within the red edge weighs against the proposals. That is emphatically not the case for the land within the blue edge which, consistent with the landscape principles of LCA5 will be returned to pastureland. Using land to take an occasional haylage/silage crop or for grazing livestock is still an agricultural use and a reversion to arable is obviously still possible in the future. To argue this as 'lost' to agriculture is patently wrong.
50. In summary, Mr Kernon confirms that planning policy requires the economic and other benefits of BMV land to be 'recognised'. He says these benefits have been considered and they are not significant. Poorer quality land is not generally available. As such, development in the area is expected to involve the use of BMV.

¹⁸ Highways SOCG with NH [CD-D18]

¹⁹ Highways SOCG with WCC [CD-D19]

²⁰ Highways SOCG with SCC [CD-D20]

²¹ Dr Bunn PoE para 11.4 CD-D32/C

²² Appendix 6 to Appellant's Planning PoE CD-D28/B

51. In view of the above points – the Appellant’s primary position is that the scheme accords with the Development Plan when taken as a whole.
52. It accords with the principal contentious strategic policies of the Local Plan – LP4, LP6 and LP34.
53. Within this context LP4 and LP6 – function together. Whilst the proposal has an impact on the Strategic Gap, it is not a significant impact. The separate identities of Tamworth and Polesworth with Dordon are preserved, with a significant gap being maintained and preserved in perpetuity between settlements.
54. As such, the scheme accords with LP4. Even if there was some conflict with LP4 (which is not accepted) then the degree to which there is conflict still needs to be assessed in looking at whether there is compliance with the development plan taken as a whole.
55. The Inspector will be invited to conclude that in view of the compelling evidence in respect of employment need, the scheme also accords with LP6 and gains significant weight from it, which then overrides any limited harm to the Strategic Gap.
56. The proposal also accords with other strategic policies in the Development Plan (namely Local Plan Policies LP1, LP2, LP5, LP11, LP12 and the non-strategic Dordon Neighbourhood Plan Policy DNP12).
57. Pursuant to s38(6) of Planning and Compulsory Purchase Act 2004 – the proposal accords with the plan and ought to be approved. Even if the contrary view was formed that isn’t the end of the matters since there are still powerful reasons in favour of allowing the appeal even if there was overall conflict with the development plan taken as a whole.
58. Furthermore, this proposal constitutes sustainable development, the plan led system has singularly failed in the West Midlands to address the need identified in a range of studies over literally years as to where to deliver strategic and logistics land in order to meet identified need. The emerging Employment DPD is delayed and at a very early stage. There is no regional plan or agreed cross boundary agreement to address this need. It is an unhappy derogation of the responsibility of the planning system to plan for much needed development.

59. The proposal generates a multitude of benefits. These are key material considerations that weigh heavily in favour of the proposal in the overall planning balance.²³
60. There is significant industry support for the scheme which is also a material consideration weighing in favour of the proposal.
61. Even if the Inspector concludes that the appeal proposals conflict with the Development Plan, taken as a whole – there are powerful material considerations, which warrant a conclusion that the appeal ought to be allowed.
62. For these reasons the Inspector is invited to allow the appeal.

18 JUNE 2024

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²³ Mr Hann PoE para 14.1.10 CD-D28/A