

**APPEAL BY
HODGETTS ESTATE**

LAND ON THE NORTH EAST OF J10 M42, DORDON/A5, POLESWORTH

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

LPA Reference PAP/2021/0663

OPENING STATEMENT

1. This is an Appeal brought against North Warwickshire Borough Council's ('the Council') non-determination of the application for outline planning permission for "*the development of land within Use Class B2 (general industry), Use Class B8 (storage and distribution) and Use Class E(g)(iii) (light industrial), and ancillary infrastructure and associated works, development of overnight lorry parking facility and ancillary infrastructure and associated works*" ('the Appeal Scheme').
2. Following the submission of the Appeal, the Council formally considered the application and resolved that it would have refused planning permission. In so doing, it identified three reasons for refusal ('the RFRs').¹
3. Following the Case Management Conference ('the CMC') it has been agreed that this Inquiry will consider nine main issues, in addition to the underlying issue of the status of the development plan and the Appeal Scheme's compliance with it.

The Development Plan

4. We operate in a plan-led system which requires that, as per section 38(6) of the Planning and Compulsory Purchase Act 2004, applications for planning permission *must* be determined in accordance with the development plan unless material considerations indicate otherwise. The area in which the Appeal Scheme is located has an up-to-date development plan, which consists of the North Warwickshire Local Plan ('the NWLP'),

¹ CD-E59, NWBC Planning and Development Board Report, 4 March 2024 – pg 23; CD-E60, NWBC Planning and Development Board Supplementary Report, 4 March 2024.

adopted in September 2021,² and the Dordon Neighbourhood Plan (‘the DNP’), adopted in December 2023.³

5. While the Application engages many of the NWLP policies, of specific importance in this Inquiry are Policy LP4 which concerns the Strategic Gap,⁴ Policy LP6 which concerns the provision of additional employment land,⁵ and Policy LP34 which concerns lorry parking.⁶
6. The adopted NWLP represents the democratic expression of the Borough’s long-term, strategic plan for sustainable development; meeting the needs of its residents while protecting and enhancing the place in which they live. It is the Council’s responsibility to deliver the plan. Significant progress has already been made in the delivery of the overwhelming majority of the NWLP’s policies.⁷ Specifically, the Council has a total supply of employment land which stands at nearly 150 hectares, of which there are 69.4 hectares of completions, 57.2 hectares of allocations and 23 hectares of outstanding sites with planning permission.⁸ It is also making significant progress in delivering the NWLP’s housing allocations,⁹ with a trajectory which is anticipated to exceed the required housing requirement.¹⁰

The effect of the proposed development on the Strategic Gap

7. The Strategic Gap, defined by Policy LP4 of the NWLP, lies between Tamworth and Polesworth with Dordon. Its purpose is to maintain the separate identity of those settlements and prevent their coalescence. The policy states that “*development proposals will not be permitted where they significantly adversely affect the distinctive, separate characters of Tamworth and Polesworth with Dordon.*” The policy requires decision-takers to consider any effect on the physical and visual separation between the

² CD-F1, North Warwickshire Local Plan

³ CD-F9, Dordon Neighbourhood Plan

⁴ CD-F1, North Warwickshire Local Plan, pg 32

⁵ Ibid, pg 36

⁶ Ibid, pg 75

⁷ CD-F6, North Warwickshire Local Plan Annual Monitoring Report, up to 31 March 2023, Executive Summary pgs 5-12.

⁸ Ibid, pg 24.

⁹ Ibid, pg 78-79.

¹⁰ Ibid, pg 23.

settlements. It also requires specific consideration of their distinctive, separate characters.¹¹

- (i) Tamworth is a large urban area with a population of around 80,000 people and large scale industry, set within its own urban authority area. It grew rapidly in the postwar years as it absorbed housing overspill from the West Midlands conurbation. Being located on both the M42 motorway and the A5 trunk road, it has seen significant expansion of the logistics industry.
- (ii) By contrast, Polesworth and Dordon are both rural villages set within a rural agricultural landscape.

8. The importance of the Strategic Gap is echoed in the Neighbourhood Plan which, in its Community Vision, sets out the following aim:

“In 20 years’ time Dordon will have retained its village identity and its heritage will have been preserved. Expansion to the west will have been limited and new development to the east of Dordon Village will be integrated with the existing built-up area.”¹²

9. Very large-scale industrial buildings dominate the A5 corridor between Dordon and Tamworth. That has undoubtedly compromised the separation between the settlements. A large part of what has been built has been on brownfield land where the old mining colliery used to be. There is definitely a sense of transition in this area.
10. Yet there remains a meaningful gap between Tamworth and Dordon, north of the A5. This is the area which is the subject matter of this appeal. This area retains its rural character, enjoyed by local people via a network of formal and informal paths, and a very well used bridleway. The M42 and the A5 act as strong defensible boundaries in this area, providing clearly defined relief from the surrounding urban intrusion, particularly from the huge industrial buildings south of the A5.

¹¹ CD-F1, North Warwickshire Local Plan; Policies Map.

¹² CD-F9, Dordon Neighbourhood Plan, pg 13. See also Community Objective 7, page 14

11. This area is now, for the first time, protected by the Strategic Gap policy designation contained in the development plan for the area.
12. The Strategic Gap has a significant local history.¹³ The area within which it sits has been subject to huge, continuing, pressure of development, with the result that there is now a scarcity of open land protecting Dordon from Tamworth and the very large scale industrial activity south of the A5.
13. The Strategic Gap provides protection of critical importance.¹⁴ Indeed, understanding its importance and the importance of maintaining this space north of the A5 has been critical to the factual matrix within which other developments have been permitted.¹⁵
14. The Council's application of Policy LP4 is faithful to its wording. As the Appellant has highlighted, where proposals have been judged to have no significant adverse effects on the distinctive and separate characters of Tamworth and Polesworth with Dordon, approval has been granted.¹⁶ But the Council has been unable to come to such a judgment about the Appeal Scheme, the impact of which on the landscape character and visual amenity and, consequently, its implications for the Strategic Gap, has been consistently understated by the Appellant.
15. The Appellant believes there will be no lasting significant effects on the landscape or its character, and that long-term effects on views will only remain significant from two local footpaths.¹⁷ In coming to this position the Appellant has relied upon an LVIA and supporting photomontage visualisations which have not consistently considered or illustrated the worst-case parameters.^{18,19}

¹³ Summarised at CD-D23/A – NWBC Proof of Evidence – Planning Matters, §§3.4-3.24. Documents referred to include CD-F15 Inspector's Report, CD-G1 Landscape and Character Assessment, CD-G2 Meaningful Gap report, CD-G3 Assessment of Value Report.

¹⁴ CD-K1, Appeal Decision ref APP/R3705/W/18/3196890, 1 April 2019, §65 which was refused notwithstanding the operation of the tilted balance. The Inspector considered there was "considerable conflict with a longstanding planning objective and key element of the CS spatial vision arising from the reduction of the gap between settlements and consequent weakening of the separate rural identity of Polesworth/Dordon.

¹⁵ CD-K2, Appeal Decision ref APP/R3705/W/15/3136495, 28 November 2022, §18, in which the Inspector found there would be no harm to the separate identity of Dordon "by reason of the large area of farmland that would remain to the north of the A5.

¹⁶ CD-D28, section 10

¹⁷ CD-30/A, Appellant's Proof of Evidence – Landscape Visual and Strategic Gap. Viewpoint 1 §4.104; Viewpoint 4 §4.106.

¹⁸ CD-D25, NWBC Proof of Evidence – Landscape Visual and Strategic Gap Matters, §1.27, §§3.61-3.63.

¹⁹ CD-D30/D, Appellant's Proof of Evidence – Landscape Visual and Strategic Gap – Supplementary Proof

16. This position is untenable for a development of the huge size, scale and nature proposed. It is undeniable that there will be significant landscape and visual impacts on the Strategic Gap and, consequently, on the character of the settlements that border it. The Appeal Scheme will result in considerable narrowing of the Gap, reducing the effectiveness of the separation.²⁰ The exact layout of what is proposed has changed from document to document, but one gets a sense of what the market is expecting from the enormous buildings across the road on the St Modwen site. Not only do those buildings have huge frontages; they also have huge depth. The parameters plan for the Appeal Site would permit buildings which are ever larger, including using most of the site for one truly enormous building. A building or two buildings of that scale were proposed in the original illustrative plans: see the front cover and Section 6.0 of the DAS.²¹ What was shown in the original photomontages does not reflect the possibilities available to a developer under the parameters plan. This is only an outline scheme, so all of the detail is to follow. As a consequence, the only photomontages which have any currency in this appeal are the block image ones contained in Mr Smith's rebuttal.²² These give a much better illustration of what this proposal could look like. They show buildings which are quite extraordinary in terms of their sheer scale and mass. These building will impose themselves not just over the Appeal Site, but over the surrounding countryside in what would be retained of the much reduced Gap.

17. These huge buildings would block both shorter and longer views and impose a dominant and oppressive presence for those in Strategic Gap and on its fringes. Proposed landscaping and pathways will suburbanise the remaining part of the gap: the Appellant's claim that the proposal will enhance the sense of separation between the secondments is bizarre.²³

18. In short, for the significant adverse effects on the Strategic Gap – and consequent non-compliance with LP4 – alone, this Appeal should be dismissed. It will completely undermine the character and extent of the Strategic Gap and the character of Dordon as

²⁰ Between Tamworth and Dordon by approximately 430m, leaving a physical gap of 777m. Between Birchmore and St Modwen to between approximately 95-155m. CD-D25, NWBC Proof of Evidence – Landscape Visual and Strategic Gap Matters, §5.6

²¹ CD-B34, Full Resolution Version of Design and Access Statement

²² It is to be noted that these images have not formed part of the EIA.

²³ CD.30/A, Appellant's Proof of Evidence – Landscape Visual and Strategic Gap Matters, §3.3

a village in a rural agricultural setting, separated from the huge expansion of Tamworth and the thick, wide tentacles of its large scale industrial expansion spanning across pretty much the whole of the Gap south of the A5.

The effect of the proposed development on the character and appearance of the surrounding area

19. The size and impact of the Appeal Scheme bears reiterating. As well as these huge buildings, or one truly enormous building, the proposal is accompanied by the large-scale parking, presence and activity of a 150-bay lorry park, large-scale engineered landscape earth works and vast long and tall earth bunds which are completely out of character with the local landscape. Even the woodland, which is designed in long thin strips, is far removed from the open character of the area. Even the support for small- and medium-sized woodland blocks in the Local Character Area does not support this type of dense manufactured linear screening. It is all alien to the character of the area and all on an enormous industrial scale.²⁴
20. It is common ground that the Appeal Site and its immediate context comprise open, large-scale, arable fields.²⁵ Open means open, not enclosed by dense planting strips. Arable fields mean arable fields, not large buildings and enormous parking bays. Changing this landscape into a commercial development of the size proposed cannot result in anything but a significant impact.
21. Many of those living around the Appeal Scheme would lose²⁶ or suffer a significant change²⁷ in views. Given the scale of the proposal this effects a very significant number of people, most notably those in the elevated position at Dordon; the village of Birchmoor, which is located right next to the proposed buildings and dense planting; and those individual residential properties on the north side of the A5, some of which have wide open views across the Appeal site.

²⁴ CD-D25, NWBC Proof of Evidence – Landscape Visual and Strategic Gap Matters, §3.29; §3.31

²⁵ CD-D15, Landscape Statement of Common Ground agreed between Appellant-NWBC, §1

²⁶ Residents of Birchmoor. CD-D25, NWBC Proof of Evidence – Landscape Visual and Strategic Gap Matters §5.10(b)

²⁷ Residents of Dordon and Hall End. Ibid

22. There will be very extensive hedgerow and tree removal along the A5 to create the sort of access that is already seen at the existing industrial estates on the A5 at Core 42, Birch Coppice and St Modwen Park. The full extent of what is to be lost has not been clearly explained by the Appellant, albeit that may be down to the fact the highway proposal has continued to be the subject of discussion with Highway England about the extent of new works that are required.
23. There also appears to be little space to replant the hedgerow and woodland vegetation which will need to be removed at Dordon Interchange and along the north side of the A5 to facilitate this development. What can be replanted along the north side of the A5 will be inadequate to provide the necessary screening, given the space required for water attenuation and sight line requirements, particularly in the early years.²⁸
24. Contrary to the depiction in the ZTV in which the planting is shown as an impermeable screen, the planting will take 15-20 years before reaching its full potential and, even then, will filter rather than obscure views of the development, particularly when trees are not in leaf.²⁹
25. Users of rights of way will be particularly affected.³⁰ There is a whole network of paths in the area. Furthermore, those who use the southern part of the existing bridleway will be displaced by the development. This route is being closed and diverted to make way for the lorry park which pushes the bunding further east than the existing field boundary. This existing route of the bridleway is incompatible with the eastern bund which is proposed as mitigation, but which, in and of itself, will have a significant visual effect on the landscape and on views.
26. The rolling countryside in this location means that the proposal, which requires vast flat platforms, will require very extensive site earth moving. There is a very noticeable change in levels across the Appeal Site. All of this will have to be changed to accommodate the buildings especially if it is one or two very large buildings like on St Modwen Park. As noted above, they may in fact be significantly bigger than St Modwen

²⁸ Ibid, §3.5

²⁹ CD-A9.6, Environmental Statement Volume 3: Technical Appendices, Appendix 10.1, ZTV with Mitigation Vegetation.

³⁰ Ibid, §2.6

Park in terms of their footprint and are acknowledged to be significantly higher as well at 21m. This will create vast amounts of earth movement. The material to create the bunds will come from this site levelling. Far from providing mitigation, these bunds appear to be little more than a means to retain spoil on-site, further transforming the character of the landscape and views and providing further harm to the area.³¹

27. There remains a high level of uncertainty around the proposed off-site mitigation area and whether or not it includes the fields to the east of the site. If this land is to be included, it is unfortunate that the proposed change of use and character has not been included in the EIA, and no plans have been proposed to deliver the promised biodiversity-rich meadows and pasture. As with the LVIA, there is simply a lack of reliable evidence before the Inquiry to prove the Appellant's case with regards to mitigation measures. Conversely, the Council can point to significant adverse impact on the character and appearance of the surrounding landscape, and upon associated visual amenity.

Effect on the best and most versatile agricultural land

28. Development within the red line of the Appeal Scheme alone will result in the permanent loss of 29 hectares of Grade 2 (Very Good) Best and Most Versatile (BMV) agricultural land.³² That is 91% of the site. This does not take into account the loss of additional land to the east of the site which will be used for off-site mitigation. While the full extent of plans for off-site mitigation remains unclear, the draft S106 agreement refers to at least 6.5 hectares of land, as well as potential pasture land which does not appear in the Appellant's land and soil assessment. The National Planning Policy Framework requires the recognition of the intrinsic character and beauty of the countryside, as well as its wider benefits.³³ The loss of this BMV land is clearly a harm which must be weighed in the overall planning balance.

Effect on the highway network

³¹ Ibid, §3.35

³² CD-A9.5, Appendix 9.1 Agricultural Land Classification Plan

³³ CD-F11, National Planning Policy Framework December 2023, §180

29. Policy LP6 provides for significant weight to be given in decision-taking to supporting economic growth and productivity. However, the relevant scheme must demonstrate compliance with three criteria, the first of which is that “*access to the strategic highway network is achievable and appropriate.*”³⁴ The Appellant has cited proposed highway measures as improvements which will count towards the benefits of the scheme, but this is to misunderstand the requirement of Policy LP6. Far from being additional benefits, any highway improvements are necessary to make the scheme minimally acceptable. Moreover, the Appellant proposes a trigger point assessment, starting mitigation works at some point after commencement, rather than concomitant with the start of development. Therefore, any delay in implementing the proposed highway works risk further exacerbating capacity issues on the A5.

30. Some of the strategic housing allocations within the NWLP are predicated upon the delivery of substantial improvements to the A5. Development which is unallocated, be it residential or commercial, may prejudice these allocations by taking up capacity on the local and strategic road network.³⁵

The need for employment land

31. Policy LP6 particularly supports economic growth and productivity where evidence demonstrates “*an immediate need for employment land, or a certain type of employment land, within Area A on Figure 4.10 of the West Midlands Strategic Employment Sites Study of September 2015 (or successor study) which cannot be met via forecast supply or allocations.*” This policy was inserted by the examining inspector in an attempt to strike a balance between the requirement to support economic growth and uphold the plan-led system.³⁶ Accordingly, for Policy LP6 to bite, and particularly for it to outweigh the other relevant policies in the NWLP, there must be evidence

³⁴ CD-F1, North Warwickshire Local Plan, pg 36

³⁵ CD-35, North Warwickshire Borough Council Planning Rebuttal, §24; CD-D38, North Warwickshire Borough Council/Warwickshire County Council Highways Rebuttal

³⁶ CD-F15, North Warwickshire Local Plan 2021 Inspector’s Report, §180. The inspector required that the policy “must be read in conjunction with the other Local Plan policies rather than automatically taking precedence over them (given that Area A encompasses Green Belt land and also land identified as “Meaningful” or “Strategic Gap” via Plan policy LP5...”.

demonstrating an immediate need for employment land in the area which cannot be met via forecast supply or allocations.

32. In the Council's view this evidence has not been provided by the Appellant, which has been selective in its review of alternative sites. It has considered only those capable of accommodating 1 million square feet of Class B8 use. The reason for this parameter is not immediately clear, as the Application is not limited to that size threshold.
33. The Appellant has also failed to provide evidence to justify the co-location of Class B8, Class B2 and lorry parking.³⁷ In the Council's view there can be no reason for this co-location beyond the Appellant's presumed wish to maximise the land's development potential. The lorry parking is not supported by LP6. Disaggregating the elements of the proposal would mean any immediate need could be met by forecast supply or allocations. There is an objection to the proposal from the operator of the Tamworth motorway services on the other side of the M42.³⁸
34. The Appellant has put forward no named occupier for the site, nor has it provided evidence of any major employer who would be lost to the area or region if a specific site does not become available within a certain timeframe. Furthermore, the Appellant has not demonstrated a particular urgency to progress matters. In strong markets developers will usually make hybrid applications which include the full details for part of the site to avoid delay from determination of reserved matters.³⁹ This is not the case in this application, which is for pure outline for a generic form of employment development.⁴⁰
35. While the Council accepts that there is a continuing need for land to meet national and regional additional floorspace requirements, it is of the view that this need is in the general area of the Golden Triangle. Businesses looking to avail of such floorspace are, typically, footloose, seeking good access to the strategic road network and accessible sources of labour. There is no specific need for the land to be at the Appeal Site.

³⁷ CD-24/A North Warwickshire Proof of Evidence – Employment Matters, §5.35

³⁸ Letter on behalf of Motos Hospitality Limited, 18 June 2024.

³⁹ Ibid, §5.25

⁴⁰ Ibid, §5.26

36. The Council believes the local plan has addressed, and will continue to address, the need for employment land.⁴¹ Furthermore, any emerging immediate needs can be met through existing strategic employment/logistics sites.⁴² Notwithstanding this capacity, the Council is progressing with its emerging Employment Development Plan Document which will identify additional employment land allocations. These additional allocations will be determined via a transparent, evidence-based and strategic process, operating under the aegis of the plan-led system.
37. In short, in the Council's view, the Appeal Scheme is purely speculative, based on what the Appellant wishes to offer rather than what the market needs to receive. It is not founded in any evidence of an immediate need for employment land, or of need specific to that location. As a result, it fails to meet the threshold established by LP6 and cannot be accorded significant weight when considered in the planning balance, and particularly not at the expense of Policy LP4 and the Strategic Gap.

Appropriate location for overnight lorry parking

38. As per Policy LP34, the Council will give weight to the provision of lorry parking and associated facilities. This policy was developed in recognition of the fact that the Borough lies within an area with high demand for lorry parking. However, it does not follow that the existence of this policy should lead to support for the proposal, either as a whole or in part. There is ample evidence to suggest that the region has sufficient lorry-parking capacity and therefore no basis on which to argue urgent need for additional sites.⁴³
39. Furthermore, as described above, the HGV park may be complementary to the employment land proposal, but they are not essentially linked by anything other than the preference of the Appellant. However, while the two uses can certainly be disaggregated, when taken together the harms caused by the whole proposal

⁴¹ CD-24/A North Warwickshire Proof of Evidence – Employment Matters, §4.15, §5.22

⁴² CD-24/A North Warwickshire Proof of Evidence – Employment Matters, §§5.18-5.23; CD-D24/B North Warwickshire Proof of Evidence – Employment Matters Appendix G

⁴³ CD-I11, National Survey of Lorry Parking Part Two, DFT, 2022, pg 35; CD-I3, Lorry Parking Demand Assessment, pg 7

cumulatively would constitute a significant adverse impact on the Strategic Gap, contrary to policy LP4.⁴⁴

40. Disaggregation of the lorry park and indeed the B2 element may result in a site outside the Strategic Gap being identified to meet any immediate need.

How the Appeal Scheme weighs in the planning balance

41. The key issue running through this Appeal is the weight attributed to policy LP4, protecting the Strategic Gap, the landscape harm and other visual impacts, balanced against the requirement to support economic growth through the purported need for immediate additional employment land, as set out in policy LP6.

42. The maintenance and protection of the Strategic Gap has been a long-standing policy objective in the area, running through several iterations of local plans and most recently included in the NWLP and DNP. These policies are recently adopted, up to date, and represent the democratically expressed will of Borough residents. As such, they should be given full weight.

43. While the Appeal Scheme does bring acknowledged benefits, largely related to the provision of additional employment land and job creation, these are considered insufficient material considerations to outweigh the conflict with the Development Plan.

44. The Inspector is therefore invited to dismiss the appeal.

18 June 2024

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⁴⁴ CD-24/A North Warwickshire Proof of Evidence – Employment Matters, §§5.38

