

**APPEAL PURSUANT TO SECTION 78 OF THE TOWN AND COUNTRY  
PLANNING ACT 1990 IN RELATION TO**

**LAND NORTH-EAST OF JUNCTION 10 OF THE M42 MOTORWAY,  
DORDON, NORTH WARWICKSHIRE**

**APPEAL REF: APP/R3705/W/24/3336295**

**LPA REF: PAP/2021/0663**

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**CLOSING SUBMISSIONS ON BEHALF OF  
THE LOCAL RULE 6 PARTY**

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**INTRODUCTION**

1. At first glance, this appeal might have some merit. The appeal site is the only undeveloped quadrant of the intersection between the A5 and the M42 at Junction 10. The Midlands is the place for strategic employment sites and there is an acknowledged need for HGV parking. And the proposal would bring some economic benefit to the wider population.
2. However, to grant planning permission for the proposed vast industrial development would involve bulldozing through the area of open agricultural space known in policy terms as the Strategic Gap. The importance of the Strategic Gap has been recognised in development plan policy and by numerous Inspectors over many years. It is highly valued by those who enjoy the open rural views across it and who use it for recreational purposes.
3. To cause this much irrevocable harm, there would need to be an overwhelming case for doing so. The Appellant has not come close to making such a case.

## **STRATEGIC GAP**

### **Policy support for the Strategic Gap**

4. The concept of designating land to maintain the visual separation between Tamworth and Polesworth with Dordon originated in the Dordon District Plan in 1989. For 35 years since then, it has been included in all iterations of local planning policy.
5. In 2015 and 2018, the Strategic Gap was assessed by the Council in preparation for the Local Plan. The Inspector who examined the draft Local Plan considered these and concluded at §238 that “collectively they represented a reasonable and proportionate approach at a plan-making stage” in the Local Plan Examination Report 2021.
6. In supporting the Strategic Gap, the Inspector said, at §228, that Tamworth was of a different order of scale to Polesworth with Dordon.<sup>1</sup> He agreed with the reasoning of another Inspector who had determined an appeal on land south of Tamworth Road and to the west of the M42, Tamworth, dated 1 April 2019, that Tamworth’s “eastwards expansion would not necessarily significantly affect its established identity”. He contrasted this to Polesworth with Dordon, a “settlement set within a predominantly rural context”.<sup>2</sup>
7. The examining Inspector further recorded, at §229, that he had “heard how many local residents accord significant value to the rural landscape”. He noted that a landscape does not have to be protected formally to merit protection within the terms of §109 of the 2012 NPPF (§180 of the current version). He said that in this context, and as was clarified by a further Inspector who determined an appeal at Land south east of the M42 Junction 10, Tamworth, Warwickshire, dated 28 November 2016 (“the St Modwen appeal decision”), “there has been a

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<sup>1</sup> Report on the Examination of the North Warwickshire Local Plan, 20 July 2021 (CD F15).

<sup>2</sup> APP/R3705/W/18/3196890 (CD K1).

longstanding approach taken by the Council here to avoid undue coalescence between Polesworth with Dordon and Tamworth.”<sup>3</sup>

8. The examining Inspector said, at §230, that, while the extent of the Strategic Gap had not been precisely defined, it was in principle “legitimate for planning to take account of the different roles and character of different areas, and to recognise the intrinsic character and beauty of the countryside.” He then noted at §231, that the Inspector who had examined the Core Strategy had reasoned similarly.
9. Thus, the Strategic Gap in its current form came into being with the Local Plan 2021 and is protected by Policy LP4. It is further protected by Policies DNP1 and DNP 4 in the Dordon Parish Neighbourhood Plan Policies 2022-2033, which was adopted in December 2023.<sup>4</sup> These are not, therefore, aging policies in need of urgent reconsideration, but are recent and up-to-date.
10. There is therefore strong, longstanding and current policy support for the Strategic Gap and its significance has been acknowledged by numerous Inspectors in recent years.

### **St Modwen appeal and the significance of the A5**

11. The St Modwen appeal decision is of particular significance as it shows the importance of the barriers that are posed by the M42 and the A5 at the location of the appeal site.<sup>5</sup>
12. At DL 21, the Inspector considered the impact of the M42:

“21. Given the size of the M42, which runs through a tree-lined cutting in this location, I agree that it provides a definitive boundary and clear separation to Tamworth beyond. On this basis the tree-lined motorway would limit the perception of any harmful coalescence from Wilnecote to Birch Coppice”.

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<sup>3</sup> APP/R3705/W/15/3136495 (CD K2).

<sup>4</sup> CD F9.

<sup>5</sup> CD K2.

13. The Inspector considered the differing significance of the land to the north of the A5 compared to the land to its south at DL 23 and 24:

“23. With the exception of a single row of houses on the southern side of the A5 Polesworth and Dordon are concentrated to the north of the dual-carriageway. This is illustrated on the Council’s policies map. In contrast, Birch Coppice is a large free-standing employment allocation to the south. Although recent expansion has brought development close to the existing row of houses accessed from the pedestrian footbridge, for the purposes of the Core Strategy it does not form part of either settlement.

24. Thus, the relevant test is whether or not a meaningful gap would be maintained to the west of Polesworth and Dordon, excluding Birch Coppice. Without encroaching on the land north of the A5 there would continue to be a large, central area of open space separating the two towns. This area and the role that it plays in separating Dordon from Tamworth are evident on the aerial photographs provided by the Council. The photographs demonstrate that in quantitative terms, a substantial gap would be maintained.”

14. The Inspector further said at DL 29:

“29. However, after a very short distance, and just beyond the ‘Welcome to Warwickshire’ sign referred to by the parties the fields north of the A5 come into view. Because the farmland drops down below the road before rising up, combined with its open character and proximity to the eastbound carriageway this area of countryside dominates the foreground. Dordon becomes visible at a higher level and there is an unequivocal gap in between. The undulating, open character of the farmland to the north of the A5 would therefore ensure that drivers entering the Borough and heading east would still be faced with a predominantly rural setting to Dordon. Based on the evidence provided the scheme would not conflict with the spatial vision of the Core Strategy”.

15. In reaching this view, the Inspector accepted the submissions of the Appellant, who explained the importance of the A5 barrier. For instance, the Closing Submissions on its behalf stated, at §2.4.5:

“2.4.5 In fact, whether viewed from the A5 or from the PROW network, or even from the public open space on the west side of Dordon, it is very obvious on the ground that the land to the north of the A5 is what provides the meaningful gap between Tamworth and Dordon, and that will be undiminished by the proposed development. Indeed it is notable that the LPA has had to go so far as to allege actual coalescence will occur if the appeal is allowed – thereby pitching their case in such a way as to suggest that the large, highly visible area of land between the two settlements will no longer form a “meaningful” gap so as to make their separate identities legible to an impartial observer.”

#### **Impact of the proposed development on the Strategic Gap**

16. The proposed development would reduce the width of the strategic gap from c.1350m to c.700m taking into account the intrusion of both the appeal site (c.400m) and the orchard and open space provision (c.250m). This represents a reduction of 48.1%.
17. This is a substantial reduction and all the more significant in this section of the Strategic Gap as it is a single defining parcel of land in this southern section.
18. In addition, the M42 service station buildings on the west side of the M42 are not presently visible from Dordon. This effectively provides an additional 350m of perceived separation from Tamworth, which would be lost.
19. In terms of the northern projection, the proposed development would essentially connect the employment site to the south of the A5 to Birchmoor. The appeal site is c.750m in a north-south direction, while the whole of the Strategic Gap between the A5 and Tamworth Road (B5000) is c.1820m. Thus, 41.2% of the open land

in this direction between the A5 and the B5000 would be lost. In visual terms, more than 60% of the Strategic Gap would be lost between these two points.

20. While there would be a narrow row of paddocks between the appeal site and the houses to the north, these would not be sufficient to prevent Birchmoor as appearing to be integrated visually with the proposed development.
21. Thus, the proposed development of buildings up to 21m and a truck stop in a relatively narrow space between the two settlements would lead to a substantial reduction in physical terms.
22. However, while the physical encroachment of the Strategic Gap is important, the greater harm comes from the effect that this would have:
23. **First**, the proposed development would cause Tamworth effectively to leapfrog the M42 to the north of the A5 and encroach substantially on what the Inspector in the St Modwen appeal identified (at DL 29) as “the undulating, open character of the farmland north of the A5”.
24. As noted by the Inspector in that appeal the combination of the countryside, the topography and the view of Dordon beyond currently provides drivers travelling east along the A5 with “a predominantly rural setting to Dordon”.<sup>6</sup> This would be lost.
25. **Secondly**, as a consequence of the different sizes and characters of Tamworth and Polesworth with Dordon and as the development would have a closer affinity with Tamworth<sup>7</sup>, the eastwards expansion of Tamworth across the M42 boundary would lead to a perception of Tamworth encroaching on Polesworth with Dordon.
26. **Thirdly**, as was noted by the Local Plan Inspector and was emphasised by local residents in their evidence, the Strategic Gap is an important space for recreation. As was noted by the Local Plan Inspector, a landscape does not have to be valued in NPPF terms in order to be protected. It is really important to them.

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<sup>6</sup> CD K2. See DL 29 quoted above at §14.

<sup>7</sup> This was agreed by Mr Hann in XX.

27. **Fourthly**, the agricultural landscape on the appeal site and within the blue line would change from an open agricultural landscape to an industrial one with pasture land, strategically placed woodland areas, an orchard, an allotment and landscape bunds. Narrow dirt paths would be replaced with formal public footpaths according to the indicative plans. There could potentially be lighting even if the Appellant does not plan for it at present.
28. Instead of seeing an open agricultural landscape with fields rising to Dordon, users would see a vast industrial building or buildings towering above them. This is considered in more detail below.
29. **Fifthly**, as a result of the changes to the landscape, the proposed development would greatly impact on views. Again, this is considered in more detail below.
30. Viewed collectively, the function of the Strategic Gap would be substantially harmed and the character of the landscape would be fundamentally and permanently changed.

## **LANDSCAPE**

31. There is some overlap with the previous section as landscape harm is integral to considering the harm to the Strategic Gap. However, it should be further considered as an issue in itself, not least as there are relevant landscape policies.

### **Landscape Character**

32. The Appellant's Landscape Character Assessment ("LCA") summarises the various landscape character documents published. These include the National Character Area Profile 97 – Arden, within which the appeal site is located.<sup>8</sup> The LCA provides the key characteristics of the National Character Area Profile at §4.2.<sup>9</sup> And it further notes that Warwickshire Landscape Guidelines place the appeal site within the regional character area of "Arden", which is then

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<sup>8</sup> CD G8.

<sup>9</sup> CD G23.

subdivided into landscape types. The appeal site is identified as being within the “Wooded Estatelands” landscape type.

33. The Appellant’s LCA notes that the character of the site is not wholly representative of the “Wooded Estatelands” description and notes, *inter alia*, “pockets of farmland, often surrounded on two or more sides by urban development.”
34. And it summarises the “North Warwickshire Landscape Character Assessment”<sup>10</sup> at §4.15. At §4.16, it states that the site is representative of many of these characteristics “from the underlying “gently undulating indistinct landform” upon which the open framework of “predominantly open arable land with little tree cover” is overlain.”
35. The proposed development would fundamentally change the character of the land. What is open and agricultural would become built and wooded in linear blocks. This is not commensurate to the appearance of the character area. Moreover, the landscape bunds would be entirely out of place.

### **Visual impact**

36. The visual impact harm is focussed on the Strategic Gap. This is not surprising as it is a gap rather than a wider countryside location. The viewpoints selected by the Appellant do not show fully the extent of the harm that the proposed development would cause.<sup>11</sup>

### **DNP Viewpoint 3**

37. The proposed development would have a substantial impact upon this Viewpoint. It is broadly comparable to the Appellant’s Viewpoint 13, but is positioned on the eastern side of Junction 10 of the M42.
38. As consequence of the height of the roundabout and the rising topography towards Dordon, a clear view of the Strategic Gap is possible. This forms a

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<sup>10</sup> CD G1.

<sup>11</sup> See Weekes Proof pp27 to 40 for photographic images of the Viewpoints discussed.



transitional view, given the alignment of the footway/cycleway across the M42 bridge directly towards the Strategic Gap.

39. If planning permission were granted for the proposed development, the buildings, which would be up to 21m in height, would dominate the Viewpoint and obscure all remaining views of the Strategic Gap and of Dordon beyond.
40. Thus, there would be a fundamental impact upon the open character of the land visible from the west and the viewpoint would have the appearance of being embedded within the M42. Any sense of separation between the settlements would be lost from this direction, which reflects the first countryside view possible towards North Warwickshire.

#### **DNP Viewpoints 1 and 2 (Appellant Viewpoints 5 and 20)**

41. These Viewpoints offer a similar view of the Strategic Gap, but from Dordon back across the Strategic Gap to the appeal site. While there is a peripheral view of the employment site to the south of the A5, a wide view across open agricultural land is experienced. Although the view is across to the M42 and the service station beyond, these are indiscernible as a result of successful landscape mitigation.
42. The proposed development would substantially foreshorten this view, both as a result of the built form and from the change in landscape character. The perceived effect would be that Tamworth would advance some 750m towards Dordon when the borrowed view of the service station planting is included. In addition, there would no longer be an arable landscape within view.

#### **Views from footpath AE46 (Appellant Viewpoints 3, 4 and 8)**

43. The importance of the Strategic Gap for recreational purposes is considerable. As most of the land is in private ownership, Footpath AE46 and the Bridleway AE45 are of heightened significance for experiencing views within the Strategic Gap. The same is true for the informal footpaths that lead from the Kitwood Avenue Recreation Ground westwards towards Footpath AE46.

44. Footpath AE46 arcs from the A5 in a north-westerly direction towards the eastern edge of the appeal site. As with other views across and within the Strategic Gap, users may currently enjoy open agricultural views as they travel along its length.
45. If the proposed development were built out, instead of such agricultural views users would experience vast buildings up to 21m in height. This would significantly erode the open character and appearance of the land.
46. The impact of the proposed development would therefore be comparable to the views at DNP 1 and 2, but would be much more immediate. The buildings would be imposing, as would the truncation of the green space.

#### **Bridleway AE45 (Appellant Viewpoints 10 and 3)**

47. Bridleway AE45 runs across the appeal site and along its eastern edge in a north south direction from Birchmoor to the A45. The effect of the proposed development on the views from it would be substantial. Rather than crossing an agricultural field, users would be immediately adjacent to an urban environment along the western side for its full length from the A5 to Birchmoor (c.750m). Industrial noise coming from the development would further ensure that they did not mistake their location for an agricultural one.

#### **View southwards from Birchmoor (Appellant's Viewpoints 1 and 17)**

48. From the south of Birchmoor both public and private views across the Strategic Gap may be experienced. At present these views are open and agricultural as elsewhere. It is proposed, but only in indicative plans, that landscape bunds would be planted along the northern site of the appeal site to mitigate the harmful impacts on Birchmoor residents. These harmful impacts would be both visual and noise.
49. While it is anticipated that this mitigation would be successful in largely blocking out the development, it would further block out the open and agricultural views that can currently be enjoyed from Birchmoor. And the vast industrial buildings would still likely be visible until the vegetation matured. Even then, it is anticipated that lighting would still be perceptible from Birchmoor.

## **View northwards from the A5**

50. The view northwards from the A5 remains as it was described by the Inspector in the St Modwen appeal decision at DL 29 (“the open, undulating character of the farmland to the north of the A5...”).<sup>12</sup> It is of a pocket of open green space between the built environment of Tamworth to the west and the contrasting rural form of Dordon to the east. Birchmoor may be observed as a collection of dwellings set back from the transitional view from the A5.
51. From the A5, the proposed development would be clearly visible to the north. Only a narrow row of planting is proposed. That is all that would be possible. Rather than agricultural fields separating Tamworth from Dordon, users of the road would experience enormous industrial buildings.
52. A similar amount of planting was said to be inadequate in an appeal at Land at Cross-in-Hand Farm, Lutterworth Road/Watling Street, Rugby, dated 12 April 2023 (“the Magna Park Solutions Ltd appeal decision”). In that appeal the adjacent buildings proposed ranged from 8 to 13m and it was further proposed that most of the site would have been kept open as part of a HGV park. In contrast, the buildings of up to 21m that the Appellant offers in the present appeal are notably higher and occupy substantially more of the site.<sup>13</sup> The proposed development would be clearly visible through the planting at Viewpoints 8 and 9.
53. The Magna Park Solutions Ltd appeal decision is further relevant in that the Inspector in that appeal recognised the difference in character of the land either side of the A5, before noting that the proposal would appear as an entity in itself rather than an extension to Magna Park.<sup>14</sup> The specific difference in visual context either side of the A5 can be seen in current appeal, where the appeal site represents the last remaining section of undeveloped land around the M42 junction and thus the final countryside segment adjacent to the urban

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<sup>12</sup> CD K2, DL 29 quoted above at §12.

<sup>13</sup> CD K13 at DL 29, 35 and 36.

<sup>14</sup> CD K13 at DL 18, 19 and 25.

environment. Its development would have a permanent and significant impact upon the rural setting of this land and the visual context in which it is considered.

54. Finally, the section of the A5 in this location is currently without any junction and the addition of a new traffic lighted junction will further add to the urbanising features on this section of the A5. Roads in rural locations tend not to have traffic lights.

### **Changes in appearance to the public rights of way**

55. The Appellant proposes to vary the appearance of the retained/redirectioned public rights of way by providing formal surfacing two or three metres wide. While there would undeniably be access benefits, the surfacing would further increase the perception of being in an urban rather than a rural landscape. The public rights of way would further run through managed pasture land rather than an arable landscape, offering a much more formal ‘country park’ appearance.

### **Selection of Viewpoints**

56. As to the viewpoints selected, the Review carried out by LUC in January 2023 selected Viewpoints 1, 4, 5, 8 and 9 for visualisation to be prepared.<sup>15</sup>
57. However, Viewpoints 3 and 10 are immediately adjacent to the appeal site and should further be identified as being significant. Mr Smith in his Table 2-3 identifies both Viewpoints as being of Medium/High Sensitivity. As to Magnitude (at Construction), he identifies Viewpoint 3 as being Medium/Substantial and Viewpoint 10 as being Substantial.<sup>16</sup> To omit these from visualisations appears an oversight as the purpose was to consider the scheme from the locations that would be most affected by the development.

### **Conclusion on Visual impact**

58. There is a common theme running through the impacts in respect of all of the above Viewpoints: the comprehensive and substantial change of an open arable

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<sup>15</sup> See Smith Proof, Appendix B.4 §3 at p.D-2.

<sup>16</sup> See Smith Proof, Appendix A Table 2-3 at ppA.13-15.

landscape on the appeal site to one of industrial development and woodland planting.

59. The planting screens the buildings to a degree, but this is very imposing upon the open countryside setting that current exists for Bridleway AE46 in particular (Viewpoints 1, 3 and 10). At the same time, the elevated views possible from the western edge of Dordon mean that the built form would still be clearly discernible (Viewpoint 5 in particular but also Viewpoint 20) as well as from private views from the houses facing onto the strategic gap.
60. The harmful visual impacts will persist at Year 15 with the buildings visible above the screening vegetation.

### **General points on mitigation**

#### **Substantial tree planting**

61. The trees are proposed to conceal the vast buildings. Planting should mitigate the effects of acceptable development not to conceal unacceptable development. The trees would perform the latter function both within the appeal site itself and in the additional planting areas within the biodiversity enhancement area off site.
62. Substantive tree planting is present as a linear belt along the edge of the M42, and this is visible within the context of the appeal site. To a lesser degree, there is boundary vegetation along the A5, with some trees included. However, the appeal site and other land within the Strategic Gap is largely open, with some hedges and only scattered trees and an occasional tree copse.
63. While there are therefore trees visible from the appeal site, substantive linear tree belts are not characteristic of the Strategic Gap and there would be a consequential change to the character of the area as a result.

#### **Bunds**

64. Other than along the edge of the M42, where they are required to allow the provision of junctions and cross over roads for local traffic, bunds are not a characteristic feature of the immediate area.

65. This is not just view of the Local Rule 6 Party. The Review carried out by LUC in January 2023 stated at §A.33 that “the proposed bunds are of large scale and not sympathetic to the context.”<sup>17</sup>
66. As with the trees, the bunding may help to hide unacceptable development, but it is uncharacteristic in the context of the appeal site.

### **BEST AND MOST VERSATILE AGRICULTURAL LAND**

67. BMV agricultural land is defined in the NPPF as: “Land in grades 1, 2, and 3a of the Agricultural Land Classification.” It is uncontroversial that there is significant support in Government policy for preserving and protecting BMV agricultural land.
68. The Appellant’s Agricultural Land Classification and Circumstances Report (January 2021) sets out, at Table 1, the percentage of agricultural land by grade for England and North Warwickshire. 14.2% of the agricultural land across England, and 19.7% across North Warwickshire, is Grade 2.<sup>18</sup>
69. The appeal site is 91% (29ha) Grade 2, with 6% (2ha) as Grade 3b and 3% as non-agricultural land.
70. This in itself represents a significant loss. However, it became apparent during the course of the appeal that there would be a further loss of active agricultural land within the blue line.
71. In his oral evidence, Mr Smith confirmed that there would be a loss of a further 46.6ha in addition to the loss of 29ha on site, 75.6ha in total. The quality of that additional land is not known, but it is probably Grade 2 as well.
72. Mr Smith further said that pasture land would still generate a grass crop which is used for animal feed and that there would not therefore be a total loss of the agricultural land within the blue line.

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<sup>17</sup> This is included at §10 of Smith Appendix B.4 at p.D-3.

<sup>18</sup> CD A9.5 Appendix 9.1.

73. However:
- a. Not all of the land would be used for pasture land;
  - b. The yield for pasture land will be significantly less than that of arable crop;
  - c. The crop would not be for human consumption, meaning all functional use for growing crops for direct benefit to humans would be lost.
74. There would therefore still be a loss of agricultural land within the blue line, even if it is not a total loss where there is pasture land. And, as a consequence of the BNG requirements, the agricultural land would be lost for at least 30 years and could not be brought back into active use even if there is a need for it to be returned to arable use.

## **HIGHWAY IMPACTS AND ROAD SAFETY**

### **Concerns expressed by the Local Rule 6 Party**

75. Concern was raised by local residents about “lost lorries” attempting to travel through Birchmoor. Additional lorry movements due to this development would increase the potential for this to occur more frequently
76. There was further concern raised about parking difficulties associated with the proposed employment use, and the expectation that future employees could well opt to park in Birchmoor and walk to the site via Bridleway AE45 in order to avoid congestion at the M42/A5 junction. The parallel link offered by the B5000 offers a more local traffic route avoiding potential delays. Reference has been made by local residents in respect of this already occurring in association with Relay Park and the Moto Service Area, despite being notably further away from Birchmoor than the appeal site.
77. The Appellant has offered obligations in a unilateral undertaking, which would mitigate these harms.
78. Finally, concern was expressed by residents about general congestion if planning permission were granted for the proposed development.

## **Council's evidence**

79. There is one aspect of the Council's evidence that was of particular concern to the Local Rule 6 Party and which was explored with Mr Hann in cross examination.
80. In his Rebuttal Proof, the Council's witness, Mr Espino, at §2.2, noted the use of the TRANSYT 16 Model as part of the development proposal rather than the use of micro-simulation modelling, which is required by Warwickshire County Council's Modelling Protocol. Mr Espino then outlined his concerns at §§3.1 and 3.2, which he explained further in the roundtable discussion.
81. His concerns related to the manner in which the delivery of the transport movements of the Local Plan allocations have been modelled. He was critical of the use of blanket percentage assumptions on the directions of travel and the assumption that the allocations would all come forward in phases at the same time.
82. In reality, allocated sites do not all progress in a uniform manner and stop at certain percentage completions. Sites will be staggered in timescales and completed largely under a single main approval. Mr Espino considered that the suggestion that 80% of the capacity of the Local Plan sites could be delivered as a result of the upgrades proposed to the A5/M42 junction was excessively optimistic. Dr Bunn accepted in the round table discussions that the 80% may be over-emphasising the delivery rate.
83. Mr Espino further referred in the roundtable discussion to pre-application consideration of the Dordon/Polesworth east housing allocation (Allocation Site H4). Here, consideration using the latest micro-simulation model for the area, showed that around 200 dwellings could be delivered on the site now (12% of allocation H4), and potentially up to 400 dwellings (24% of allocation H4). However, no additional dwellings could then be delivered through the A5 corridor until the A5 infrastructure was delivered. This represents just 6% of the Local Plan housing allocation and does not include any employment allocations.



84. The inquiry further heard that development in the Borough is focused along the A5. So the ability to only delivery 6% of the identified housing need without further upgrades to the M42/A5 junction as a consequence of the proposed development absorbing the capacity risks undermining the plan led approach and the Borough's overall ambitions and objectives to deliver housing and employment.
85. This is a serious concern and would greatly affect those who live in the vicinity of the appeal site.

### **EMPLOYMENT LAND**

86. The proposed development is speculative. There is no identified end user and no fixed floor area proposals for B1/B2/B8 uses. Instead, there is a general assumption that the development would meet a generalised need in the area whereby additional development is required.
87. The Local Rule 6 Party supports the Council's case on the lack of an identified need for employment land. The Appellant's case is both overstated and misguided.

### **OVERNIGHT LORRY PARKING AND ASSOCIATED FACILITIES**

88. While additional lorry parking is accepted as beneficial in general, the Local Rule 6 Party notes the issues of highway safety and capacity that were raised.
89. In addition, the Council cannot force lorry drivers to use dedicated parking areas. These cost money to use and are often not covered by the employers. Thus, when trailers are empty, there is little incentive to use them when laybys are free. Doors are often left open on parked vehicles to illustrate this position.
90. In addition, local residents have commented that many of the surrounding business parks, particularly to the west in Tamworth have trailers parked up without the cabs on the roads. This removes on street parking capacity and clearly would not be resolved by the construction of a new HGV parking area.

## **PLANNING BALANCE**

91. The Inspector is required to determine the application in accordance with the development plan unless material considerations indicate otherwise (s.38(6) of the Planning and Compulsory Purchase Act 2004).
92. Towards the end of the inquiry, the Appellant conceded that the application of the tilted balance under §11 d) ii) of the NPPF did not apply.<sup>19</sup>

### **Development plan**

93. The development plan is recent and up-to-date.

## **North Warwickshire Local Plan 2021**

### **Strategic Gap**

#### *Policy LP4: Strategic Gap*

94. The purpose of Policy LP4 is to maintain the separate identity of Tamworth and Polesworth with Dordon by means of the Strategic Gap. The policy states that proposals “will not be permitted where they significantly adversely affect the distinctive, separate characters of Tamworth and Polesworth with Dordon”. It further states that in assessing this, “consideration will be given to any effects in terms of the physical and visual separation between those settlements.”
95. For the reasons above, the proposed development would significantly adversely affect the distinctive, separate characters of Tamworth and Polesworth with Dordon, both in terms of physical and visual separation.
96. There is therefore substantial conflict with the policy.

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<sup>19</sup> Hann XIC.

## Employment need

### *Policy LP6: Additional Employment Land*

97. Policy LP6 permits additional employment schemes to come forward particularly where evidence demonstrates an immediate need for employment land, or a certain type of employment land within Area A on Fig.4.10 of the West Midlands Strategic Employment Sites Study, September 2015 (or a successor study) and which cannot be met via forecast supply or allocations.
98. A key issue is whether the proposed development meets an immediate need for employment land which cannot be met via forecast supply or allocations. As indicated above, the Local Rule 6 Party supports the Council's case. The focus has been on Big Box logistics, but there are sites available within Area 2 and beyond which can accommodate any immediate need.
99. Another key issue is whether the proposal qualifies as a "certain type of employment land" which cannot be met via forecast supply or allocations. While there is perhaps a degree of ambiguity in the interpretation of the policy, the Council is right to conclude that this strand of the policy is also concerned with immediate need. It would make little sense otherwise.
100. The Local Plan Inspector indicated in his Report (at §§171 and 172) that he struggled to quantify the big box logistic need/demand for North Warwickshire and introduced amended the wording of the policy to reflect this.<sup>20</sup>
101. To say simply that the proposed development is a big box logistics site and not allocated is sufficient for it to accord with the policy undermines the purpose as explained by the Inspector.
102. There is no clarity as to what the requirement for logistics is and the Local Plan Inspector stated at §172 of his Report that the linear projection of past completions into the future is "clearly unrealistic".<sup>21</sup>

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<sup>20</sup> CD F15.

<sup>21</sup> CD F15.

103. Other sites and land are still coming forward within Area 2 – the economic sub-regional area which covers eight local planning authorities. The emerging DPD will then seek to allocate additional site(s) as we heard from Mrs Barratt. So there are “forecast supply and allocations”.
104. The policy does not, therefore, comply with Policy LP6 and gain “automatic” significant weight as the Appellant has sought to argue.
105. Instead, significant weight should be afforded to the harm caused by the lack of compliance with Policy LP6.
106. Even if the Inspector were to accept that the proposed development did comply with the policy, §7.46 states that this does not mean that the policy would automatically override other policies in the Local Plan. In the context of this appeal, these policies would include policies relating to protecting the Strategic Gap.

#### Landscape

##### *Policy LP14: Landscape*

107. Policy LP14 relates to landscape and seeks to conserve and enhance the natural landscape and to restore landscape character where possible.
108. The main concern in respect of this appeal is the visual impact of the development. The main conflict is section B of the policy, New Landscape Features. The inclusion of bunding and large linear blocks of woodland is not considered characteristic of the relevant Landscape Character Area and thus would cause harm to the visual setting of the land.
109. There is moderate conflict with the policy as a result of landscape harm.

##### *Policy LP30: Built Form*

110. Policy LP 30 requires that new development in terms of its layout, form and density should respect and reflect the existing pattern, character and appearance

of its setting. Local design detail and characteristics should be reflected within the development. All proposals should conform with various criteria.

111. These include that new development should “a) ...harmonise with both the immediate setting and the wider surroundings”. The proposed development reflects the character of Tamworth and the employment buildings to the south of the A5. It does not in any way harmonise with either Birchmoor or Dordon.
112. Criterion b) requires that proposals “make use of an enhance views into and out of the site both in and outside of the site”. As set out above, there would be numerous harmful impacts to existing views if planning permission were granted for the proposed development.
113. Criterion e) requires that proposals “reflect the predominant materials, colours, landscape and boundary treatments in the area.” As this is an outline application these are not yet fixed, but the indicative heavy landscape planting proposed is uncharacteristic of the area in which the appeal site is located.
114. There is a further requirement under criterion f) that proposals should ensure that the buildings and spaces connect with and maintain access to the surrounding area...” While access is provided, the proposed development does not connect with the landscape visually. As discussed above, the indicative landscaping scheme tries, for instance, to hide the industrial development behind a landscape bund to the north and to a large extent the east as well.
115. And criterion h) requires that proposals create a safe, secure, low crime environment...” At best it is questionable whether this criterion is satisfied.
116. Presumably the units themselves would be secure, but there is less assurance concerning the seemingly potential long “trim trail” along the western and northern boundaries of the appeal site. Several residents expressed concerns as to the safety of their homes in Birchmoor as a consequence of the route within the northern part of the site.<sup>22</sup>

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<sup>22</sup> See Weekes Appendices 4, 6, 7 and 13.

117. Overall, there is significant conflict with the policy.

### Highways

#### *Policy LP23: Transport Assessments and Travel Plans*

118. As discussed above, concerns were raised by the Council over the appropriateness of the Appellant's modelling and whether it adequately picks up movements. It is considered that local movements are not accurately depicted, and local residents have all voiced their concerns over congestion.

119. If the Inspector agrees that the modelling and impacts are not fully depicted, there will be conflict with this policy, which would likely be moderate.

#### *Policy LP27: Walking and Cycling Strategy*

120. The proposed development would deliver benefits to both walking and cycling and complies with this policy.

#### *Policy LP 29(6): Development Considerations (safe and suitable access)*

121. Policy LP 29 states that development should meet the needs of residents and businesses without compromising the ability of future generations to enjoy the same quality of life that the present generation aspires to. To this end development must meet various criteria:

122. Criterion 6 requires that development provides safe and suitable access for all. I understand that this has now been agreed with National Highways.

123. The obligations proposed by the Appellant to help protect Birchmoor residents from off-site parking and HGVs accessing the residential area, would have the effect that the proposed development would conform with the relevant sub-clause of the policy and the policy as a whole.

## **Dordon Neighbourhood Plan**

### Strategic Gap

#### *Policy DNPI: Sustainable Development*

124. This policy states that development should be located so that it can make a positive contribution towards the achievement of sustainable development. Development proposals are to be assessed in accordance with four criteria (a) to (d).
125. Criterion (a) states: “Density, layout and character that integrates with the part of the Parish in which it is located.” The proposed development would be within Dordon, but would have the character of Tamworth.
126. Criterion (b) states: Maintains the sense of space, place and separation on land to the west of the Parish, taking into account the amenity of Dordon residents”. As discussed above, the proposal does not maintain an appropriate sense of space, place and separation.
127. There is substantial conflict with the policy.

### Strategic Gap and Landscape

#### *Policy DNP4: Protecting the Landscape Character*

128. Policy DNP4 includes a series of criteria to protect landscape character. Several of these are concerned with reinforcing local distinctiveness. For instance, §4 requires that development should take account of the way in which it contributes to the wider character of the neighbourhood area. It further requires that the layout, scale and boundary treatment of any applicable development should seek to retain a sense of space, place and (where relevant) separation. Footnote 41 states that land to the west of Dordon is subject to Policies LP4 and LP6.
129. There is considerable conflict with this policy in terms of both landscape and the harm to the Strategic Gap.

## **Conclusion on the development plan**

130. Overall, there is significant conflict with the development plan as a whole

## **Other material considerations**

131. The proposed development would bring some benefits:

- a. **Employment Generation (construction and operation): moderate.** It is uncertain what jobs would be provided or how many. There is also the scope for significant use of robotics as the employment use is for logistics, where such operations are on the increase. In addition, at present there are significantly more jobs available than there are people in the Borough (a ratio of 1.36:1 was stated by Mrs Barratt in XIC), though this does not include Tamworth. As to Dordon and Polesworth, there were 10,000 jobs at the Core 42 and Birch Coppice sites before the St Modwen site was even constructed. This number far outstrips the population of Dordon and Polesworth and the benefit to those residents would be limited.
- b. **Revenue and Economic Spend: moderate.** This benefit cannot be afforded more weight in circumstances where it is not known who the operator would be, how many employees there would be, or from where they would come. There would be some direct and indirect revenue captured in the region, but it would be unlikely to provide direct help to existing businesses.
- c. **Provision of parking and facilities to HGV drivers: significant.** Despite significant weight being afforded, there remains uncertainty as to whether all the facilities stated can be accommodated within the 400m<sup>2</sup> building proposed. Toilets, showers and changing facilities have to be provided, and it would seem that a retail and hot food offering would be included. There is further reference to a gym and laundry facilities. It seems that there would either be insufficient space, or facilities would need to be compromised. There does not seem to yet be a plan for 24-hour access. Another planning application could be submitted to try resolve this. However, the Appellant



has said that it is not at present contemplating further development of the appeal site in the event that planning permission were granted.

- d. **Additional facilities to non-HGV drivers: limited.** While facilities would be available, these would be inconveniently located and the inclusion of barriers are not conducive to the suggestion that they would be available to others. Further, lorry parks are not renown for footpath connections within them. There would be a limited desire for most people to walk in the immediate vicinity of HGVs.
- e. **Enhanced public right of way connectivity: moderate.** Routes are essentially already available across the site either formally or informally for residents. Upgrading them provides a benefit, but it is noted that the upgrading the cycleways and crossings on the A5 will offer enhancements to public users. Mr Weekes therefore recalibrated this as a moderate benefit.<sup>23</sup>
- f. **Biodiversity net gain: moderate.** Mr Weekes revised his initial assessment to moderate noting that the gain will exceed 10%. It is noted, though, that many local residents have noted the presence of birds and bats. Any short turn loss of vegetation may displace these, including red listed species. Lighting from the scheme once built would further affect migration and feeding routes.
- g. **Training opportunities: limited to moderate benefit if considered as a separate benefit.** This overlaps with job creation. In addition, while there is the scope to help develop skills, as with other matters, the Appellant has provided little information.
- h. **Co-location of employment and housing: limited.** The employment is not especially close to the village, but residents could walk there. Alternative allocations in the Local Plan are directly next to each other (H1, H2 and E1 at Atherstone). Jobs are being focussed on an area in the Borough where

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<sup>23</sup> Weekes XIC.

they outstrip the size of the population, so travelling distances will not be reduced. There is further no information on the distances of workers to existing employment.

- i. **Encouraging active and healthy lifestyles: very limited.** Some modest upgrades to paths and cycleways are proposed. Most are already in existence.
- j. **Bus connectivity – neutral to very limited.** The bus routes already exist so incorporating a loop into the site simply reduces the distance slightly for employees on the site from this facility.
- k. **Sustaining the operation of the bus service – limited.** A financial contribution will be provided for four years. If it is not being used at present, it is unlikely to be a transport option used by employees on the appeal site.
- l. **Provision of orchard, open space and allotments: very limited.** There is overlap here with biodiversity, but if considered physically in terms of benefits of public facility provision then the benefit is modest. The open space and allotments replace existing facilities, which means the only addition is the orchard.
- m. **Zero emission goods: moderate.** Future proofing the site is commendable and shows what should be undertaken with developments. However, it is difficult to know exactly what will be required in the future, and whether this development would in fact deliver on this aspiration.
- n. **Decarbonising transport: limited.** There is no confirmation as to whether the rail will be used for containers, where employees would come from, or whether all energy requirements could in fact be generated on site if all the lorry fleet were transferred to electric.

132. Against this though there are a number of harms:

- a. **Visual impact and harm to the Strategic Gap: substantial.** As set out above the proposed development would have a substantial impact on the

landscape and on visual impact as well as to the Strategic Gap itself for all the reasons set out above;

- b. **Change to the quality of environment to public right of way: moderate.** The experience for people using the route will be substantially altered; it is currently open, rolling arable land. This would be changed entirely with substantial buildings constructed, extensive tree planting, and the introduction of bunding. The suggested upgrading to formal tarmacked footpaths, would further lead to a loss of rural sensation for users: it would no longer feel like a walk in the countryside, but one adjacent to a busy employment site in a suburban location;
- c. **Change in outlook/amenity to Birchmoor residents: moderate.** The open view will be completely removed, with clear views of the buildings until the vegetation grows. It is only because of the extensive planting that the impact is downgraded from substantial to moderate;
- d. **Loss of agricultural land: moderate.** Mr Weekes increased the weight that he originally afforded to this on the basis that it transpired from the Appellant's evidence that significantly more agricultural land would be either lost or used as pasture land with a more limited yield;
- e. **Facilitate delivery of Local Plan: potentially limited.** The Appellant argues that this is a benefit. However, if Mr Espino is correct in respect of his modelling of the A5 with the proposed development in place, the capacity for additional growth is reduced to around 400 dwellings, or 6% of local plan housing allocation (see above). With housing and employment focused along the A5 corridor, if this cannot be delivered due to capacity issues again occurring it is likely to hinder delivery of housing and other employment land;
- f. **Lighting: limited.** It is not possible to know what would be lit, when or how. But there would be at least some harm. At present the lights are turned off in Dordon and Polesworth at midnight. It would inevitable that the

employment buildings will be lit all night and that a degree of light pollution would emanate as a result;

- g. **Heritage (archaeology): limited.** There are remnants of Hall End Hall within the blue ownership line; technical reports require additional investigation, which is conditioned. From an archaeological perspective, any disturbance to finds is a harm, but the harm is considered to be limited in this instance.

133. There are further potential harms, though neutral weight is afforded:

- a. **Noise:** the bunds would mitigate much of the noise impact and the technical information shows that the development accords with policy on any noise increase to properties. There is still the potential for harm as hourly averages are required by policy and this ignores spikes, such as from reversing beepers on forklift trucks that could well go off at 3am disturbing residents. Similarly, it would be necessary to keep any refrigeration lorries running throughout the night. As the end user is not known, it is particularly difficult to assess the potential level of harm;
- b. **Air Quality:** the Appellant's Air Quality report is created all from modelling based upon existing Council tube locations, with the closest being at the Long Street roundabout at Dordon to the east. This showed unacceptable levels in 2019 and overall levels have been slowly reducing. However, it is accepted that there is no evidence as to what the levels are around Junction 10 and therefore neutral weight is afforded. The Local Rule 6 Party has suggested incorporating a new tube on the appeal site to measure this. This has the support of the Council's Environmental Health Officer, but the Appellant will not do it;
- c. **Flooding/drainage:** this is not an area of concern as the appeal site is in Flood Zone 1 and it is accepted that it will be possible to deal with any surface water issues;

- d. **Heritage (Built Environment):** it is accepted that the setting of any nearby listed buildings would not be directly affected;
- e. **Highways safety:** as it would seem that agreement would likely be reached this matter is likely to be neutral in the balance. If matters remain outstanding, then it will need to be reassessed;
- f. **Additional congestion/disruption to Birchmoor residents due to lost/stuck HGVs:** the Appellant has offered contributions in a unilateral undertaking to deal with “lost” vehicles and off-site parking in Birchmoor. While there are outstanding concerns in relation to the modelling for local highway routes, the Local Rule 6 Party is satisfied that the clauses in the unilateral undertaking resolve its concerns in relation to the above issues;
- g. **Aspiration to create the greenest business park in the West Midlands: neutral.** A stated aspiration in a planning appeal is encouraging, but it just an aspiration.

#### **Conclusion on the planning balance overall**

134. While the benefits may appear more numerous than the harms, this is not a numbers game. The harm to the development plan is considerable and there are no material considerations that come close to indicating that planning permission should be granted.

#### **CONCLUSION**

135. There has been a lot of apparent complexity in this appeal. However, the issues are essentially relatively straightforward. The Appellant’s case on need is fundamentally weak and falls well short of justifying the substantial harm that the development would cause, especially to the Strategic Gap.

136. For the reasons in these Submissions and in all the evidence of the Local Rule 6 Party, the Inspector is respectfully invited to dismiss the appeal and to refuse planning permission.

**Howard Leithead**

10 July 2024

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