

**LAND NORTH EAST OF JUNCTION 10  
OF THE M42 MOTORWAY  
NORTH OF THE A5,  
DORDON, WARWICKSHIRE**

**APP/R3705/W/24/3336295**

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**CLOSING SUBMISSIONS  
ON BEHALF OF THE  
LOCAL PLANNING AUTHORITY**

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**No5**  
BARRISTERS  
CHAMBERS

## **INTRODUCTION**

1. The starting point for the determination of this appeal is the Development Plan. The Appellant has abandoned its ill-judged attempt to claim the tilted balance applies in this case. As a consequence, the relevant test here is to determine whether the proposal complies with the Development Plan, unless material considerations indicate otherwise.
2. The Development Plan is very up-to-date, with the North Warwickshire Local Plan having been adopted in 2021 and the Dordon Neighbourhood Plan, having been adopted in December last year.
3. The proposal very obviously conflicts with the Development Plan in multiple ways including Policies LP2, LP4, LP14 and LP30 of the of the Local Plan and Policies DNP1 and DNP4 of the Neighbourhood Plan. The material considerations that the Appellant relies upon, most especially need, are very significantly exaggerated. And there are in fact numerous material considerations which weigh against the proposal, such as the large scale loss of Grade 2 best and most versatile agricultural land.

## **THE DEVELOPMENT**

4. Before turning to the Development Plan in detail, it is very important in this case to be clear about what it is for which the Appellant is seeking planning permission. It is over 1 million sq ft of floorspace for B8 warehousing.
5. To be precise, in accordance with condition 5, it is 1,076,400 sq ft (100,000 sqm x 10.764 sqm). Condition 7 limits any B2 industrial floorspace or Class E (g)(iii) (offices) to no more than 10% of the total. In other words, despite the description of development, the permission would allow for all of the development to be B8 warehousing.<sup>1</sup>
6. Beyond this there is very little detail. The Appellant seeks permission dependant on a single parameter plan.<sup>2</sup> There are two plots on the Plan: Plots A and B.

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<sup>1</sup> CD-ID6, Draft Planning Conditions 03/07/2024

<sup>2</sup> CD B6 and B37 – both showing the amended Parameters Plan (dated 31/10/2020). The amended version was submitted on 16 February 2022. The changes made relate to the drawing and to the key. It warrants careful scrutiny.

- a) **Plot A:** One rectangular plot measuring 582.72m in length and 292.49m min width. That is a rectangular plot of 170,439 sqm.
- b) This rectangular area is capable of accommodating a building which is nearly 600 m long or 300 m wide. In fact, 100,000 sqm would fill well over half the rectangular plot. It could be the 583 m in length and still be 172 m wide.<sup>3</sup>
- c) Nearly all of this plot can be built to a height of 117.8 m AOD. The Appellant has indicated that this means the building or buildings in this area will be 21m high.
- d) There is no parameter to define the actual height, and the actual height will be dictated by the extent of the cut into the ground. The Appellant has already indicated that there will be extensive cutting into the land.
- e) The lower part of the site is crossed on the OS Map by the 95m contour.
- f) Only the last 50 metres (51.52) of Plot A is shown as lower than 117.8m AOD. This area, shown as Plot A2 is around 5m lower, suggesting a 16m building, although it could be taller depending on the extent of cutting into the ground.
- g) The Appellant has not wanted to define the extent of the cutting into the ground nor limit the overall height of the building or buildings.
- h) **Plot B1:** provides scope for an additional building. Plot B1 is up to 111m high, just 2m lower than the building on Plot A2. It is 370m long and nearly 40m wide.<sup>4</sup>
- i) **Plot B2** is much lower at 102 meters AOD and is where the entrance hub building is intended to be accommodated.

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<sup>3</sup> 171.6m wide (100,000 / 583m = 171.6m)

<sup>4</sup> One length is shown as 370,70 m and the length is 373.75m (240.20m + 133.55m) and the width is shown as other as 37.91m

- j) Plot B1 is a real curiosity in this case. It has been presented as a truck stop area on the indicative masterplan and in other documentation. Yet the Appellant seeks permission for a height of 111m AOD which is easily capable of accommodating a 14m high building, if Plot A1 is 21m (more if there is more cutting into the ground).
- k) Plot B1 also does not extend as far up the hill as Plot A1, so it would need far less cut to achieve that height of 14m.
- l) Such long thin buildings are used as double docking facilities, as can be seen by DPD's new building at Hinckley, down the road on the A5 – site 75.<sup>5</sup>
- m) This concern was raised by the Council in the conditions session. The Appellant suggested that this height of 111m AOD was because of the contours in the land. But Plot B1 allows for a building which is only 6m lower than the 21m building allowed on Plot A1.
- n) It is very curious why a surface level car park for a Truck Stop would need to be only 6m below the height of tallest 21m building. Indeed, the photograph on page 21 of the Design Guide refers to ***“Building heights to be reduced in the north (Plot A2) and east (Plot B1 and Plot B2).”*** (Our underlining).
- o) It may or not have been the Appellant's intention to seek to put a building there. But which it is matters not. The fact is a 370m long building is being sought here which could be 14m high.
- p) The Appellant has asked for consideration of a split decision, but it has not sought to amend the redline or to change the landscaping into this area. If the truck stop was removed through a split decision or voluntarily, then it is important to recognise that a building 370m long, 37.9m wide and 14 m high could be built there because that is what the Appellant is seeking permission for.

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<sup>5</sup> CD-36/B, NWBC Rebuttal Employment Matters, Appendix 2, part 4, pg 35

q) The building with those parameters depicted on Plot B1 has not been shown on the photomontages.

7. The Appellant was free to submit a Parameters Plan which showed a different type of development. It could have submitted a Parameters Plan which matched its Indicative Masterplan. But it did not.

8. The Parameters Plan was amended during the course of the application. So it is not the case that the Appellant lacked the appetite or enthusiasm to make amendments. It is simply that the amendment it chose to make was to remove the limitations on actual height, such as its boundless enthusiasm for an ever larger scale of building or buildings. The original Parameters Plan contained these words in the key:<sup>6</sup>

**“Plot A1 - Employment (B2/B8/E) up to 21m in height/117.8m AOD**

**Plot A2 - Employment (B2/B8/E) up to 11m in height/112m AOD**

**Plot B1 - Lorry parking (Sui Generis) up to 10m in height/111.5m AOD**

**Plot B2 - Hub Office up to 8m in height”**

9. But in the amended version the actual heights of the buildings are removed. That is to say, the 21m height for the building or buildings on Plot A1 is removed. The 11m height on Plot A2 is removed. And the 10m building height which is referred to as “a lorry park” removed. Curious isn’t it? Why would a lorry park need to be 10m in height? This measurement cannot refer to the amenity building, as that is said to be 400sqm, whereas the building permitted by Plot B1 is 370m long and nearly 38m wide.

10. The wording on the amended Parameters Plan reads as follows in respect of Plot A1, A2, B1 and B2:<sup>7</sup>

**“Plot A1 - up to 117.8m AOD**

**Plot A2 - up to 113m AOD**

**Plot B1 - up to 111m AOD**

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<sup>6</sup> CD-A5, Parameters Plan

<sup>7</sup> CD-B6, Amended Parameters Plan

## **Plot B2 - up to 102m AOD"**

11. This means the buildings are not limited in terms of their overall height. That is important because Mr Smith openly referred to cut of 8 metres in his evidence.<sup>8</sup> But in fact there is no limitation on the size of the cut on the Parameters Plan.
12. This is a client-led proposal, not a landscape-led or design-led approach.
13. It is to be noted that the proposed use and the Use Class have also been removed from the amended Parameters Plan, meaning there is no limitation on the way in which each area is proposed to be used.
14. There are no parameters plans for the extent of the depth of the site (i.e. cutting into the ground), the landscaping, the bunding or the depth of trees.
15. Landscaping is a reserved matter to be determined at a later stage. The detail provided by the Appellant in its various drawings and illustrations is therefore not fixed.
16. Condition 8 does seek to link the proposal to the Design Guide.<sup>9</sup> The Appellant wants there to be a need only for broad accord with this. Mr Hann maintained that view at the conditions session yesterday: that remains the Appellant's preference. The Council has been clear that it should be "in accordance."<sup>10</sup> But plainly that means there is still scope for variation.
17. The Design Code is a lengthy document. It contains lots of detail about energy efficiency and access. The concept of "Design Parameters" pervades the document. But there is also reference to "EIA Development Parameters". The EIA Development Parameters are shown in Section 2.2. These refer to the width of the landscape buffers. Section 2.5 then refers to Design Parameters.<sup>11</sup>

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<sup>8</sup> Cross examination of Mr Smith, 20 June 2024

<sup>9</sup> CD-B35, Revised Design Guide PL6

<sup>10</sup> Conditions and S106 round table discussion, 4 July 2024

<sup>11</sup> CD-B35, Revised Design Guide PL6

18. The Appellant has produced a document showing the footpaths and the bridleway covered in hardstanding and with retaining walls.<sup>12</sup> Yet the case presented at Appeal is that they might not look like that after all, and could be left as earth tracks. The ambiguity is troubling as the Appellant seems to want to argue for the benefit of hardstanding and engineered structures for the purpose of making these better walking routes, usable in all weathers, but at the same time does not want to accept the negative impact of the inevitable suburbanisation that such works would bring.
19. The Appellant has also been very reluctant to provide visualisations of the proposal. This was resisted for a very long time.<sup>13</sup> In other words, they are not keen for people to see what it is for which they are actually seeking planning permission to build.
20. The Appellant only relented to a degree on the visualisations by attempting to tie them to an Indicative Masterplan.<sup>14</sup> The Indicative Masterplan has, of course, absolutely no status in this appeal. So the visualisations of the three buildings with the curved roof lines have no relevance in this Inquiry. They have nothing to do with the planning permission being sought in this case. They are also completely at odds with the huge buildings shown in the DAS. They are a complete irrelevance. Worse still, they carry with them the very real prospect of badly misleading people about what is proposed. Imagine a member of the public looking at those plans and expecting to see those buildings erected if permission is granted, subsequently being faced with a building or buildings similar to those shown in the block photomontages, which have only been seen at the Inquiry.
21. The fact the visualisations submitted with the Application were tied to the Indicative Masterplan which carries no binding status is another revealing way in which the Appellant has been keen not to be tied to any real detail of the proposal.
22. The Appellant finally produced photomontages which match the proposed parameters, but they are still unrealistic because they are deliberately coloured to match the sky and

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<sup>12</sup> CD-B16, Proposed Connectivity Plan – Route Type and Surface

<sup>13</sup> Evidence in Chief of Ms Oxley, 18 June 2024

<sup>14</sup> CD-B28, Indicative Masterplan INST + Specification

show no signage. There is no use of any different – often darker – colours, such as those commonly seen around doorways and docking bays.<sup>15</sup>

23. The truth is that these images, whilst still not fully representative, are the nearest we get to what the proposal for which planning permission is being sought might look like. The reluctance to produce them is more revealing than anything else in this Inquiry. That is because they immediately reveal how completely unacceptable this proposal would be in the Strategic Gap.
24. It is important to note that the Appellant has still refused, point blank, to provide any visualisations from the entranceway on the A5, or from Viewpoint 3 on the bridleway next to the site. In other words, what is proposed is even more dramatic and extraordinarily vast even than what is shown in the images the Appellant has eventually provided.
25. This is what this appeal is about. A huge, vast, enormous building or buildings, of the kind found on Birch Coppice, but even taller, because the Appellant seeks buildings which are at a height of 21m (and possibly higher, if there is more cutting into the ground). This building or buildings will impose themselves, not just over the appeal site, but over what would remain of the Strategic Gap north of the A5 between the new edge of Tamworth (now located well east of the M42) and Dordon.
26. This building or buildings could take the following configurations:
  - a) one truly enormous building 583m long and 172m wide;
  - b) two large vast buildings of roughly half that size (roughly 300m x 165m), but covering much of Plot A, as shown repeatedly in the illustrations in the DAS; or
  - c) three or four vast buildings with the main one or two still very similar to the above, but with an additional 319m long thin building in Plot A and/or a 370m long, thin building on Plot B1.

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<sup>15</sup> See the buildings on the St Modwen development for examples



27. The fact that Mr Hann could not bring himself to accept that even the single building of 583m by 172m would be a very large building reveals everything one needs to know about whether the Appellant's team have properly understood and acknowledged the sheer magnitude of what is being proposed here.<sup>16</sup>
28. This is new development of the biggest scale possible. Buildings in the UK do not get bigger than this. They are truly enormous.

### **THE DEVELOPMENT PLAN**

29. The English Planning System operates on a plan-led approach.
30. The Development Plan comprises:
- a) The North Warwickshire Local Plan 2011 to 2033 (adopted September 2021)<sup>17</sup>
  - b) Dordon Parish Neighbourhood Plan 2022-2033 (adopted December 2023)<sup>18</sup>
31. Both elements of the Development Plan are unquestionably up-to-date. The claim the tilted balance applies in this case, such that the grant of permission should be made easier, was wholly fallacious. Mr Hann was wise to concede this point during his evidence in chief.<sup>19</sup> He was not, apparently, aware of the relevant law.
32. Accordingly, and as required by the plan-led system, applications for planning permission *must* be determined in accordance with the development plan unless material considerations indicate otherwise.<sup>20</sup>
33. This proposal is not allocated in the Development Plan.
34. The proposal is, in fact, completely contrary to the Development Plan. Reasons for refusal one and two identified no less than seven separate policies to which the proposal is in conflict.<sup>21</sup>

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<sup>16</sup> Evidence in Chief of Mr Hann, 3 July 2024

<sup>17</sup> CD-F1, North Warwickshire Local Plan

<sup>18</sup> CD-F9, Dordon Neighbourhood Plan

<sup>19</sup> Evidence in chief of Mr Hann, 3 July 2024

<sup>20</sup> Section 38(6) of the Planning and Compulsory Purchase Act 2004

<sup>21</sup> CD-E59, NWBC Report Board 04032024, pg 23

35. An understanding of the full extent of the conflict with the Development Plan should begin with understanding the context. As is set out at the Spatial Portrait at the start of the Local Plan “**North Warwickshire is a rural Borough...**”<sup>22</sup>.
36. It has “**over 50 settlements in the area covering 110 square miles...**” The largest of which has a population of only 10,000 (Atherstone with Mancetter).
37. There are three market towns in the Borough:
- a) Atherstone with Mancetter,
  - b) Polesworth with Dordon; and
  - c) Coleshill.
38. The remaining settlements are all simply villages and hamlets.
39. This is rural England: a landscape of market towns, villages and hamlets set each within an agricultural countryside.
40. The proposal brings with it huge, vast buildings into the open countryside. The entire appeal site sits outside any settlement boundary. Accordingly, it is in the open countryside.
41. **Policy LP2 Settlement Hierarchy** lists the various different levels of settlement and then makes clear, “In all other locations development will not generally be acceptable, albeit as set out above that there may be some instances where development may be appropriately located and would enhance and maintain the vitality of rural communities under this category.”<sup>23</sup>
42. **Policy LP14 Landscape** requires that “**...development should look to conserve, enhance and where appropriate restore landscape character...**” It is absolutely inconceivable that the proposal would achieve this. Yet Mr Hann persists in claiming the proposal is in conformity with the Development Plan.<sup>24</sup>

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<sup>22</sup> CD-F1, North Warwickshire Local Plan, pg 9, § 2.2

<sup>23</sup> Ibid, pg 27

<sup>24</sup> Ibid, pg 48

43. **Policy LP30 Built Form** requires amongst other things to “...harmonise with the immediate setting and wider surroundings”; and “make use of and enhance views into and out of the site both in and outside the site.” Again there is simply no way this proposal can be said to meet these policy requirements.<sup>25</sup>
44. The main focus of this Inquiry has been on the extent of the harm to the **Strategic Gap** under **Policy LP4** and the support gained under **Policy LP6 for Additional Employment Land** and a Truck Stop under **Policy LP34: Parking**, but it is important to recognise that the second reason for refusal identifies no less than six policies with which the proposal conflicts. There are a range of significant adverse landscape and visual effects which fail to respect or respond to the key characteristics of the surrounding area, as is made clear from the words of the second reason for refusal itself.<sup>26</sup>
45. Included amongst them is **DNP4 Protecting the Landscape Character**. This policy is contained in the Dordon Neighbourhood Plan.<sup>27</sup> It expressly requires that “where appropriate, development proposals should demonstrate the way in which they have taken account of the actions identified in the landscape management strategies recommended for the Landscape Character Area in the NWBC Landscape Character Assessment.<sup>28</sup> This expressly seeks to “**maintain a broad landscape corridor to both sides of the M42, introducing ot (sic) small to medium sized blocks of woodland planting using locally occurring native species would be appropriate within this corridor**”.
46. Mr Smith rightly acknowledges the proposal could not achieve this objective of maintaining a broad landscape corridor to the side of the M42.<sup>29</sup> And that is plainly right. So, there is direct conflict here with **DNP4 Protecting the Landscape Character**.
47. Later on in the Inquiry, Mr Hann attempted to undermine his own witness’s clear answer on this, by suggesting that this objective did not apply because of the motorway service

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<sup>25</sup> Ibid, pg 70

<sup>26</sup> CD-E59, NWBC Report Board 04032024, pg 23

<sup>27</sup> CD-F9, Dordon Neighbourhood Plan, Adopted December 2023, pg 28

<sup>28</sup> CD-G1, North Warwickshire Landscape Character Assessment and Capacity Study, August 2010, pg 42

<sup>29</sup> Cross examination of Mr Smith, 20 June 2024

area (“MSA”) on the other side of the M4. But there is no suggestion this objective does not apply to undeveloped land in locations where there is already some built development on the other side of the road. Mr Hann also tried to suggest that the long, continuous screen planting, which stretches the length and width of the site, being 600m long and 500m wide, might fall within the definition of “small to medium sized block of woodland.”<sup>30</sup> It patently does not.

48. There are multiple breaches of Development Plan policy here. That is hardly surprising, given the sheer scale of what is proposed in the context of a development to be sited on agricultural land, in the open countryside, in rural borough; where there are landscape guidelines seeking to maintain a broad landscape corridor; and a Strategic Gap seeking to maintain the separate and distinct character of settlements.

49. There is very obviously no conformity with the Development Plan or the Development Plan as a whole. The Appellant’s case must be predicated on material considerations, which are considered below. The Appellant’s case is that it complies with both LP4 and LP6. The Council is firmly of the view the proposal conflicts with LP4 and doesn’t satisfy the criteria in LP6.

50. We now turn to consider the Inspector’s Main Issues.

## **INSPECTOR’S MAIN ISSUES**

### **Issue (i): The Effect of the Proposed Development on the Strategic Gap Between Tamworth and Polesworth with Dordon**

51. The Strategic Gap has a significant local history. It was first described in policy terms in 1989, as an Area of Restraint and, later, a Meaningful Gap, and has appeared in the areas planning policy documents ever since.<sup>31</sup> It has real importance to local people.

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<sup>30</sup> Cross examination of Mr Hann, 3 July 2024

<sup>31</sup> 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.

52. The Gap was recognised in terms of policy protection in the 2014 Core Strategy, but its extent and boundaries were not defined. The policy now, for the first time, finds proper expression, definition, geographical extent and defined boundaries in Policy LP4 of the 2021 Local Plan.

53. The wording of Policy LP4 is really important:<sup>32</sup>

**“In order to maintain the separate identify of Tamworth and Polesworth with Dordon, a Strategic Gap is identified on the Policies Map in order to prevent their coalescence. Development proposals will not be permitted where they significantly adversely affect the distinctive, separate characters of Tamworth and Polesworth with Dordon. In assessing whether or not that would occur, consideration will be given to any effects in terms of physical and visual separation between those settlements.”**

54. The purpose of the policy is provided in the first line of the policy. It is two objectives both set out after the words “in order to”:

- a) To maintain the separate identity of Tamworth and Polesworth with Dordon
- b) To prevent their coalescence.

55. The key operative part for decision taking is the second sentence. It creates a threshold test. The threshold is **“significantly adversely affect”**. But this threshold is not focussed on the existence or otherwise of coalescence. It is focussed instead on the maintaining **“the distinctive, separate characters of Tamworth and Polesworth with Dordon.”** Significantly adversely affecting that means there is a clear and straightforward breach of the policy.

56. LP4 is therefore not just a policy seeking to prevent coalescence. It is also a policy which seeks to maintain the identity of Polesworth with Dordon and keep it separate from the identity of Tamworth.

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<sup>32</sup> CD-F1, North Warwickshire Local Plan, pg 32

57. The third sentence explains what should be taken into account when making that judgment. It expressly requires “**consideration of any effects in terms of the physical and visual separation of those settlements.**”
58. The Appellant’s attempts to focus attention on purely physical coalescence are therefore misplaced. The policy also requires consideration of what it is that provides the sense of separation between the two settlements, which is to be assessed by consideration of both the physical and visual separation.
59. So, there are two key questions:
- a) What are the distinctive, separate characters of Tamworth and Polesworth with Dordon?
  - b) What effect does the development have on the physical and visual separation of them?

***What are the distinctive, separate characters of Tamworth and Polesworth with Dordon?***

60. As the Inquiry has heard, the two settlements have very different characters. Tamworth is a large urban area with a population of around 80,000 people and large-scale industrial buildings, set within its own urban authority area. It grew rapidly in the postwar years as it absorbed housing overspill from the West Midlands conurbation. Its urban characteristics are accentuated by the fact it is located alongside the M42 motorway and is dissected by the A5 trunk road which runs right through the middle of the urban area. Being located on both the intersection of M42 motorway and the A5 trunk road, it has seen significant expansion of the logistics industry. It is unashamedly a large urban area.
61. By contrast, Polesworth with Dordon is agreed to be a market town set within a rural agricultural landscape.<sup>33</sup> Market towns are the quintessential urban form of rural areas, as much defined by the rural setting as the town form itself. Like most market towns Polesworth with Dordon has a historic centre.

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<sup>33</sup> Evidence in Chief of Mr Collinson, 2 July 2024. Cross examination of Mr Hann, 3 July 2024

62. As noted above, the context here is important. North Warwickshire is very clearly a rural borough. This point is fully drawn out in the Spatial Portrait at the start of the Adopted Local Plan, which highlights its **“open, rural character which is unique compared to many of the surrounding urban areas.”**<sup>34</sup> This rural identity is important to the Borough and is something the Local Plan seeks to preserve.
63. Even as a market town, Polesworth is modest in scale and remains as such, even if one includes Dordon.
64. It was agreed between the parties that the thrust of this protection was largely in one direction; to protect Polesworth with Dordon’s rural setting from Tamworth’s eastward expansion.<sup>35</sup>

#### *The Character of the Village of Dordon*

65. The Inspector in the St Modwen appeal (“the St Modwen Inspector”) focussed specifically on Dordon, recognising that this was the main part of ‘Polesworth with Dordon’ which is visible in and around the A5.<sup>36</sup> As Mr Collinson made clear during his oral evidence, Polesworth Secondary School is visible from the appeal site and the A5, but most of what one sees is Dordon.
66. The reasoned justification supporting the policy itself also makes specific mention of Dordon, separate from Polesworth.<sup>37</sup>
67. Mr Hann accepted that Dordon, to the extent that it is a separate entity, is described as a village.<sup>38</sup>
68. As a separate entity Dordon is a settlement with the following:
- a) It is a linear settlement focused mainly along one road running north/south
  - b) Along its long axis, it has open countryside on both sides of the village
  - c) It sits in an elevated position on a prominent ridgeline.

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<sup>34</sup> CD-F1, North Warwickshire Local Plan 2021, §2.2

<sup>35</sup> Cross examination of Mr Hann, 3 July 2024

<sup>36</sup> CD-F1, North Warwickshire Local Plan 2021 §23, see his focus on “the single row of houses on the southern side of the A5” (at Dordon) and §35 35 “the proposal would respect the separate identify of Dordon.”

<sup>37</sup> CD-F1, North Warwickshire Local Plan 2021, last line of §7.27

<sup>38</sup> Cross examination of Mr Hann, 3 July 2024

69. From the west, the village is very visible due to the combination of all three factors.
70. It follows that a key part of what gives Polesworth with Dordon its distinctive character is its market town status, set within open countryside. And what gives Dordon its own distinctive character is its status as a separately identifiable village, located on a prominent ridgeline, set within open countryside and highly visible, especially from the west.
71. Countryside in this country is valued. It is recognised for its intrinsic character and beauty.<sup>39</sup> The countryside north of the A5 between the M42 and Dordon is, despite the urban influences around it, very notably agricultural. The agricultural use persists and, given its very open nature, one gains appreciation of the width of the Gap. It is an area of captive countryside which provides relief from the very obvious urban influences to the south and west, and the village itself to the east.
72. Dordon is clearly distinct from Tamworth, in terms of its scale, function and surroundings. The two are separate. But this separation is already compromised by the extensive industrial-scale logistics developments south of the A5. This development started with the regional logistics site at Birch Coppice which initially ran next to the road but has since expanded on a vast scale, extending to a far greater depth, and is now flanked on each side by Core 42 and the St Modwen logistics park.
73. A gap remains between St Modwen and Birch Coppice, but a large part of that land is allocated for employment development. What remains is largely the route of a gas pipeline, and St Modwen are looking to potentially re-direct that, in order to expand their park further east through the development plan process.
74. The sheer scale of what has been built to date is extensive. With an almost continuous line of development along the A5, one might be forgiven for thinking that Tamworth had already extended well across the M42 all the way to Dordon. Yet, in allowing the appeal on what remained of the Meaningful Gap south of the A5, the St Modwen Inspector took the view **“Birch Coppice is a large free standing employment**

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<sup>39</sup> CD-F11, National Planning Policy Framework 2023 §180



**allocation to the south.”** He plainly saw it as separate from Polesworth and Dordon. His justification for that being that **“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.”** He was supported in that view by the Council’s policies map.<sup>40</sup> He went on to say **“Although recent expansion has brought development close to the existing row of houses accessed from the pedestrian footbridge, for the purpose of the Core Strategy it does not form part of either settlement.”**<sup>41</sup> That recent expansion was Core 42. So, his view at the time was that Birch Coppice was separate from both Tamworth and Dordon. Whether that holds true now with the presence of the St Modwen development is a moot point. There is a lot of development along that road.

75. Yet the Local Plan Inspector found the Strategic Gap policy sound, self-evidently accepting that Dordon has a separate identify from Tamworth. Why is that so, despite all the huge development along the A5? That is purely because of the land north of the A5.
76. Indeed, the very fact that the land north of the A5 remained open and undeveloped seems to be the main justification for the St Modwen Inspector allowing the appeal, despite the Core Strategy recognising a Meaningful Gap between the Tamworth and Polesworth with Dordon.
77. The land between Tamworth and Dordon has been subject to huge, continuing, pressure of development, with the result that the only meaningful area of open land protecting Dordon from Tamworth is the land owned by the Hodgetts family: the appeal site and the blue land. This is because of the very large-scale industrial activity south of the A5.
78. The development of Birch Coppice, Core 42 and St Modwen as huge logistics areas present the Appellant with a dilemma. The Appellant relies upon these huge strategic logistics schemes to make its case that the appeal site is heavily influenced by them and what results is a fragmented landscape with industrial and urban fringe land uses.<sup>42</sup> The

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<sup>40</sup> CD-F1, NWBC Local Plan Policies Map

<sup>41</sup> CD-K2, Appeal Decision APP/R3705/W/15/3136495, Land south east of the M42 Junction 10, Tamworth, Warwickshire, B78 2EY, §23

<sup>42</sup> CD-G1, North Warwickshire Landscape Character Assessment and Capacity Study August 2010. Character Area 5: Tamworth Urban Fringe pg 40

Appellant expressly relies on this to show that the landscape sensitivity is medium/low.<sup>43</sup> Yet the Appellant must simultaneously try to argue that bringing that large scale industrial development north of the A5 and east of the M42 within the Strategic Gap, will not itself have any real urban influence and fragmented effect on what remains of the significantly narrowed Strategic Gap.

79. Therein lies the fundamental contradiction in the Appellant's case. The Appellant wants the Inspector to believe that a 21m high building or buildings, possibly as long as 583m, will not have such influence. Yet they significantly adversely affect the Strategic Gap, not just because of the obliteration of the appeal site itself beneath vast and enormous strategic development, but because of the influence it will exert over the rest of what remains.<sup>44</sup> This building or buildings will dominate the surrounding agricultural land of the Gap. It will simultaneously significantly narrow the Strategic Gap, removing a vast swathe of it south of the village of Birchmoor, whilst also imposing itself on the remaining area to the east.
80. Dordon itself is on the ridgeline above the appeal site, so the influence of this enormous development on the setting and character of Dordon will be accentuated. Added to which the intervening land has a very open character and is plainly very open from a visual perspective.
81. The landscaping proposed seeks to foreshorten those views, changing the character of the area so that there is continuous screen planting. Yet, even in 20 years' time or more the buildings will still be visible, with the tops rising above the screen of trees next to bridleway and very evident from Dordon itself, given its elevated position.
82. If this appeal is allowed, Dordon will be seen in the context of the large scale industrial development located on both sides of the A5. As Mr Smith fairly acknowledged, THE proposal will be seen as part of Tamworth.<sup>45</sup>

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<sup>43</sup> Evidence in Chief of Mr Smith, 20 June 2024. Also see CD-A9.6 Appendix 10.2, LVIA Methodology and Tables, pg 28; CD-30/A, Appellant's Proof of Evidence – Landscape visual and strategic gap matters, §4.28, §4.29, §4.72, §4.132, §7.24, §8.12

<sup>44</sup> Evidence in Chief of Mr Collinson, 2 July 2024

<sup>45</sup> Cross examination of Mr Smith, 20 June 2024

83. Tamworth will extend eastwards, north of the A5 to a very significant degree. This will manifest itself in various different ways:

- a) It will be evident from the M42 roundabout travelling east, where present views across the appeal site of Dordon on the ridgeline will be blocked.
- b) It will be evident from the huge logistics building or buildings north of the A5, as seen when travelling east along the A5, whether that be by vehicle, bicycle or on foot.
- c) It will be evident at the huge entrance of the appeal site, stripped of its tall hedges and with its new, signalised, four-way movement junction, as seen when travelling along the A5 by vehicle, bicycle or on foot.
- d) It will be evident from the influence this huge building or buildings will exert over the adjacent land to the east.
- e) It will be evident from the full length of the bridleway.
- f) It will be evident from the footpaths in the Strategic Gap north of the A5.
- g) And it will be evident from Dordon itself, in the same way that the Tamworth Logistics Park built by St Modwen is, yet it will be far closer, much taller and not separated by any strong defensible boundary like the A5 or the M42.
- h) The St Modwen buildings are in fact only 80,000 sqm.<sup>46</sup>
- i) The St Modwen buildings are also spread over two sites either side of Trinity Road, so that what one sees on the main St Modwen site facing the A5 is actually far less than 80,000 sqm. What the Appellant proposes is 100,000 sqm on the appeal site, nearly all of it up to 21m high, if not higher depending on the cut of the land.

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<sup>46</sup> CD-K2, Appeal Decision ref APP/R3705/W/15/3136495, 28 November 2022, See condition 7 on the appeal decision. The 20,000 sqm in condition 8 is merely a limitation on B1(c) and B2 within the context of the 80,000 sqm allowed through condition 7. It was King's Counsel's mistake to read that 20,000 sqm as anything other than a simple restriction on B2 and Class E.

84. The Appellant must present the site as strongly influenced by its surrounding commercial development in order to more easily permit the development that they wish to promote. They must simultaneously insist that Dordon will retain its rural character, even with 100,000 sqm of new development, 21m high, on the other side of the A5, so as not to suggest this development will significantly adversely affect the distinctive, separate character of Dordon.

85. Examples of this contradiction abound. On the one hand, both Mr Hann and Mr Smith have agreed that Dordon is a village.<sup>47</sup> However, at the same time they have been unwilling to agree that it is in a rural setting,<sup>48</sup> despite being surrounded by countryside and Birch Coppice being agreed to be freestanding.<sup>49</sup> In order to persuade the Inspector to permit development in the Strategic Gap, they must devalue it. They have done so by making vague allusions to its being “influenced” by the Big Box development on the Gap’s edges,<sup>50</sup> or its “transitional” character.<sup>51</sup> However, the problem with this approach is it relies upon the proposition that Big Box sheds exert significant influence over adjacent farmland.

86. The result of this ambivalence is a strangely incoherent position with regards the role played by the countryside to the west of the village of Dordon: it is said to be simultaneously “heavily influenced by the industrial buildings” and yet the appeal proposal, we are led to believe, will not have the same effect.<sup>52</sup>

### ***Strong Defensible Boundaries***

87. Worst still, the Big Box sheds both Mr Hann and Mr Smith rely upon are:

- a) on the other side of the A5, which is a four lane trunk road widening out to 6 lanes in places; and
- b) on the other side of the M42 motorway.

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<sup>47</sup> Cross examination of Mr Smith, 20 June 2024; Cross examination of Mr Hann, 3 July 2024

<sup>48</sup> Cross examination of Mr Smith, 20 June 2024; Cross examination of Mr Hann, 3 July 2024

<sup>49</sup> Para 23 of the St Modwen Appeal decision.

<sup>50</sup> Cross examination of Mr Hann, 3 July 2024

<sup>51</sup> Cross examination of Mr Smith, 20 June 2024

<sup>52</sup> As an example of this equivocation, Mr Hann said in cross examination “It depends on how you define the land. Some is countryside, some playing fields and other uses. It is in agricultural use. In terms of its intrinsic character and beauty it is highly influenced by two trunk roads and influenced by industrial buildings. It is clearly influenced by noise, activity, lights. It is not bucolic. It feels like open land sitting at the cusp of development.”

88. This is where the greatest problems lie for Mr Hann and Mr Smith. The Strategic Gap is very well defined by strong defensible boundaries. Nowhere in the Gap is this more clear than in the south-western section. The combination of the M42 and A5 gives this area the strongest possible boundary in the whole of the Gap. Mr Smith railed against the idea of either road being a strong defensible boundary. That was unfortunate.<sup>53</sup>
89. In cross-examination Mr Smith back-peddled a little, but still clung in part to the idea that these boundaries were compromised.<sup>54</sup> Yet it is as plain as a pikestaff that both roads are the very definition of very strong defensible boundaries.
90. It is actually the attempt to deny this which is most revealing. The fact the proposal seeks to jump not just one, but two archetypal strong defensible boundaries in one go, which the Appellant's witness feels the need to downplay, speaks volumes. The Strategic Gap boundaries have been carefully chosen. Breaching them is therefore a matter of concern. The whole basis of the St Modwen case was that it was the area contained by those two national trunk roads which was the key part of the Gap in this area. More on that below.

### *The Scale of the Proposal*

91. The Council sought to limit development in the Strategic Gap to small-scale development, not causing any visual intrusion. The wording proposed by the Council was that **“all new development within this gap should be small in scale and not intrude visually into the gap or physically reduce the size of the gap.”** This is explained in the Local Plan Examination Inspector's report.<sup>55</sup>
92. Inspector Bristow rejected that wording. He considered this insertion was disproportionate to the Policy's aims and **“was likely to be the case in respect of any development whatsoever.”** He therefore removed this text.<sup>56</sup>

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<sup>53</sup> Cross examination of Mr Smith, 20 June 2024.

<sup>54</sup> Cross examination of Mr Smith, 20 June 2024

<sup>55</sup> CD-F15, North Warwickshire Local Plan 2021 Inspector's Report, §241

<sup>56</sup> Ibid

93. By this deletion, the Inspector sought to ensure that there was not an embargo on development in the Strategic Gap. Development which was more than small-scale would be permissible, as would development that visually intruded into the Strategic Gap – demonstrating that visual intrusion was likely from any scale of development if located in the Gap.
94. The Appellant’s response to that however has been breathtaking. Its interpretation of removing the reference to “small-scale” has been to propose a strategic employment site to meet the need of the West Midlands region.
95. Policy LP6 is drafted to admit the possibility of strategic employment land. It contains no such support or encouragement. Indeed, even within the context of Policy LP6 (discussed below) which permits decision makers to give significant weight to employment if there is an immediate need, it is made expressly clear in the reasoned justification that this support for additional employment land **“does not automatically override other policies”** including, expressly, LP4.<sup>57</sup>
96. Meeting need for additional employment land could be achieved in part by a single building of a relatively modest size. The Appellant’s own condition suggests that even buildings of 9,290 sqm could address immediate strategic logistics need. So why does the proposal need to be 100,000 sqm? And why does it need to be 21m in height, with no actual constraint on total building height, given the cut is not limited?
97. Mr Hann could give no answer as to whether the directors of the Appellant company had given any thought of a smaller proposal.<sup>58</sup> Indeed, there appears to have been no consideration of disaggregation at all. This was put to Mr Hann but again he could not say whether his clients had given that option any consideration.<sup>59</sup> Given the indicative masterplan shows 3 buildings of around 30,000 sqm, that seems very odd.<sup>60</sup> LP6 does not require significant weight be given only to Strategic Employment Sites: the title of the policy, the reasoned justification and the wording of the policy itself, simply relate to additional employment land. The reference to Strategic Employment Sites Study only relates to the area of search.

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<sup>57</sup> CD-F1, North Warwickshire Local Plan, §7.46

<sup>58</sup> Cross examination of Mr Hann, 3 July 2024

<sup>59</sup> Ibid

<sup>60</sup> CD-B28, Indicative Masterplan

98. Mr Collinson is clear that the “**mass, scale and size**” of this proposal will leapfrog the M42 and impose itself on the Strategic Gap and, in so doing, will have significant adverse impact on the identities and separate characters of Tamworth and Polesworth with Dordon.<sup>61</sup> In his view, the development will clearly significantly adversely effect the settlements’ physical separation on the ground, transgressing the clear and defensible boundaries of the M42 and the A5 which currently protect the Strategic Gap from Tamworth’s eastward sprawl,<sup>62</sup> and changing the whole context of Dordon by greatly narrowing a gap which, at present, is only a mile wide and is already significantly compromised by the vast developments south of the A5, including the St Modwen development.

99. The Appellant, of course, should have appreciated this was an inevitable conclusion.

### *The St Modwen Appeal Decision*

100. With each successive permission to develop, the value of the undeveloped land has increased. During the Appeal which permitted the development for the Tamworth Logistics Park (the St Modwen site), the need to maintain the Strategic Gap was one of only two issues at Inquiry.<sup>63</sup> The Inspector considered that Tamworth and Dordon were two clearly separate settlements. In his view “**the expanse of farmland between the M42 and the main body of the settlement north of the A5 differentiates each settlement**”<sup>64</sup>

101. When considering whether a Meaningful Gap would remain if the St Modwen development were to be allowed, the Inspector considered that it would.<sup>65</sup> He focussed again on the importance of what will remain:

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<sup>61</sup> Evidence in Chief of Mr Collinson, 2 July 2024

<sup>62</sup> Ibid

<sup>63</sup> At that time known as the Meaningful Gap, discussed at §§19-20 of the Appeal decision, but largely identical in form and function to the current Strategic Gap, which now defined in the statutory Development Plan.

<sup>64</sup> CD-K2, Appeal Decision ref APP/R3705/W/15/3136495, 28 November 2022, §14.

<sup>65</sup> Confirmed by Mr Smith in cross examination: he was asked “He’s saying what is important is the separation between Tamworth and Polesworth with Dordon north of the A5, without encroaching on the land. St Modwen wasn’t encroaching on the land north of the A5, so it would continue to be a large area separating two towns?” He answered “yes”.

**“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.”<sup>66</sup>**

102. The Inspector rejected the idea that the way to approach the issue of maintaining separate identities was to be addressed by distance: the so-called “scale rule” approach.<sup>67</sup> Instead he focussed on something much more human, namely, **“an appreciation of the gap between Dordon and Tamworth”**. His focus was very much on how it was perceived from the A5, surrounding footpaths and from respective settlements.<sup>68</sup>

103. The Inspector was under no illusion that development of the St Modwen Site would result in harm. He accepted that it would introduce a highly visible form of development into the countryside, with associated noise and light. He knew that it would be highly visible for various people experiencing the area:

- a) those experiencing the arrival into North Warwickshire travelling on the A5;<sup>69</sup>
- b) those enjoying recreation and leisure at Kitwood Recreation Ground;<sup>70</sup> and
- c) on the public right of way (‘the PROW’) to the north of the A5.<sup>71</sup>

104. His analysis here began with the A5 travelling east. Paragraph 29 deals with the land north of the A5:

**“However, after a very short distance, and just beyond the “Welcome to Warwickshire’ sign<sup>72</sup> referred to by the parties the field 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 east-bound carriageway this area of countryside dominates the foreground. Dordon becomes visible at a higher level**

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<sup>66</sup> Ibid, §24

<sup>67</sup> Ibid §25

<sup>68</sup> Ibid §27

<sup>69</sup> Ibid, §29

<sup>70</sup> Ibid, §30

<sup>71</sup> Ibid, §32

<sup>72</sup> The sign which Mr Tucker KC accepts is where it always was: county boundaries rarely move.



**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.”**

105. As Mr Smith agreed in cross examination, the features the Inspector focussed on in terms of the experience of the gap were three-fold:<sup>73</sup>

- a) the fact Dordon is visible at a higher level;
- b) the intervening topography: the undulating nature of the land; and
- c) the open character of the farmland.

106. This led him to conclude that, for those entering the Borough on the A5 (the main body of visual of receptors from a numerical point of view), the land in the Gap north of the A5 provides a predominantly rural setting for Dordon.

107. That last sentence taken from the Inspector’s decision letter and quoted above, thorough the use of the word “**predominantly,**” admits to the fact that the Gap had already been compromised because of the amount of development which had been built in the Gap between Tamworth and Dordon at the Birch Coppice logistics park and potentially at Core 42. Self-evidently, that was even before the St Modwen development had significantly reduced the extent of separation in the area: the effects of which are very obvious.

108. One can see what the Inspector was considering there because Mr Williams provides a photograph of the view along the A5 looking eastwards.<sup>74</sup> This contemporaneous photograph is a blinkered view, not illustrative of a full human field of vision. But even allowing for that clipped image, the appeal site is very clearly in view on the left. The field boundary that lies within the eastern edge of the redline boundary of the appeal site is clearly evident on the ground.

109. When viewed in a normal human field of vision, the appeal site would be even clearer, as it would extend right across the lefthand side of the view. The Appellant for the

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<sup>73</sup> Cross examination of Mr Smith, 20 June 2024

<sup>74</sup> CD-G19 page 34, PDF page 36; viewpoint E3 with the notation “Dordon west edge of prominent”

current Hodgetts appeal has allowed the hedgerow next to road to grow tall at the present time, but as can be seen in the photograph, at other times it is cut much lower, significantly altering the view from the road. Make no mistake, the appeal site would be very visible at this point. The very place to which the St Modwen Inspector's observations in paragraph 29 relate.

110. Were the current appeal to be allowed, into that view one must add the entrance to the new strategic employment site, with all the paraphernalia that would create. In the fullness of time the view would be cut off by the combination of the bunding and the proposed landscaping belt on the eastern part of the site.

111. The St Modwen's Inspector contented himself that the clear harms which he described would be acceptable precisely because of the endurance of the Strategic Gap north of the A5. It was this area in particular that led to his view:

**“Due to the openness of this area, its lack of significant built form and the change in level, residents on the western edge of Dordon would continue to experience an unequivocal sense of separation from Tamworth”<sup>75</sup>**

112. He was there identifying three key features which defined the distinct separate identity of Dordon, namely:

- a) **“the openness”**, which is provided by the farmland and little vegetation;
- b) **“the lack of significant built form”**; and
- c) the topographical **“change in level”**

113. Paragraph 32 deals with the public right of way to the north of the A5. One assumes he means the bridleway, as this is the route most obviously affected by the St Modwen development. He accepted that:

**“In this location the scheme would result in one of the greatest changes to the countryside separating Dordon from Tamworth. Although the scale of development would erode the open fields between the spoil heap and Trinity Road,**

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<sup>75</sup> Ibid, §31

**members of the public looking towards the site would do so from the open agricultural land, with Dordon above and Tamworth on the other side of the M42. Walkers would therefore be able to easily ascertain that there was a large, clear gap between the two settlements.”**

114. Look at the emphasis he places on the value of walkers being able to experience the open agricultural land north of the A5, and Tamworth being on the other side of the M42, when seeking to protect **“the countryside separating Dordon from Tamworth”**. This is all in the context of there being, in his words, a large, clear gap between the two settlements.

115. The proposal is so large it will remove all the open countryside to the right of the walker heading toward the A5, or to the left when heading to Birchmoor. It will bring Tamworth so close to the walker that the bridleway will, in fact, have to be moved. Tamworth will no longer be on the other side of the M42, it will have arrived at the bridleway, and the countryside experience for walkers will be completely obliterated. At the moment, the industrial buildings of Tamworth north of the A5 are around a mile away, separated by the M42 lying in a cutting with tree lined boundaries. With the proposed development, the industrial buildings of Tamworth north of the A5 will be impossible for walkers to ignore. The Appellant has provided no montage from Viewpoint 3 and it is pretty obvious why. Despite it being asked for from the very outside by LUC, the Appellant could never bring itself to produce one.

116. The St Modwen inspector **further** stated:

**“Based on the evidence provided I therefore conclude that due to the open farmland to the north of the A5, combined with the location of Dordon on higher ground...the proposal would respect the separate identity of Dordon, and, maintain a meaningful gap between Polesworth and Dordon and Tamworth.”<sup>76</sup>**

117. In his final conclusion he said:

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<sup>76</sup> Ibid, §35

**“I agree that the retention of the farmland to the north of the A5 is critical, and by reason of its topography and open character this area of land would continue to provide a meaningful gap between Polesworth and Dordon and Tamworth.”<sup>77</sup>**

118. The Inspector relies no less than six times on the extent and nature of the open land north of the A5 and its role in maintaining the gap between Tamworth and Dordon to justify his decision to allow the appeal. His focus is on the open, undulating agricultural land, about a mile wide, as providing the rural setting for Dordon which is plainly visible on the higher land.

119. He focussed on the fact the separate identity of Dordon, separated from Tamworth by this countryside, is experienced in various different ways from those using public footpaths and the bridleway, those on the recreation ground, those living in Dordon itself and to those walking cycling and driving along the A5.

120. Attention should be drawn to the Inspector’s use of the word **“critical”**. It is clear that there, he was agreeing with the Appellant.

121. In evidence submitted to that Inquiry the Appellant’s landscape witness, keen to emphasise the importance of the role played by Strategic Gap in facilitating the development of his scheme, described the land as playing **“an essential role in this separation.”**<sup>78</sup> Clearly, however, in the Inspector’s view, this did not put the land’s value high enough. Instead, he chose to describe it as “critical.”

122. The Appellant’s closing submissions also adopted the same approach, focussing on that fact it is **“very obvious”** that the land north of the A5 provides the meaningful gap between Tamworth and Dordon.<sup>79</sup>

**“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.”**

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<sup>77</sup> Ibid, §97

<sup>78</sup> CD-G19, PAP/2014/0648 appeal M42 POE, §5.5.5

<sup>79</sup> CD-G20, PAP/2014/0648 Appeal M42 Closing, §2.4.5

123. It is clear from the Appeal Decision that the “**large, clear gap**”<sup>80</sup> to which the Inspector was referring includes the Appeal Site,<sup>81</sup> as was conceded by Mr Smith.<sup>82</sup> Despite equivocation and prevarication during cross examination it is also plain, clear and obvious that the existence of the “large, clear gap” was a necessary precondition in the Inspector’s decision to permit development. The Appeal Decision acknowledges the risk that, by permitting the development, Tamworth would be brought to Dordon south of the A5; a risk which has since very much materialised.<sup>83</sup>

124. However, the appeal was allowed specifically on the basis that the risk was only sufficiently mitigated by the continued existence of the open undulating farmland to the north, which would ensure sufficient separation between the settlements and permit them to maintain their distinct characters. And with St Modwen’s Tamworth Logistics Park now built, it is easy to see why.

125. What is north of the St Modwen site is the appeal site. No matter how the Appellant seeks to distinguish itself from the decision, the area of land the Inspector was talking about includes the appeal site. Indeed, it worse than that for the Appellant: it is very much the appeal site and the land immediately next to it, over which this vast development would impose itself, which is the focus of the Inspector’s attention when considering in particular those using the bridleway and those travelling along the A5.

126. The logic is clear: the St Modwen development could only be found to be acceptable because the Strategic Gap provided protection against its evident harms; if the Strategic Gap is replaced by 1 million sq ft of industrial logistics space, not only does the harm caused by the St Modwen development go unmitigated, very substantial harm will ensue to the distinctive, separate characters of Tamworth and Polesworth with Dordon.

127. The Appellant’s witnesses keep saying that the St Modwen Inspector was not faced with the present appeal decision. But that’s the point. He only allowed that appeal because on no less than 6 occasions he relies on the openness of the site which is the focus of

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<sup>80</sup> Ibid, §32

<sup>81</sup> Ibid, §29, and agreed by Mr Smith in cross examination.

<sup>82</sup> Cross examination of Mr Smith, 20 June 2024.

<sup>83</sup> See § 7 above.

this current appeal to justify his decision. If he had been faced with what is proposed in the appeal scheme, he might never have allowed the St Modwen appeal. The very fact he did further strengthens the Council's case at this appeal exponentially.

128. Having considered the character of Dordon and the importance of the mile of land between it and the M42, one turns to consider the scale of the proposal itself.

### *The Photomontages*

129. It is said that a picture is worth a thousand words. In this appeal that is an underestimate. At this Inquiry one set of pictures is worth possibly more than all the words in the LVIA itself. The picture in question labours under the unwieldy name J10-7i.<sup>84</sup> There are several images showing what has been applied for. Each warrant scrutiny. But 7i is the epitome of this proposal's scale and the way in which it will impose itself.

130. The Appellant argues these images are not realistic depictions of what will come forward. Ms Oxley has accepted that general proposition. But, to be clear, the lack of realism comes mostly from the lack of effective colouring, because the colour shown has been deliberately chosen to match the sky. They also show only one colour, which is rarely the case on completed buildings,<sup>85</sup> but the height and width of the buildings is realistic; that is the whole point of them.

131. The images are not plan views, so a single 580m long building is entirely realistic within the limits of the permission the Appellant seeks.

132. Alternatively, two large buildings close to one another, as shown in numerous images in the DAS, would have much the same impact.<sup>86</sup>

133. What is not realistic, however, is the previous photomontages offered by the Appellant with the 3 curved roof buildings, based on an indicative masterplan which has no planning status whatsoever.<sup>87</sup>

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<sup>84</sup> CD-D30/D – Appellant's Proof of Evidence – Landscape Visual and Strategic Gap – supplementary proof, pg 16.

<sup>85</sup> See the images of the St Modwen development where different darker colours are used around the opening and loading bays

<sup>86</sup> CD-B9, Design and Access Statement, PL4 – Part1

<sup>87</sup> CD-B31, REV E Type 3 Photomontages LAJ56-70 (25.07.23)

134. These block images were the one thing the Appellant was so desperate to avoid anyone seeing. It is only through the constant persistence and tenacity of Ms Oxley and her fellow landscape professional Ms Hynes, that we have seen it at all.<sup>88</sup>
135. Image J10-7i shows a colossal box, imposing itself upon the open, undeveloped agricultural fields, next to a well-used bridleway, and forming a vast wall blocking all sense of the landscape and views beyond. This shows the precise dimensions for which the Appellant is seeking permission.
136. The blocking of views and extraordinary imposing scale will have a dramatic and significant adverse effect, not only on the site, but on what will remain of the Gap itself. The St Modwen proposal, lying far to the south and on the other side of the A5 shows how that is possible. Buildings of this scale don't nestle into the countryside. They stamp their authority all over it, changing the very nature of the area.
137. With just one picture it becomes clear that the level of harm to the distinct, separate character of Dordon will be significantly adverse. Nothing explains that more eloquently than the Appellants repeated and deliberate attempts over more than two years to avoid submitting such damning visualisations, preferring instead to rely on anything other than visualisations of the permission being sought through its parameters plan.
138. It is no wonder the Appellant has sought to downplay and minimise the true scale of what they are seeking. This approach was evident right from the start. In a startling departure from accepted best practice, the Environmental Statement was submitted in December 2021 with an LVIA which included only baseline photos.<sup>89</sup> No photomontages of the proposed development were provided. Mr Smith confirmed in cross examination that photomontages are easy to create and that his firm had all the necessary technology.<sup>90</sup> The failure to include them could, therefore, only be the result of a conscious strategy on the part of the Appellant.

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<sup>88</sup> Evidence in Chief of Ms Oxley, 19 June 2024

<sup>89</sup> CD-G4, Guidelines for Landscape and Visual Impact Assessment, pg 141 §8.16. In cross examination Mr Smith said "I accept it would be best practice to have them."

<sup>90</sup> Cross examination of Mr Smith, 20 June 2024

139. Fortunately, notwithstanding the lack of visualisations to guide them, the Council recognised the scale and potential landscape and visual harm threatened by the proposed development and commissioned experts, in the form of LUC, to conduct a professional review. LUC noted the lack of visualisations and requested the Appellant supply them to enable proper review of the proposals.<sup>91</sup>
140. The Appellant’s response was to submit, in April 2022, the Design and Access Statement.<sup>92</sup> This document included ‘wireframe’ images, which were presented in A4 and failed to show the extent or heights of the proposed development.<sup>93</sup> They also showed the site with extensive planting at maturity which, Mr Smith agreed, was more reflective of 20 years’ growth than 15.<sup>94</sup> These drawings were, as Mr Smith conceded, **“not as helpful as they could be.”**<sup>95</sup>
141. Following further requests from LUC, ‘wireline’ visualisations were prepared in January 2023.<sup>96</sup> These images provided limited assistance in determining how the site would look during the construction phase and in the first years of the development’s life, given they modelled in proposed vegetation in a state of maturity. These were also described as **“not as helpful as they could be.”**<sup>97</sup> A fair summary of the Appellant’s position with regard to determining the landscape and visual harm of their proposal.
142. In July 2023, the first photomontages were provided (the ‘Type 3’ visualisations’), based not on the EIA Development Design Parameters illustrated in the Design Guide showing single or two unit developments,<sup>98</sup> but based instead on there being three

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<sup>91</sup> CD-G11, LUC Review of Applicant’s LVIA, §2.70 reads “according to LI Technical Guidance Note 06/19, Type 3 visuals ‘encompass photomontage and photowires which will commonly be produced to accompany planning applications, LVAs and LVIAs.” While the majority of baseline photography may have been produced to Type 3 standard, the visualisation itself has not been produced to Type 3 level as no photowires/photomontages have are included.”; and §2.72

<sup>92</sup> CD-B34, Design and Access Statement, April 2023

<sup>93</sup> Re-Examination of Ms Oxley, 19 June 2024

<sup>94</sup> Mr Smith said, with reference to image showing view point 4 (pg 76) “It’s meant to be fifteen years but it looks more mature”. He

<sup>95</sup> Cross examination of Mr Smith, 20 June 2024

<sup>96</sup> CD-B31, Wirelines DB, LAJ53-56, dated January 23

<sup>97</sup> Ibid

<sup>98</sup> CD-B11, Chapter 2 and Appendices Chapter 11; also presented in CD-B10, Planning Access and Design Statement, Chapter 6 and Chapter 7, with the preferred scheme set out at 7.6



buildings, with their long axis being east to west. The Type 3 images were not only wholly unrelated to the Parameters Plan they were also incorrect.<sup>99</sup>

143. These images provide limited assistance in determining how the site would look if built in accordance with the Preferred Scheme in the DAS.<sup>100</sup> It is common ground before this Inquiry that photomontages are supposed to depict a reasonable worst-case scenario.<sup>101</sup> In this case, that could be a single building, 600m long and 21m high.<sup>102</sup> However, that was not what these photomontages depicted. Instead, the Appellants presented an image of three green buildings with curved roofs, quite unlike the grey or black rectangles which currently occupy the Appellant's scheme at Core 42.<sup>103</sup>
144. Recognising the addition of visual detail to the photomontages for what it is – a blatant attempt to render an enormous and overbearing development more palatable – is important. As noted above, the Inspector will of course appreciate, should permission be granted, the only document which will have any status will be the Parameters Plan. This Parameters Plan will permit the development, if the Appellant so wishes, of a single colossal grey box.
145. In cross examination of both Ms Oxley and Mr Weekes, the Appellant sought to argue that, as per the draft conditions, the site was limited to 100,000 sqm and would, therefore, never occupy the full extent of the site. Unfortunately for the Appellant, this point offers no assistance. As was cogently explained by Mr Weekes, while it was correct that the Appellant might be prevented from constructing a building which covers the entire site, there is nothing preventing them from extending fully in one direction and compensating with a reduced depth on another dimension.<sup>104</sup>

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<sup>99</sup> Modelled at the wrong height, as accepted by Mr Smith 20 June 2024

<sup>100</sup> CD-B31, REV E Type 3 Photomontages LAJ56-70 (25.07.23)

<sup>101</sup> Examination in chief of Ms Oxley, 17 June 2023; Cross examination of Mr Smith, 20 June 2023.

<sup>102</sup> CD-B37, Amended Parameters Plan

<sup>103</sup> See, for example, the Maersk or Ocado buildings.

<sup>104</sup> Cross examination of Mr Weekes, 19 June 2024. Drawing JS10-7S was particularly cited as a useful illustration. He said “theoretically a building of that height and length may be constructed. The depth is not the full depth so the impact will be different... but there is nothing to stop a building of that width.”

146. It was only on 5 June 2024, and 2 years 6 months after the initial application, and less than two weeks before the start of this Inquiry, that visualisations were provided which represented the true parameters of the Appellant's Proposed Development<sup>105</sup>
147. Even here, attempts have been made to minimise the true nature of the development; the colour used for the blocks matches the colour of the sky; the viewpoints chosen do not demonstrate the full extent of the openness of the landscape;<sup>106</sup> the original Zone of Theoretical Visibility ('the ZTV') was modelled to show woodland and hedgerows as if they were fully grown (10m high) and completely solid (impermeable), indicating that there would be no views at all for residents in Dordon or Birchmoor.<sup>107</sup>
148. These images give the Inspector the closest representation of the true extent of the development the Appellant intends to bring forward is revealed, and it is only with this in mind that the Inspector can accurately ascertain the landscape and visual harm that it will perpetrate.
149. When properly understood from the Parameters Plan and the visualisation that show its extent, it is clear the proposal does significantly adversely affect the distinctive, separate character of Polesworth with Dordon as rural settlements. Both the physical and visual separation between these and Dordon would be very obviously affected.
150. The Appellant might have brought forward a different form of development. It might have been more modest in its ambitions in the Parameters Plan. But that is not what is before the Inspector. There is an in principle objection. But there is also an objection to what is proposed here. The LPA are well entitled to object to both. It is an outline scheme. But being EIA development the parameters must be defined. It is also necessary for any meaningful assessment of the landscape and visual impact. They parameters are defined. And this is where the understanding of the sheer size, scale, length and height of what is proposed comes firmly into view.

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<sup>105</sup> CD-D30/D – Appellant's Proof of Evidence – Landscape Visual and Strategic Gap – supplementary proof, pg 16

<sup>106</sup> Ibid, for example view point 8, taken from behind the hedge between the Appeal Site and the A5; or map J107N, which focuses on a small, low-lying copse west of Kitwood Recreation Ground which, 100m further south at Barn Close would reveal a much more open view, as observed during the site visit; or VP9 which is taken from the A5 and looks into existing hedgerow, but does not reflect that there are gaps elsewhere in the hedgerow, or a view from no 67 Hall End Villas.

<sup>107</sup> CD-A9.6 Appendix 10.1, Figure LAJ-3

### *The Eastleigh Criteria*

151. Strategic Gap policies can be analysed by reference to a series of factors referred to as the Eastleigh Criteria.<sup>108</sup> The factors are as follows:<sup>109</sup>

- a) Distance;
- b) Topography;
- c) Landscape character/type;
- d) Vegetation;
- e) Existing uses and density of buildings;
- f) Nature of urban edges;
- g) Inter-visibility
- h) Intra-visibility
- i) The sense of leaving a place

152. **Distance:** The Strategic Gap currently ranges from between 1.2km – 1.45km on the east/west axis.<sup>110</sup> It is agreed between the parties that the Strategic Gap will be narrowed to:

- a) approximately 750m between Tamworth and Dordon;<sup>111</sup> and
- b) 95-155m between Birchmoor and the Proposed Development.<sup>112</sup>

153. The Appellant notes the factually correct position that there are, indeed, smaller Strategic Gaps elsewhere in the region.<sup>113</sup> However, it is hard to understand how this argument takes them anywhere. This Gap is a gap which is defined in this location by built development and a motorway on three sides. That is how it is seen, measured but most of all how it is experienced.

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<sup>108</sup> CD-G6, Strategic Gap and Green Wedge Policies in Structure Plans: Main Report, §4.15

<sup>109</sup> Specific analysis of the Eastleigh Criteria can be found at CD-D25, NWBC Proof of Evidence – Landscape Visual and Strategic Gap, Table 4.1 and CD-D37 Rebuttal Landscape Matters, §1.25 onwards

<sup>110</sup> CD-D15, Landscape statement of common ground agreed between Appellant and NWBC, §39

<sup>111</sup> Ibid

<sup>112</sup> CD-A8, Environmental Statement: Volume 2 Main Statement, §10.5.62; CD-D25, NWBC Proof of Evidence – Landscape Visual and Strategic Gap, §4.11.

<sup>113</sup> CD-A8, Environmental Statement: Volume 2 Main Statement, §10.5.63

154. As agreed, appreciation of a Strategic Gap is more than just an exercise in distance measurement. It is about an understanding of a piece of land as a coherent whole. Regardless of whether there are smaller gaps between Coventry and Nuneaton, or Hinckley and Barwell, they are not the gap with which this Inquiry is concerned. Between Tamworth and Dordon the Strategic Gap which exists, and which the Local Plan deems essential to maintaining the separate identity of those towns, is 1.45-1.2km wide. Any significant reduction in that size, particularly in the context of rampant, industrial scale, Big Box logistic development which lies immediately to its south has the potential to significantly adversely effect the character of Dordon. The St Modwen inspector took a sophisticated view of his understanding of the gap, focussing on matters such as perception.

155. **Topography:** the Strategic Gap itself has a gently rolling topography, which emphasises the scale of the Gap. The undulating nature of the land is sufficient to create interest and add to the attractive nature and value of the land. But it is not so variable as to cut short views, certainly not across the east-west expanse of the gap north of the A5. It is important to note that this gently undulating topography is part of the character of the area as set out in the North Warwickshire Landscape Assessment for this LCA. The huge flat platforms which the Appellant is proposing and as defied in its Parameters Plan and the use of one single rectangular area: Plot A are completely alien to this part of the character of the LCA and the Strategic Gap in particular.

156. The proposed development, includes the creation of high earth mounds (5m) for screening which will also alter the topography and openness of the Strategic Gap.<sup>114</sup> The Appellant's attempt to draw reference to the spoil heap from the former Birch Coppice Collery is unconvincing, as that sits outside of the Strategic Gap and therefore is not relevant to the consideration of its topography.<sup>115</sup>

157. Then there are the surface level car parks, the inevitable extensive lighting and the other industrial scale paraphernalia. None of which is consistent with the undulating topography which helps to define and enhance the gap.

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<sup>114</sup> CD-D25, NWBC Proof of Evidence – Landscape Visual and Strategic Gap, §4.11.

<sup>115</sup> CD-A8, Environmental Statement: Volume 2 Main Statement, §10.5.65

158. Therefore the proposed development seeks to change the Gap's topography very significantly by introducing flat platforms for huge buildings and car parks, and earth mounds which will be at odds with the natural landform which currently exists. And this will only serve to narrow the perception of the gap.

159. **Landscape character/type:** the landscape character of the site and Strategic Gap is mainly arable in nature with very small copses of trees and hedgerows. The proposed development would introduce very tall buildings of a massive scale (up to 21m high and up to c.600m long) which would fundamentally change the character of the Strategic Gap and reduce the openness which is characteristic of the setting of Dordon. Mitigation associated with the proposed development, such as the laying down of 3m wide, resin-bound paths may have a suburbanising character.<sup>116</sup>

160. **Vegetation:** there is limited vegetation on the site and in this part of the Strategic Gap. Hedgerows are found around the boundaries of the site and in adjoining areas of the Strategic Gap. But there is no strong vegetated boundary to extend to, or which might provide a sense of separation to the east.

161. The landscape of the Strategic Gap has relatively little woodland, except a small stunted oak copse to the east, walked through on the site visit. As noted above, the field pattern is very large, and there are relatively few hedgerows and associated trees in this landscape. This results in open views across the land, extending across large areas.

162. While it is generally agreed that planting trees is a good thing, one can have too much of a good thing, particularly where that good thing comes at the expense of a place's fundamental character. Planting dense thickets of woodland in long strips on 5m high bunds in an area characterised by its open views cannot reasonably be understood as a positive gain. The extensive and dense planting is proposed in an attempt to soften the impact of these very tall, vast and bulky buildings as they hit the ground.

163. During the Inquiry it was suggested that improvement of landscape in the blue line land would not occur if not for developers, as if to suggest that developers choose to plant trees motivated by philanthropic urges.<sup>117</sup> This is patently untrue. Logistics scheme

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<sup>116</sup> Mooted by Mr Smith in cross examination, 20 June 2024

<sup>117</sup> Cross examination of Mr Smith, who said "You know improvement of landscape would not occur if not for developers."

developers, as is the case here, plant trees on this scale because it is required to make acceptable their developments. To cause harm, and then describe the measures required to mitigate that harm as benefits, stretches credulity to breaking point.

164. **Existing use and density of buildings:** the existing use of the site is arable land. There are no existing buildings on the site. And none in this part of the Strategic Gap, save for a few houses along the A5.

165. **Nature of urban edges:** there is built development all around the Strategic Gap, in the form of main roads and settlements, and industrial development. The settlement of Tamworth is located to the west of the M42. Visibility of this urban edge, alongside the clear settlement edge of Dordon, accentuates the presence of having two distinct settlements, separated by undeveloped gently rolling farmed landscape.

166. What is visible are the houses at Dordon and to a far lesser extent those at Birchmoor. These are all very much at a human and domestic scale. Both settlements are seen as villages. This gives a rural character to the Strategic Gap and helps to define its scale. The buildings to the south of the A5, especially the St Modwen development are the epitome of industrial scale development. They are plainly responsible for reducing the quality and value of the Gap.

167. The houses at Dordon and to a far lesser extent those at Birchmoor are very much domestic scale. Both settlements are seen as villages. This gives a rural character to the Strategic Gap and helps to define its scale. The buildings to the south of the A5, especially the St Modwen development are the epitome of industrial scale development. They are plainly responsible for reducing the quality and value of the Gap.

168. **Inter-visibility:** the open and flat nature of the site and Strategic Gap enables inter-visibility across the Gap. The landscape west of Dordon and Polesworth and north of the A5 is very open and provides for a degree of intervisibility.

169. The proposed development will reduce this intervisibility, by blocking views across the Strategic Gap, or from the Gap, due to the large buildings, bunds and planting. The size of the proposed buildings will also make the Gap seem narrower because of perspective, and the blocking of views to the borrowed landscape beyond. Intervisibility between

the new edge and Dordon (assuming the proposed development forms the new eastern edge to Tamworth, rather than the M42 as it is now) would increase given the substantial narrowing of the gap between the edges, making Tamworth and Dordon physically closer together.

170. **Intra-visibility:** the open and relatively flat nature of the site and Strategic Gap enables intravisibility from across the site and the open land which surrounds it, to the distinctive settlement edge of Dordon on rising ground to the east. The eye is drawn more to the north-east, towards Dordon, than to the developments on the southern side of the A5 given the road corridor forms a strong boundary. This is due to the openness of the landscape and the views available across it, as well as because of the distinctiveness of the edge of Dordon which contrasts strongly with the open land.

171. Likewise, the eastern edge of Tamworth is visible in views to the north-west from sections of the A5 and extensively from the network of PRowS to the north of the A5. This is due to the open nature of the fields across which the site is located, and the gaps in hedgerow along the road. The visibility of both the eastern and western settlement edges, from and across an arable landscape, allows the clear separation of these settlements to be appreciated when in this area.

172. The proposed development will reduce this existing intra-visibility by blocking views from within the Strategic Gap to Tamworth west of the M42. The Appellant's answer is the development will create a new edge to Tamworth, but now on the other side of the M42.

173. This negative effect associated with the blocking of open views was agreed by Mr Smith under cross examination,<sup>118</sup> although in written evidence he had portrayed the effects of planting, both on the appeal site and in the offsite mitigation area, as positive.<sup>119</sup>

174. **The sense of leaving a place:** the Strategic Gap currently provides a real sense of leaving one place and arriving in another, even when travelling fast in a car. The crossing of the M42 provides a clear sense of having left Tamworth, and is a very strong

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<sup>118</sup> In Examination in Chief Mr Smith said of native woodland on sloping landform "I appreciate it blocks views which is a negative effect."

<sup>119</sup> CD-D30/a – Appellant's Proof of Evidence – Landscape Visual and Strategic Gap, §§4.69-4.70

boundary.<sup>120</sup> This sense can be appreciated when travelling by car on the A5 and also when on the public rights of way. As described by Ms Oxley, there is currently a real sense of leaving a place and being between Tamworth and Dordon. Similarly, one gets the same impression when walking from the south up to Birchmoor, or across the fields east to Dordon. While this sense is of leaving one place and arriving in another is compromised when one passes along the A5 due to the St Modwen's Site, it would be irrevocably harmed in all respects, if the Proposed Development was permitted.<sup>121</sup>

***Conclusion on Significant Adversely Affect the Distinctive, Separate Character of Polesworth with Dordon***

175. There is clear conflict with LP4 which has a very clear purpose. Overall Mr Collison attaches substantial weight to the conflict with LP4 in terms of the significant adverse affect to the distinctive and separate character of Polesworth with Dordon, Dordon in particular, which is what the St Modwen inspector focussed on.

***Coalescence***

176. Policy LP4 also has the objective to prevent the coalescence of Tamworth and Polesworth with Dordon. That is distinct from the objective of seeking to maintain the separate identities of both settlements.

177. It is accepted that physical coalescence will not happen here.

178. But the Appellant recognises that coalescence is more than just the physical linking of the two settlements. Mr Hann expressed it in these terms: that if the development went ahead there will be no **“physical coalescence, or in any other sense.”**<sup>122</sup> He was quite rightly alluding to the fact that coalescence or the merging of settlements is a concern which extends beyond simply physical connection. He accepted in cross-examination,

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<sup>120</sup> Accepted by Mr Smith in cross examination. He was asked “Is the sense of leaving Tamworth achieved when you are past the motorway?” to which he responded “Yes.” He later added “the buildings around junction 10 feel from a character point of view as part of Tamworth.”

<sup>121</sup> Evidence in chief of Ms Oxley, 18 June 2024

<sup>122</sup> Cross examination of Mr Hann, 3 July 2024



that coalescence could be a concept broader than the physical adjoining of built development, which includes perceptual understandings of place and space.<sup>123</sup>

179. This perception of coalescence is important because, as with Green Belt policy and the desire to prevent neighbouring towns from merging, harm can emerge simply from two distinct settlements being brought closer together.<sup>124</sup> Indeed, this is a recognised feature of Gap policies such as this because they are capable, and indeed are, applied to protect villages from merging with neighbouring towns, which Green Belt does not expressly seek to do.<sup>125</sup>

180. The proposal does not need to join Tamworth with Dordon for there to be a concern about coalescence. The very fact that it would mean the distinct separation that remains is reduced, albeit already significantly compromised by the development south of the A5, is a legitimate basis for refusal.

181. What is also a legitimate concern is the fact that the Appellant has control of the entire Gap north of the A5 and plainly has ambitions to seek more development. The submission made for the recent Call for Sites for Employment Use promoted the whole area for employment. Other land uses are also listed in the Appellant's response, and that is what the Council invited. But crucially there is no indication of the extent of any of those other uses. Most significantly, the Appellant did not make a submission showing the promotion of only the appeal site for employment. Far from it. The submission includes the full 75 hectares of land which the Appellant controls.<sup>126</sup>

182. Added to which, there is a real danger here that if the Appellant is right, it will completely undermine the purpose of policy LP4. And this is why:

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<sup>123</sup> Cross examination of Mr Hann, 3 July 2024

<sup>124</sup> CD-F11, National Planning Policy Framework 2023 §143(b)

<sup>125</sup> CD-G6, Strategic Gap and Green Wedge Policies in Structure Plans: Main Report: para 7: ***“The main overlap between strategic gap and green wedge and Green Belt purposes is in the area of preventing the coalescence of settlements. Most of the strategic gap and green wedge policies also have the purpose of avoiding coalescence between large built-up areas and villages. This purpose does not however overlap with those of Green Belts.”***

<sup>126</sup> ID-25

- a) The Appellant claims there is only 3 months supply of Big Box logistics in Area 2 (if one includes Junction 11 outside of Area 2);
- b) The appeal scheme will only add 6 months supply to that figure;
- c) That leaves an unknown amount of additional land required to meet whatever requirement threshold the Appellant thinks applies (it hints at a 5 years supply – albeit LP6 sets no such level);
- d) Yet according to the Appellant, the only real constraint on using up other land in the Strategic Gap is if there is actual physical linking of Tamworth and Polesworth with Dordon;
- e) Which means the Appellants case is that it is open season in the Strategic Gap.

183. That is not a precedent argument. It just a logical consequence of their own approach. At no point has the Appellant sought to suggest that the remainder of the Gap is what is required to be maintained as the minimum to protect the distinctive, separate character of Polesworth with Dordon.

### *The Dordon Neighbourhood Plan*

184. It is important to note that the importance of the Strategic Gap is echoed in the Dordon Neighbourhood Plan ('the DNP') 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.”<sup>127</sup>**

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<sup>127</sup> CD-F9, Dordon Neighbourhood Plan, pg 13. See also Community Objective 7, page 14

185. The DNP further seeks to protect the character of the landscape in which Dordon sits, requiring that proposals protect the character of the landscape.<sup>128</sup> On the Appellant's case, this landscape would not be unduly affected by a building of 1 million sq ft in that landscape. Notwithstanding that, the present Gap, which is only a mile wide will be very significantly reduced and existing open views will have been replaced with buildings or tree screens which will take 20 years to mature.<sup>129</sup> And, even then, the buildings will still be visible over the top.

186. It is the Council's case that the colossal scale of the building proposed, in addition to the mitigation required to make it even minimally acceptable, the significant reduction in the width of the Gap and the effect on the openness and rural character of the site will have significant adverse effect on the distinct character of Dordon, bringing Tamworth ever further eastward. The Proposed Development is, therefore, undoubtably contrary to the Neighbourhood Plan

***Issue (ii) the effect of the proposed development on the character and appearance of the surrounding area***

187. This issue is primarily focussed on the landscape and visual impact of the proposal.

188. The site is located within the Tamworth Fringe Uplands Landscape Character Area ( 'LCA 5' ) as defined in the North Warwickshire Landscape Character Assessment. All the key characteristics of LCA 5 are relevant to the site and its surroundings.<sup>130</sup> It is agreed between the parties that the proposed development site, sitting as it does within LCA5, has what is described as "community value," (i.e. it is valued by local communities)<sup>131</sup>, and the part of LCA 5 which lies within the study area has a medium susceptibility.<sup>132</sup>

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<sup>128</sup> Ibid, DNP4, pg 28

<sup>129</sup> Cross examination of Mr Hann, 3 July 2024

<sup>130</sup> CD-G1, North Warwickshire Landscape Character Assessment, pg 40.

<sup>131</sup> CD-D15, Statement of Common ground, landscape and visual §21

<sup>132</sup> CD-D30, Appellant's Proof of Evidence – Landscape Visual and Strategic Gap – Supplementary, pg 5 table S1; CD-D23, NWBC Proof of Evidence, Landscape, visual and Strategic Gap, §4.61

189. As is common, Mr Smith's team on behalf of the Appellant has produced an LVIA to support the application, and Ms Oxley's team for the Council has critiqued it and provided alternative judgments where there is disagreement. As the Inspector will know, this practice is perfectly normal. Nothing is to be gained by having two rival LVIA's and associated sets of graphical materials. It is a mere jury point for an Appellant to say they are the only ones to have produced an LVIA. Critiquing it and identifying areas of agreement and disagreement is by far the most straightforward way of understanding different judgments about landscape and visual impact.

190. The initial point at which the parties disagree is the issue of sensitivity:

- a) Mr Smith puts the site's sensitivity at Medium/Low<sup>133</sup>
- b) Ms Oxley says it is Medium<sup>134</sup>

191. It is important to understand the reasons for this. What drives this disagreement can actually be reduced to the following points:

- a) the agreement over susceptibility is only a broad agreement, which overlooks many of the details, on which the experts' opinions diverge; and
- b) the proper interpretation of the heat diagram.

The divergence of opinions on the predicted magnitude of change, which is the other half of the equation to be fed into the overall judgement to be made on level and significance of effect.

192. This difference on sensitivity is important because there is a disagreement about the landscape effects of the proposal, and ultimately their significance. The difference in magnitude of change is similarly important.<sup>135</sup> When considered at a site level, Ms Oxley considers the magnitude of change will be substantial and the landscape impact

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<sup>133</sup> CD-D30/A, Appellant's Proof of Evidence – Landscape Visual and Strategic Gap – §4.61

<sup>134</sup> CD-D25 NWBC P roof of Evidence – Landscape Visual and Strategic Gap, §3.20

<sup>135</sup> CD-30/A, Appellant's Proof of Evidence – Landscape Visual and Strategic Gap, See §4.66. where overall magnitude is judged to be slight/medium at year 1 reducing to slight by year 15. Mr Smith then combines a medium/low sensitivity with a slight/medium magnitude and concludes at his para 4.71 that the overall effects on the would be moderate/minor at year 1 and minor at year 15, whereas the Council and Ms Oxley consider these effects on the part of the study area that falls within **LCA 5 to be moderate and significant**.

on the site itself will be major and significant, reducing to moderate and significant at Year 15.<sup>136</sup>

193. As a combination of both judgements (sensitivity and magnitude) in order to arrive at the overall conclusion on level of effect and significance, variation in either or both can lead to a difference in the ultimate judgements of significance. Mr Smith puts both sensitivity and magnitude a notch below Ms Oxley, then concludes that the resulting moderate/minor, reducing to minor, effects will not be significant, whereas Ms Oxley concludes that these moderate (at LCA 5 level) and major (at a site level) effects will be of significance

194. On the issue of the heat map for sensitivity, a site (the receptor) with a community value and medium susceptibility to change puts the LCA in the medium sensitivity category, following Mr Smith's own LVIA Methodology.<sup>137</sup>

195. In terms of susceptibility, despite the apparent agreement over the issue, there is a difference, with Mr Smith stating that it is medium/low and Ms Oxley stating that it is medium.<sup>138</sup> This notch below makes a difference when combined with what seem like small differences in other judgements, given Mr Smith then goes on to combine a medium/low sensitivity with a slight/medium magnitude and conclude that the overall effects on the part of LCA 5 which falls within the study area would be moderate/minor at year 1 and minor at year 15.<sup>139</sup>

196. In terms of significance, Mr Smith's LVIA Methodology makes this clear stating:<sup>140</sup>

***“Moderate effects are considered individually on a case by case basis, to determine whether each effect is considered to be significant or not significant. In determining whether moderate effects are or are not significant, particular attention is given to the constituent judgements leading to the assessment of a***

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<sup>136</sup> CD-D25 NWBC Proof of Evidence – Landscape Visual and Strategic Gap, §3.25

<sup>137</sup> CD-A9.6 Apdx 10.2: LVIA Methodology and Tables: figure 10.1 9 after paragraph 10.1.20: draw a line on the table from the word Community and a line across from medium: it is very close to the word Medium and far removed from the word Low

<sup>138</sup> CD-D25 NWBC Proof of Evidence – Landscape Visual and Strategic Gap, §§3.19-3.20

<sup>139</sup> CD-30/A, Appellant's Proof of Evidence – Landscape Visual and Strategic Gap, See §4.71

<sup>140</sup> CD-A9.6 Apdx 10.2: LVIA Methodology and Tables, §10.1.28

*moderate effect, and particularly to value, susceptibility and size/scale of the effect...*” (our underlining)

197. With this in mind, turning then to Ms Oxley’s reasoning explaining her position:<sup>141</sup>

*“In my opinion, given the area of open rolling farmland north of the A5 does not feature any industrial development and is more semi-rural, compared to the built up surroundings, its distinctive features and character are more susceptible to change than recognised by the appellant. The influence of main roads and existing industrial development to the south of the A5 and west of the M42 provides a noticeable but not the prevailing or only influence on the landscape. In my opinion the appellant underplays the character and distinctiveness of the semi-rural landscape which remains, albeit bound by built development to the east, west and south. They appear to underplay the importance and susceptibility of the open, undeveloped agricultural landscape, based on there being industrial developments and roads nearby, but this landscape could in some respect be considered more susceptible, given its open nature and contrast with surrounding areas, as it offers relief from the surrounding built up landscape. North of the A5, there is currently no existing industrial development, and key landscape features which help define this area (e.g., rolling fields and hedgerows, with some long views being available to countryside beyond) will be lost through development of the site, partly through direct removal, and partly through the blocking of longer views by buildings, bunds and planting. The field which forms the site will be fundamentally altered from an open, farmed, landscape, to a busy construction site, and then to an industrial development of a vast scale.”*

198. This largely mirrors the position taken by the Inspector at the St Modwen Appeal by seeing the area north of a A5 between the M42 and Dordon as not having been compromised or as a zone of transition, but as something which is different from the surrounding urban form and which provided relief from it.

199. Therefore, as explored in cross examination of Mr Smith, there is a disagreement over susceptibility which does then explain why, in accordance with the heat map reference above, Mr Smith overall rating of medium to low sensitivity must be tied to his lower rating of the susceptibility to change. In other words he is suggesting the relevant part of LCA5 has a greater ability to accommodate change without adverse effects. And that is largely because he considers the LCA to be already compromised.

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<sup>141</sup> CD-D25, NWBC Proof of Evidence – Landscape Visual and Strategic Gap, §3.16

200. Mr Smith puts the site's sensitivity at Medium/Low,<sup>142</sup> explaining in cross examination that, as significant parts of the surrounding area have already been contaminated by large scale industrial development, the appeal site had been infected by its influence and is therefore of a lower sensitivity.<sup>143</sup> Ms Oxley arrives at her assessment of medium sensitivity based largely on the reasoning set out above.<sup>144</sup> Despite Mr Smith's attempt to dismiss this disagreement simply as a **"difference of interpretation,"**<sup>145</sup> it represents a more fundamental divergence and is one upon which the Inspector is invited to form his own judgment.

201. Unsurprisingly, given that difference over the sensitivity of the landscape, the parties also differ in their assessment of the significance of the landscape effects. It is the Appellant's case that there were no significant effects identified at all in relation to any landscape receptors.<sup>146</sup> This is a position described as "surprising" by Ms Oxley, given the scale of the proposed changes.<sup>147</sup>

202. As she points out:

*"Aside from the loss of an open arable field and surrounding hedgerows, the proposed re-location of the bridleway, which has a pleasant and well established rural character, the blocking of open views with buildings, bunds and landscape planting, it is understood that a long length of hedgerow and woodland belt is likely to be removed to accommodate the access to the site, junction upgrades and widening required to allow west bound traffic to turn right, as well as a cycle track to the north of the existing hedgerow along the A5. This will further change the landscape character and open up views of the proposed development. If new planting is proposed, then this will take time to grow, and will be limited by the proposed drainage basins (see Design and Access Statement Figure 69) and proposed cycling infrastructure. The land to the east (blue line boundary on Planning Statement Figure – Red and Blue Line Plan) will also alter in character from farmland, to a network of more formalised paths and cycleways, playing fields and allotments at point 4 on Figure 70, public open space and orchard at point 2, giving the area a*

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<sup>142</sup> CD-D30/A, Appellant's Proof of Evidence – Landscape Visual and Strategic Gap – §4.61

<sup>143</sup> Cross examination of Mr Smith, 20 June 2024.

<sup>144</sup> CD-D25, NWBC Proof of Evidence – Landscape Visual and Strategic Gap, pg 28 §3.20. This is supported by CD-G1, North Warwickshire Landscape Character Assessment and Capacity Study, August 2010, which considers the part of the site within the blue line, of the same character and immediately adjacent to the redline site boundary pg 99.

<sup>145</sup> Evidence in Chief of Mr Smith, 20 June 2024

<sup>146</sup> CD-A9.6 Environmental Statement Chapter 10, Appendix 10.2, Tables 10.12-10.15

<sup>147</sup> CD-D25, NWBC Proof of Evidence – Landscape Visual and Strategic Gap, pg 28 §3.23

*more suburban character. It is assumed that the remaining fields would continue to be farmed if this is practical for the farmer, given their reduced sizes, albeit this is uncertain.*”<sup>148</sup>

203. It is unnecessary to list all of the sensitive receptors and the magnitude of change they will experience.<sup>149</sup> One need only look at a few examples to calibrate the credibility of Mr Smith’s approach. The Council invites the Inspector to consider, as an example, the receptor described as **“a single largescale, irregular, arable field.”** This field is the one on which 1 million sq ft of industrial development up to 21 metres in height (if not more) will be sited. The field itself will be excavated, then obliterated, buried under hardstanding and Big Box development. Nevertheless, it is described as suffering only a medium magnitude of change and a moderate impact.<sup>150</sup> By any measure, this position is absurd.

204. Mr Smith tried to explain this bizzare position in oral evidence by suggesting that he was considering the **“single largescale, irregular, arable field”** not as a single, largescale, irregular, arable field, but as something else. That is genuinely baffling. The whole point of this process of LVIA is to try and define clearly what it is one is talking about and assess it. That a single field is somehow to be judged not as a single field is incomprehensible. His suggestion was that he was taking into account the wider area. But that is not what it says and not what the words mean.

205. The proposed development’s landscape and visual effects will not be consistent throughout its lifetime. Given the enormous size of the development, it is anticipated that the construction period will take 3-5 years, particularly if the site comes forward in phases, as is now proposed.<sup>151</sup>

206. The site of the proposed development is not level. It rises by 13m. This will require that the building, or buildings, to be raised to a higher level on the lower parts of the site and sunk into the ground through cutting in other parts.<sup>152</sup> If it is one or two buildings it will be huge horizontal platforms which will need to be created. Indeed, in his oral

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<sup>148</sup> Ibid, §3.23

<sup>149</sup> They are set out in detail in Ms Oxley’s Proof of Evidence CD-D25

<sup>150</sup> CD-A9.6 Environmental Statement Chapter 10, Appendix 10.2, Table 10.15

<sup>151</sup> Examination in Chief of Ms Oxley, 18 June 2024

<sup>152</sup> Drawing LAJB30



evidence Mr Smith talked openly of excavation into the ground of 8 metres when cross examined on the long sections through the site.<sup>153</sup> There is in fact no limit on the extent of excavation and no parameter to define that. Added to which the Appellant does not want to limit the actual height of any of the buildings, as evidenced through its removal of such heights from the Parameters Plan (as noted above).

207. In Ms Oxley's view, in assessing the impact of the construction activities as having a moderate overall effect which is not considered significant, the Appellant has clearly understated their very real impact.<sup>154</sup>

208. The Appellant adopts a stance which is unconvincing when, describing its mitigation measures and the impact that they will have, it states that the proposed development will be "directed" (whatever that means) towards south-western corner of the site, and that it will not be highly prominent in the landscape.<sup>155</sup> This sentence is patently absurd. As Counsel for the Appellant helpfully explained, the Site is 20.49 hectares and the Application is for 100,000 sqm.<sup>156</sup> The Applicant intends to build one or more "Big Boxes" across half of the site. This size does not include any associated infrastructure or the lorry parking.

209. The Appellant proposes landscape mitigation measures including bunding up to 5m high which, in Ms Oxley's view will look out of place in the gently undulating open landscape.<sup>157</sup> However, it is wrong to assume that the bunds are proposed purely as mitigation. They are an integral part of the proposal, disposing of the large amount of spoil which will need to be moved to create the flat platforms on this gently rolling site.<sup>158</sup> Furthermore, while the bunds may provide some visual screening of the enormous warehouses proposed, they should not in any way be considered as mitigation for the proposed development's effects on the landscape. They will introduce an entirely alien character to the area, disrupting its gently rolling landform and open views. They

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<sup>153</sup> Cross examination of Mr Smith, 20 June 2024

<sup>154</sup> CD-D25, NWBC Proof of Evidence – Landscape Visual and Strategic Gap, pg 29 §3.25. "Construction activities across a site of this size, which is very open, and where large scale excavation is required in order to create flat development platforms and substantial earth bunds, are likely to result in in substantial magnitude of change and have an overall Major effect (significant), for the duration of the construction activity and beyond"

<sup>155</sup> CD-B10, Design and Access Statement, 3.11.

<sup>156</sup> Cross examination of Ms Oxley, 19 June 2024

<sup>157</sup> CD-D25, NWBC Proof of Evidence – Landscape Visual and Strategic Gap, §3.30

<sup>158</sup> Evidence in chief of Ms Oxley, 18 June 2024

will, in short, become man-made features of the landscape, resulting in negative impacts in themselves.<sup>159</sup>

210. The bunds are not characteristic of the landscape character of the area. There are none in and around the appeal site.

- a) They are characteristics of the logistics parks south of the A5, but these are new man-made developments.
- b) They are not a feature of the M42 either, as it runs in a cutting past the site.
- c) The slip road is not a bund.

211. The natural character of the LCA as described in the North Warwickshire Landscape Character Assessment is not one of bunds. It is gently undulating predominantly open arable land.

212. Bunds are not a feature of the site. Nor of the Strategic Gap.

213. Our cross examination of Mr Smith was interrupted to allow him to point to a plan showing one bund in the Strategic Gap, which is nothing more than a short section of embankment for a road in the northern part of the Gap. That was an unwelcome interruption after the witness had accepted they are not a feature of the Strategic Gap. Such points, if relevant, are for re-examination not interruption of cross examination. But in any event, it is plain to see they are not a feature of the LCA; it is not listed as a feature in the key characteristics. And in any event, that one roadside bund does not of course make it a feature of the Strategic Gap.

214. What is listed as key characteristics of the LCA are “**predominantly open arable land**” and “**generally large, open arable fields**” with “**low trimmed hedges and hedgerow trees**”.<sup>160</sup> The concept of open and openness here is a reflection of visual openness as a key feature of the character of the area. It does not mean openness in a Green Belt sense i.e. free from development. Mr Smith thought that was a breakthrough moment or revelation when it was put to him that the openness here, and as described by the St

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<sup>159</sup> Ibid

<sup>160</sup> CD-G1 - Page 40

Modwen Inspector, meant a visual open landscape. He thought that was simply wrong. In his view that openness described was the Green Belt sense of openness, meaning being free from built development, with the result that the planting of bunds of large belts of trees to close off visual openness is acceptable and in line with the character of the LCA. That, unfortunately, is not a remotely convincing argument. Reading the St Modwen decision and the LCA key characteristics study makes that abundantly clear. Of course, the proposal itself is built development. Huge, vast, enormous buildings, of a kind which cannot be found north of the A5 and the exact opposite of the small scale domestic grain of Birchmoor and Dordon.

215. These bunds will be **“densely planted”**<sup>161</sup> which will also have an unnatural appearance.<sup>162</sup> It has become clear that plans for the mitigation measures are poorly developed. Notwithstanding what the LVIA says – and what the photomontages show – regarding the planting of trees, Mr Smith suggested in his evidence in chief that the planting might actually be at a distance of 1.5m.<sup>163</sup> This uncertainty further underlines that, should permission be granted, the Inspector can in no way be sure what it is he is actually approving.

216. There will be no mitigation during the construction phase. At year 1, after the years of construction, the site will only benefit from very limited mitigation, with the bunds in place but only newly planted trees in plastic tubes, perhaps 50cm high. Over a 15-20 year period, the trees will grow to 7.5-8m high which will, eventually provide some mitigation to the overall effect.<sup>164</sup> But the buildings will still be very much visible. And of course, judging by the most recent types of Big Box sheds constructed at the back of Birch Coppice, St Modwen’s main site and the Maersk building on Core 42, or at sites up the M42 at Junction 11 or at East Midlands Gateway, the preferred building sizes are getting bigger and bigger over time. Height, such as the proposed buildings at 21m rather than 18m on the appeal site is a reflection of this. And it is that top part of the building or buildings which will be most noticeable, at odds with the countryside in the Strategic Gap, imposing itself onto the remaining part of the Gap.

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<sup>161</sup> CD-B10 Planning, Design and Access Statement Note 4 in Figure 69 / B11 Design Guide Note 3 of Sec. 9.1

<sup>162</sup> CD-D25, NWBC Proof of Evidence – Landscape Visual and Strategic Gap, §3.31

<sup>163</sup> Evidence in chief of Mr Smith, 20 June 2024

<sup>164</sup> CD-D15, Statement of Common Ground between NWBC and Appellant, §31

217. Other proposed mitigation measures, such as the introduction of surfaced (and maybe lit) paths, will introduce a suburban character to landscape, converting open, rural and agricultural land into an experience of suburban parkland which can be transited from east to west on foot in 7-8 minutes along the proposed perpendicular paths.<sup>165</sup>

218. The Council's Landscape Character Assessment also contains a capacity study. Dordon Area A relates to the land west of Dordon. It is clear about the fact that the land west of Dordon has limited scope to accommodate development – the document is clearly focussed on housing. Tree planting is encouraged, but only in terms of small blocks of woodland.

219. However., the description of development describes this land as that which falls towards the A42 (the M42 becomes the A42 shortly further north). It might be assumed that covered the appeal site. Mr Collinson could not find the accompanying map on the Council's website at the time the Core Documents were prepared for the inquiry. But the Council's main website has been updated and it is now easy to find as Mr Tucker demonstrated in 3 seconds. The relevant map shows the appeal site is not within this Area A. A very small part of it is. But that is not the point. The Council's team, including us, should have provided the plan. However, now it is available, one can readily understand what is meant in the landscape assessment section of the document to having a landscape corridor either side of the M42. As Mr Smith accepted in XX, this is a corridor for landscape and not something the proposal can confirm with. But how wide is that corridor in the proximity of the appeal site? The answer is found in the capacity study: the landscape corridor is presumably meant to be the land which is not examined for development in the capacity study – and that is the appeal site.

220. Relying on the evidence of Ms Oxley, Mr Collinson gives the harm to the landscape character of the area moderate weight. This is a reflection of the fact that the Council recognises that separate from the Strategic Gap issue, the harm to the character of the landscape is diminished by the existing industrial scale development to the south of the A5. Giving significant weight to such harm was considered by Mr Collinson to be unjustified. But moderate weight is appropriate given there will be real harm to the character of the landscape in this location, given the open agricultural nature of the land.

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<sup>165</sup> Evidence in chief of Ms Oxley, 18 June 2024; site visit on 21 June 2024

221. That shows very clearly how reasonable Mr Collison’s view is about giving substantial weight to the conflict with LP4.

222. In contrast Mr Hann gives this harm only limited weight. As revealed in XX, he does so because he does not accept that what his clients are proposing can be described as very large buildings. In so doing, he is offering a view about an imaginary scheme and not what is proposed. On anyone’s definition what is proposed here through the Parameters Plan are very large buildings. And it is absurd to suggest otherwise.

### *Visual impacts*

223. The Appellant similarly significantly underestimates the visual effects of the proposed development, with only three viewpoints assessed as having significant negative effects at construction (major for walkers), and none experiencing significant negative effects at year 15.<sup>166, 167</sup> The Appellant considers that effects will not be significant elsewhere even at construction stage, including effects on residents,<sup>168</sup> and road users.<sup>169</sup> Clear views from these locations across to the site will have been experienced on the accompanied site visit, including from inside residents’ properties.

224. In response, the Council invites the Inspector to consider the photomontages provided by the Appellant on 5 June 2024,<sup>170</sup> and to look specifically at:

- a) J10-7d, which shows viewpoint 1 at year 1;
- b) J10-7i, which shows viewpoint 4 at year 1; and
- c) J10-7j, which shows it at year 15;
- d) J10-7s, which shows viewpoint 8 at year 1 and
- e) J10-7t, which shows it at year 15.

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<sup>166</sup> CD-A9.6 Environmental Statement Chapter 10, Appendix 10.2, Table 10.18

<sup>167</sup> Viewpoint map in CD-A9.6 Appendix 10.1 LVIA Appraisal Plans Figure LAJ-4, viewpoints 3, 4, and

<sup>168</sup> Ibid, i.e. in Dordon – viewpoints 5, 7, 19, 20, 21, Birchmoor – viewpoint 17, Hall End – represented by viewpoint 8

<sup>169</sup> Ibid, viewpoints 8, 9, 10, 11

<sup>170</sup> CD-D30/D – Appellant’s Proof of Evidence – Landscape Visual and Strategic Gap – supplementary proof, pg 16.

225. These visualisations were supplied spectacularly late. Too late in fact to be addressed within Ms Oxley's written proof or to be properly addressed in the rebuttal evidence as they were submitted as a Supplementary proof only shortly before the rebuttal evidence. While she cogently described their impact during her examination in chief, in reality they require little explanation. Simply viewing them is sufficient to see first why the Appellant was reluctant to supply them; and second, why the Appellant's assessment of the impact on the visual amenity is clearly indefensible. This was the assessment reviewed and guided by Mr Smith,<sup>171</sup> notwithstanding later attempts to distance him from these judgements.

226. To further substantiate this position, the Inspector is also invited to consider the visual impact on some of the houses in Birchmoor, which the Appellant agrees will see permanent negative effects, but claims are not significant.<sup>172</sup> In point of fact, should the Appeal be allowed, these residents will – in place of their current view south over gently sloping open arable fields – have bunds and dense planting only 12 and 14 meters from the backs of their houses.<sup>173</sup>

227. Similarly, those residents of Dordon whose properties currently lie along the edge of the Strategic Gap currently enjoy clear, open, elevated views. Those views will be lost or significantly foreshortened by the trees proposed by the Appellant as an orchard, in a transparent attempt to buy off criticism of this proposal. Mr Smith suggests, somewhat flippantly, that views on to an orchard might be nice. That could well be the case, but that is not his judgment to make. Those people who live in Dordon appreciate their wide, open view. If they did not, they would not have chosen to live in Dordon. Requiring them to adapt their preference to a shorter, more wooded view, or across to a some 600m long 21m high wall of the proposed 'Big Shed' development, to facilitate the Appellant's pursuit of profit is a startlingly unreasonable position to take.<sup>174</sup>

228. There is of course no photomontage from viewpoint 3. This is revealing in itself. The Appellant cannot bring itself to submit such a photomontage. So we have to just imagine what the impact will be for users of the bridleway in that location. But imagine

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<sup>171</sup> CD-D30/a – Appellant's Proof of Evidence – Landscape Visual and Strategic Gap, §1.5

<sup>172</sup> CD-D25, NWBC Proof of Evidence – Landscape Visual and Strategic Gap, §3.42

<sup>173</sup> Cross examination of Ms Oxley, 19 June 2024 and as seen from a residents property during the site visit

<sup>174</sup> Cross examination of Mr Smith, 20 June 2024.

what it will look like? It will be a truly extraordinary urban experience. It will also completely change the nature of the route, both physically and in terms of perception.

229. There is no photomontage from the entrance of the site. Again, the Appellant is desperate for the inspector not to see what the proposal will actually look like for the overwhelming number of receptors. Tamworth in the area north of the A5 will be experienced east of the M42. And it will be experienced as one drives, cycles or walks along the A5 all the way back from Dordon itself.

230. The Appellant is keen to point out that the ZTV is limited in this case. And visual impacts are limited. There is no dispute about that. Not least because the land is contained from wider views by features which actually accentuate the importance of the land in the Strategic Gap. Views from the South, South West and South East are blocked by the vast array of huge buildings south of the A5. These contain the ZTV but also seek to define and emphasise the contrast between those areas south of the A5 and value of what is left in contrast to the north. Similarly, the topography to the east contains the views from that direction. But this is also what gives Dordon its ridgeline character. To the west, the double barrier of trees either side of the M42 helps to complete the sense of clear definition that defines the extent of the Strategic Gap north of the A5. And with rising land to the north, this part of the Strategic Gap is very clearly defined as a piece of captive countryside – and clearly enjoyed by many local people for that very reason.

231. Again, based on the evidence of Ms Oxley, Mr Collinson gives the harm arising from the visual impact of these proposals moderate weight. Again that is not to suggest that these buildings will not have a dramatic visual impact. But it is the case that other Big Box development lies to the south, albeit on the other side of the A5.

232. For the reasons explained above Mr Hann gives it only limited weight. Again, that is simply not credible.

233. Policy LP14 requires development to conserve, enhance and where appropriate, restore landscape character. It is the Appellant's case that their proposal will harmonise with the existing landscape and, therefore, is not in conflict with the policy. Mr Hann

maintained this position when it was put to him that it was, frankly, ludicrous to suggest that when a building of 1 million sq ft will be placed in the middle of an open, agricultural landscape.<sup>175</sup> In his view, although the red line area of landscape will effectively be obliterated, the blue line area will be subject to measures which will enhance the character. The fact that this would result in a permanent loss of half of the landscape in question appeared not to factor at all in his consideration.

234. Far more realistic is the Council's view that the proposed development, given the landscape and visual impacts, would result in moderate visual harm and, therefore, would be in conflict with the policy.<sup>176</sup>

235. Policy LP30 seeks to ensure that the built form of new developments respects and reflects the existing pattern, character and appearance of its setting. In several respects, the proposed development is in conflict with the Policy.<sup>177</sup> Specifically, it conflicts with clause a), in that the building relates to the large-scale industrial site around Tamworth which, it must be noted, is in a different Borough, but not at all to the Gap, or with Polesworth, Dordon or Birchmoor. It conflicts with clause b), as has been clearly set out both in the landscape evidence above and in the Rule 6 Party's Planning Proof of Evidence.<sup>178</sup> While the current Application is only in outline, it refers to heavy planting, which is out of character with the area and therefore conflicts with clause e). The bunding and planting which will be necessary to screen the development will reduce access, contrary to clause f). Finally, the enclosed and overshadowed walkways and footpaths have the potential to conflict with clause h). This final aspect has been raised as a specific concern by the residents of Birchmoor, who are concerned that that the bunding abutting their gardens will create a secluded area in which crime might proliferate.<sup>179</sup>

236. The provision of the NPPF also need to be considered. This is not a valued landscape. But it is a landscape of value, especially to local people. People who have already been

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<sup>175</sup> Cross examination, Mr Hann, 2 July 2024.

<sup>176</sup> Evidence in Chief of Mr Collinson, 2 July 2024

<sup>177</sup> Evidence in Chief of Mr Weekes, 2 July 2024

<sup>178</sup> CD-D27/A, Local Rule 6 Party Proof of Evidence, §6.27

<sup>179</sup> Evidence in Chief of Mr Weekes



most accommodating of what has been built south of the A5. But as they see it, enough is enough already. And they have a point.

237. The inspector's issues (ii) and (iv) are addressed below.

**(v) Whether the proposed development would address an immediate need for employment land, or a certain type of employment land and, if so, whether the appeal site is an appropriate location to meet such a need**

238. Before turning to the specifics of Policy LP6, it is worth putting into context the Local Plan's success in addressing wider employment needs. Significant progress has already been made in the delivery of the overwhelming majority of the NWLP's policies.<sup>185</sup> 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.<sup>186</sup> It is also making significant progress in delivering the NWLP's housing allocations,<sup>187</sup> with a trajectory which is anticipated to exceed the required housing requirement.<sup>188</sup>

239. In terms of strategic employment land, this rural Borough, which is tiny in size, provided for both of the regional logistics sites in the West Midlands Regional Spatial Strategy. It took not just its fair share, but the full share of regional logistics sites for the entire region. Not one huge site, but two. Suggestions that the Council is parochial are wholly inappropriate.

240. North Warwickshire having taken both of the regional logistics sites through the mechanism of regional planning, in 2011 the Conservative-led coalition government decided to abolish regional planning. It is also decided at the same time to remove structure planning. The consequence is that, for the last 14 years, there has been no regional planning to examine which other areas in the West Midlands might be suitable for regional logistics sites.

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<sup>185</sup> CD-F6, North Warwickshire Local Plan Annual Monitoring Report, up to 31 March 2023, Executive Summary pgs 5-12.

<sup>186</sup> Ibid, pg 24.

<sup>187</sup> Ibid, pg 78-79.

<sup>188</sup> Ibid, pg 23.

241. It is not the fault of the North Warwickshire Borough Council that there has been no regional or even county-wide strategic planning for the last 14 years. Indeed, it might be said that North Warwickshire has suffered as a consequence because no additional regional logistics locations have been identified.

242. The new Labour Government, installed on Friday of last week, has announced plans to reinstate regional and other forms of strategic planning. That will be much easier to facilitate given Section 94 Levelling up and Regeneration Act 2023. This is the provision which allows for National Development Management Policies. This provision inserts into the Planning and Compulsory Purchase Act 2004 a new Section 38ZA introducing “national development management policies.” It specifically provides that

**“(1) A “national development management policy” is a policy (however expressed) of the Secretary of State in relation to the development or use of land in England, or any part of England, which the Secretary of State by direction designates as a national development management policy.”** (our underlining)

243. Regional planning, including for logistics, may therefore not be very far away at all.

244. In the meantime, two strategic rail freight interchanges (“SRFI”) have been promoted through the Development Consent Order (“DCO”) route. Neither has delivered occupations yet, but the West Midlands SRFI Phase I is about to be offered to the market and the Hinckley SRFI is awaiting a decision in September. Both are for 8 million sq ft of logistics space.

245. These will no doubt start to contribute very significant amounts of logistics space. But in the meantime, what has happened over the last 14 years is that whilst North Warwickshire has been facilitating the delivery of vast amounts of strategic employment land, nowhere else in the region has been matching its delivery. Every other area has been able to hide behind the absence of regional and structure planning.

246. It means that delivery has been very heavily focussed and skewed towards North Warwickshire. And yet the only thing the agents and consultants working in logistics

seem to do is focus on past trends. And surprise surprise! – the past trends data tell us that there is a high level of demand in the North Warwickshire and the M42 corridor, where both the Birch Coppice and Hams Hall strategic employment sites are located.

247. The past trends approach is therefore not just the antithesis of town and country planning. It is also completely and utterly unfair to North Warwickshire. Which is exactly the conclusion reached by both the:

- a) the planning Inspector examining the 2014 Core Strategy; and
- b) the planning Inspector examining the 2021 Local Plan

248. In terms of strategic employment land, the Appellant is not interested in addressing any need for industrial premises – Use Class B2. The application description lists B2 as the first of type of development sought. But through the application documents such as the DAS and now its own suggested condition (submitted in March 2024), the Appellant seeks B8 use for a minimum of 90% of the development. That removes any prospect of B2 from nearly all of the development. And, in fact, means the proposal could delivery entirely B8 space. That includes even the small residual 5,000 sqm of SME space.

249. So the focus for the Appellant is simply on logistics. Yet LP6 is not directed at logistics on its own. Far from it. LP6 is seeking to encourage economic growth and productivity. As the evidence shows B2 industrial uses also require ‘Big Box’ sites. But the Appellant rules itself out of wanting any of these. That seems very odd indeed. Why would any developer want to expressly rule out including B2 industrial use on the site and ruling out B2 occupiers? No reasons have been given for that decision and Mr Hann, who has worked closely with his client for several years could not give any reason at all.<sup>189</sup>

250. The Council is conscious that a plan-led solution to strategic employment land is the best solution. The Council is currently progressing an emerging Employment Development Plan Document (‘the EDPD’).<sup>190</sup> As part of this process the Council has completed a consultation on scoping, issues and options, which included a “call for sites” in addition to other documents which will contribute to the development of the

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<sup>189</sup> Cross examination of Mr Hann, 3 July 2024

<sup>190</sup> CD-D24, NWBC Proof of Evidence, Employment Matters, §4.16

plan.<sup>191</sup> 127 sites totalling 2500 hectares were submitted in response to this call, with over 1625 hectares submitted as potential employment allocations.<sup>192</sup>

251. The Council is not sitting idle, waiting for the EDPD to emerge. Following this call for sites, Officers have continued to meet with landowners, agents and promoters to develop strong working relationships. Where relevant, Members have been invited to join the meetings, in order to reduce any delays when proposals get to the Planning Board or LDF sub-committee.<sup>193</sup> The Council is, therefore, taking seriously its responsibility to bring forward employment sites under the aegis of the development plan, and is proactively pursuing the allocation of sites. It anticipates allocating strategic employment sites under the EDPD.<sup>194</sup>

252. This proactive and communitarian approach is typical of NWBC who, far from being “charmingly parochial” in their approach, have engaged repeatedly and voluntarily with regional strategic planning.<sup>195</sup> NWBC is delivering homes for the Greater Birmingham Housing Market Area, and the Coventry and Warwickshire Housing Market Area.<sup>196</sup> The only authority in the West Midlands to be meeting Birmingham’s unmet housing needs, despite a total unmet need of 40,000 and agreement from each of the authorities in the HMA that they would take Birmingham’s unmet need.

253. North Warwickshire BC has also previously agreed to support Tamworth’s housing needs,<sup>197</sup> and has included 14 hectares of employment land in the NWLP to address Tamworth’s unmet employment needs.<sup>198</sup>

254. In developing employment land in this area, NWBC has capitalised on its industrial and mining heritage, identifying sites for logistics development which were brownfield, or previously developed land. These sites have now mostly been developed, delivering a

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<sup>191</sup> Ibid §4.17. In evidence in chief, Mrs Barrett confirmed a revised date of 24 July had been set for the LDF sub-committee to consider these documents, with the delay due to the unexpected announcement that the general election would be held on 4 July 2024

<sup>192</sup> Ibid, §4.19

<sup>193</sup> Evidence in Chief of Mrs Barratt, 26 June 2024. Officers have met with, amongst others, IM Properties, St Modwens, Prologis and Richborough Estates.

<sup>194</sup> Cross-examination of Mrs Barratt, 26 June 2024

<sup>195</sup> As described by Counsel for the Appellant during the cross-examination of Mrs Barratt, 26 June 2024.

<sup>196</sup> CD-D24, NWBC Proof of Evidence, Employment Matters, §4.17

<sup>197</sup> CD-F15, North Warwickshire Local Plan Inspectors Report, §166

<sup>198</sup> CD-F1, North Warwickshire Local Plan 2021, §14.45

significant amount of employment in the logistics industry. As a result, any future allocation of employment sites will be on greenfield land. This requires a more careful and strategic approach, and it is one which the Council is pursuing with care and diligence.

255. Indeed, the strength of NWBC's commitment to promoting employment land in the Borough can be seen by the low unemployment rate, and an employment ratio which currently stands at 1.36 jobs for every one person of working age.<sup>199</sup> This indicates significant inward migration from other boroughs and therefore demonstrates the extent to which the Borough is already shouldering many the employment requirements of neighbouring areas.

256. LP6 seeks to facilitate the delivery of all types of employment land if there is an immediate need for it. So, the question becomes how does one show there is an immediate need?

257. The policy is there to ensure decision takers give significant weight to the benefit of new employment land if there is an immediate need it<sup>200</sup> The first part of the policy replicates part of the second sentence of NPPF 185. It is a general encouragement to support the provision of new employment land in the right location. The additional part is to give emphasis to this in the context of an identified immediate need. The immediate need plainly relates to both employment land and certain types of it. Otherwise it does not make any sense for two very obvious reasons: first, all employment land is a certain type of employment land; and second, without the use of the words immediate need, then the certain type of employment land get significant weight without there needing to be any form of need at all.

258. Policy LP6 states:

**“Significant weight will be given in decision taking to supporting economic growth and productivity, particularly 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**

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<sup>199</sup> Evidence in Chief of Mrs Barratt, 26 June 2024

<sup>200</sup> CD-F1, North Warwickshire Local Plan 2019, pg 36

**2015 (or successor study) which cannot be met via forecast supply or allocations. The relevant scheme will be required to demonstrate:**

- (i) access to the strategic highway network is achievable and appropriate,**
- (ii) the site is reasonably accessible by a choice of modes of transport,**
- (iii) it is otherwise acceptable, taking account of the living conditions of those nearby.”**

***Reason for LP6’s inclusion in the Local Plan***

259. It is trite law that one should not conduct “forensic archaeology” into the interpretation of a document like a local plan.<sup>201</sup> However, it is common ground between the parties that the wording of LP6 is ambiguous. As a result, it is instructive to consider the background to the policy’s creation.

260. During the examination of the Local Plan no clear evidence was provided as to the level of strategic employment land required in the Borough. Developers and promoters tried to advance the position that the Inspector should rely primarily on the Borough’s past successful delivery of employment land and factor it in to a “linear projection,” forecasting future growth. Using this approach, the Borough would be expected to bring forward some 410 hectares of employment land by 2028.<sup>202</sup>

261. The unreliability of this approach can be understood most clearly when viewing the Coventry and Warwickshire Housing and Economic Development Needs Assessment 2022 (‘the HEDNA’). In the period 2011 to 2019, NWBC completed approximately 122 gross hectares of employment land, most of which was Class B8. This was projected into a total need for the Borough of 304.4 hectares for the period 2021 to 2041. The population of the Borough is 65,000.

262. By contrast, Nuneaton and Bedworth, a neighbouring borough with a population of 134,200, according to the 2021 Census completed 21.5 hectares of employment land during the period 2011 to 2019, and was therefore assessed as having a need of only 47.5 hectares during the period 2021 to 2041.<sup>203</sup>

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<sup>201</sup> Lewison LJ in *R (oao TW Logistics) v Tendring District Council, Anglia Maltings (Holdings) Limited*, [2013] EWCA Civ 9, 2013 WL 128122, §14

<sup>202</sup> CD-F15, North Warwickshire Local Plan Inspectors Report, §171

<sup>203</sup> CD-I4, Coventry and Warwickshire Housing and Economic Development Needs Assessment 2022, §9.44

263. The same table projects Coventry's need – as a city of over 350,000 people – as approximately 100 hectares less than North Warwickshire's. As Mrs Barratt said, using this need projection “**if you've under-delivered in the past then your future requirements are going to be less as well.**”<sup>204</sup> Hardly an evidence-based approach to determining need.

264. In considering this approach, the examining Inspector noted that the figure arrived at via the future projection methodology would represent the majority of employment land forecast to be needed to 2031 by the Coventry and Warwickshire Housing Market Assessment and, as an annual average, would be broadly equivalent to the target set by policy TP17 of the Birmingham Delivery Plan:<sup>205</sup> Britain's second city with a population of over one million people.

265. Consequently, the Local Plan inspector described this approach as “**clearly unrealistic.**”<sup>206</sup> A similar view was taken by the Core Strategy Inspector in 2014.<sup>207</sup>

266. Yet here we are at an inquiry into employment land and the Appellant is reliant on a clearly unrealistic approach to calculating the need for logistics. This is wholly inappropriate. It may well be how agents like Mr Binks and consultants working for Big Box developers like Mr Turner like to communicate market demand. But it is not appropriate in North Warwickshire for the most obvious of reasons and not one, but two planning inspectors have already made that crystal clear. Clearly unrealistic and imprudent – that is the Appellants case.

267. It is also to be noted that the inspector in the St Modwen appeal decision did not address the shortcomings of past trends in his decision. This is odd because the Core Strategy inspector had already raised it. It is also odd as the Council clearly raised it in its closing submissions.

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<sup>204</sup> Re-examination of Mrs Barratt, 26 June 2024

<sup>205</sup> The Birmingham Development Plan covers a population of approximately 1 million, while the Borough of North Warwickshire has a population of approximately 65,000. Re-examination of Mrs Barratt, 26 June 2024

<sup>206</sup> CD-F15, North Warwickshire Local Plan Inspectors Report, §172

<sup>207</sup> CD-F21, North Warwickshire Core Strategy Inspector Report 2014, §45 “*I do not consider it would be prudent, therefore, to rely on the past completions model.*”

268. In order to address the issue without unduly delaying the plan, the examining Inspector created policy LP6 via Main Modification 40, allowing a clear basis for decision-taking where there was evidence of immediate needs.<sup>208</sup> The Inspector was at pains to point out:

**“In my view MM40 strikes an appropriate balance between according weight to provision of employment growth whilst not undermining the value accorded to a plan-led system in the NPPF2012. It must be read in conjunction with 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 as addressed subsequently in this report).<sup>209</sup>**

269. The Council’s policy LP5 requires that a minimum of 100 ha of employment land will be brought forward during the plan period and such land has been allocated accordingly.<sup>210</sup> There is employment land available in Area 2.<sup>211</sup> In order for LP6 to bite, any development which seeks approval under LP6 must show evidence of immediate need for employment land, as explicitly stated in the policy. It must also demonstrate why the site in question is the one required. While it is acknowledged that the policy does not say this explicitly, the implication is clear: if LP6 is being used to bring forward development on a site which is unallocated and which is otherwise contrary to other policies in the plan, there must be a justification for the use of that specific site.

270. This is the only logical approach to the application of LP6. Policy LP5 exists to support the development of general employment land with the aim of reaching the target of 100 hectares and subject to the usual planning balance.<sup>212</sup> Policy LP6 provides additional weight in the balance in the case of very specific additional need which cannot be met

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<sup>208</sup> CD-F15, North Warwickshire Local Plan Inspectors Report, §179

<sup>209</sup> Ibid, §180

<sup>210</sup> CD-F1, North Warwickshire Local Plan 2019, pg 36. Mrs Barratt pointed out in re-examination on 26 June 2024 that this figure was adopted in the final plan as the minimum achievable figure. This is supported in the examining inspector’s report (CD-F15, §169).

<sup>211</sup> The successor to the Policy’s Area A. Cross examination of Mr Binks, 26 and 27 June 2024

<sup>212</sup> Evidence in chief of Mr Collinson, 2 July 2024



elsewhere, and is not subject to either a specific target, or to delivery within a timeframe more specific than the general life of the plan.<sup>213</sup>

***Demonstrating immediate need for employment land or type of employment land***

271. A plain reading of Policy LP6 requires that the Appellants demonstrate an immediate need for employment land which cannot be met via forecast supply or allocations, if it wants to secure significant weight to this factor. This is contrary to the Appellant's case, which is that immediate need does not apply if it can be demonstrated that a certain type of land is required instead.<sup>214</sup> That must be wrong.

272. Unfortunately for the Appellants, the policy does not specify a quantum of development. Nor the supply level to be attained. The policy also does not specify a time period for delivery.<sup>215</sup> There is no threshold of what is acceptable or what immediate need looks like. All of which Mr Hann quite rightly accepted. To be clear then, Policy LP6 does not set out how much additional land is required, nor what the level of supply should be. Nor does it set how many years supply is required (such as a 5 year supply). What amounts to immediate need cannot therefore be answered in quantitative terms.

273. There is no reference to the quality of the employment land (such as it needing to Grade A). So it cannot be about the quantum of a certain quality of land.

274. In the absence of a figure in the policy, clearly specifying either a level of need or a method of quantifying and then demonstrating immediate need, something else is required.

275. Fortunately, we have clear examples of what. We don't have to go very far for that example it is just outside this council's authority area one junction up the M42. The neighbouring authority of North West Leicestershire ("NWL") has a very similar policy.

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<sup>213</sup> Ibid

<sup>214</sup> Cross examination of Mr Hann, 3 July 2024

<sup>215</sup> Accepted by Mr Hann in cross examination

It has applied it to the new logistics development at J11. The committee report is CD-199. At the time of the determination, which is the only relevant time, NWL Council knew:

- a) exactly who the occupiers for the entire site would be<sup>216</sup>;
- b) precisely why they need the logistics space in this location<sup>217</sup>;
- c) precisely where they were moving from<sup>218</sup>;
- d) the reasons why they were moving<sup>219</sup>;
- e) in the case of Jaguar Land Rover the Council knew a 20 year had been signed<sup>220</sup>
- f) and that it was subject only to planning permission being granted<sup>221</sup>; and
- g) the fact the investment was time sensitive<sup>222</sup> and immediacy of the need;
- h) in the case of JLR the application was for full details
- i) those full details related to 279,007 sqm: nearly 3 million sq feet of the space
  - please see paragraphs 1.1 to 1.8

276. That all of this was provided by the developer of that site (IM Property) was plainly for a reason. This is explained in paragraphs 5.1.12 of the Report. Both the applicant and the local planning authority knew this information was important and necessary for a large strategic employment site demonstrates why it was provided.

277. This is a very clear way to show immediate need as both IM, their agents and NWL knew. It is an example of how to do it. An example which is simple and clear.

278. Of course, an applicant might not want or be able to submit all these details. It may be that only some could be divulged. It would depend on each proposal. But even some of the detail would help to evidence immediate need.

279. The Appellant was well aware of this application. Indeed it's experts on need relied heavily on it to try and inflate their past trends data with this site – despite the fact it is

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<sup>216</sup> CD-199 para 1.3 and 1.8 CD-199 para 1.3 and 1.8

<sup>217</sup> CD-199 para 1.3 and 1.8

<sup>218</sup> CD-199 para 1.3 and 1.8

<sup>219</sup> CD-199 para 1.3 and 1.8

<sup>220</sup> CD- 199 para 1.3

<sup>221</sup> CD- 199 para 1.3

<sup>222</sup> CD-199 para 1.5

outside of Area A and Area 2 of the WMSESS. So they knew all about it. And it provided the Appellant with a blue print of what to do. But they did nothing.

280. It should be noted that the NWL policy relates to both need and demand. This would explain why the Council and an inspector accepted the past trends approach (a demand based approach) for the sites at Castle Donnington. It is also to be noted these were both for a much lesser scale of development than at junction 11.

281. The policy Inspector Bristow endorsed for North Warwickshire is explicitly only concerned with need. A lot of what the Appellant experts are talking about is demand. Demand for bigger space and consolidation in one location. It is not need. It is a commercial desire for consolidation. It also has little to do with actual productivity. Goods arrive a bit quicker – the aftersales part for the my 12 year old Land Rover might arrive a day sooner. But that is not really a measure of productivity.

282. One only needs to hop over the border in the other direction to see another example of how immediate need can be met. In Hinckley Borough there has been the recent Padge Hall Farm permission on the A5. It was demonstrated here with a hybrid application. The permission sought detailed consent for a large building (55,740 sqm). It was a large building, the details of which were known because there was a specific occupier named and the reason why they wanted the location. Again the premises were wanted for the consolidation and expansion of a local business. The details were known to the officers – see the committee report at 2.6. The fact it was subsequently taken by another occupier, the retailer Tesco, is nothing to point about why it was granted in the first place.

283. In contrast, in this case, the Appellant offers no details about any occupier.

284. There is no full or hybrid element to the proposal.

285. That seems even more odd, given the Appellant (or one of their companies) says that since 2020 there has been an occupier lined up with a bespoke building requirement.<sup>223</sup> They could have submitted this application as a hybrid if that really was the case. It is just a planning application they needed to submit – they do not need to build it.

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<sup>223</sup> CD-D41, page 22

286. In truth, this is the very definition of a speculative development and there is no immediate need of any kind.

287. We know from Mr Binks that the St Modwen site took 6 years to find occupiers from the date of the permission: see his XX. That is what we are talking about here.

288. Note also that the Appellant in this appeal did not offer to shorten the period for the submission of RM below the 3 years for any of the 2 years that the application was being considered. Nor during the many months that the appeal has been lodged. It has only happened after the Council raised it at this inquiry. And even then it is only for the first phase. That was undefined until after the conditions session and now it relates to the 1/10 of the site (9,800 sqm). And even then it is just the submission of details. And even this 1/10 of the site does not require commencement for 3 years after that.

289. None of this is remotely consistent with demonstrating an immediate need.

290. At Castle Donnington, the application was required to submit details of a first phase within the one year. But instead of meeting the immediate demand, it has sought a CLEUD, to simply preserve the permission.

291. It is important to note there was no test of immediacy at the time of the St Modwen appeal at Junction 10.

292. Commercial sensitivity or concern about the reaction of trade unions is not a basis for providing no detail. A hybrid application could be provided without revealing those details. And of course JLR, DSV and the global logistics firm in Hinckley are examples from just this local area of why that concern is not a legitimate cloak to hide behind.

293. In this instance, the proposed occupiers, Jaguar Land Rover (JLR) were known to the Committee which, accordingly, was able to consider in detail the requirements and benefits. The Committee was shown a signed agreement for a 20-year lease, and a description of the various uses for the buildings which were sought.<sup>224</sup> The committee was also able to understand why that site, in particular, was needed, with reference to the occupier's bespoke operational requirements and weigh the quantified economic

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<sup>224</sup> CD-I99, North-West Leicestershire District Council Application 18-01443-FULM, §§1.1-1.5

benefit to the area.<sup>225</sup> In weighing the economic benefits the Committee was under no illusions about the actual number of jobs which would be provided. The Appellant has provided none of this information in support of its application, save a vague reference to a “potential occupier” who is interested in taking 333,000 sq ft.<sup>226</sup>

294. While it is understood why the potential operator may wish to remain anonymous within the remit of the planning process, there has been nothing stopping the Appellant from progressing matters on their behalf. If, as is claimed, discussions have been taking place with a potential occupant since 2020 for the construction of a bespoke facility requiring 330,000 sq ft up to a maximum height of 12m,<sup>227</sup> one must ask why it is that the Applicant has proceeded with a speculative application with a maximum height of 21 sqm? Given the concerns over landscape character and visual effects, as well as the impact on the Strategic Gap, it would seem prudent to minimise those impacts and apply for a building which meets the maximum requirements of the prospective client, rather than jeopardise the relationship by applying for a significantly larger building. However, this was not the approach pursued in this case, with the Appellant preferring to proceed on a purely speculative basis. The Inspector is invited to draw his own inference from that approach in terms of the reality of the operator’s interest.

295. It is worth noting in passing that the extended discussions with this unidentified operator also help shed some light on the immediacy of the need. They have been looking to move for at least 4 years and, even if this permission were to be granted, would be unlikely to have a completed building to occupy within two more years. Having an intention to move but waiting until the right location is available is expressive only of a generalised wish to relocate, not an immediate need. This therefore does nothing to help the Appellant’s case on immediacy.

296. When giving his evidence, Professor Coleman listed the attributes of this particular site which made it attractive to logistics operators. These attributes included access to the motorway network, good connectivity, proximity to rail freight, proximity to a large settlement and within a cluster of logistic providers.<sup>228</sup> There is nothing in this list of

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<sup>225</sup> CD-I99, North-West Leicestershire District Council Application 18-01443-FULM, §§1.1-1.5

<sup>226</sup> Evidence in chief of Mr Dinks, 26 June 2024.

<sup>227</sup> CD-D41, Appellant Rebuttal Employment Matters (Market Perspective) 07062024, pg 22

<sup>228</sup> Evidence in chief of Professor Coleman, 28 June 2024

attributes which is specific to the proposed development site, and therefore no reason to justify the destruction of the Strategic Gap in this location.

297. In summary, it is the Council's assertion that the Appellant has demonstrated, at its highest, a generalised need for strategic employment land. The Council does not disagree. Land is needed and is being brought forward through the Employment DPD. However, the Council fundamentally rejects the suggestion that immediate need has been demonstrated and that the Appellant's proposal has thereby secured significant weight in the planning balance.

298. The Appellant is also seeking to argue there is no need to show immediate need. Well if that was the case why has it devoted so much energy to trying to show that. The policy has immediate need at its heart. Unfortunately for the Appellant it can't show it.

***Trying to show immediate need through quantification***

299. The Appellants have purported to determine need by assessing past demand and basing future supply requirement on that past demand. The Appellant seeks to confine its analysis to Area 2 of the WMSESS 2021. It is not appropriate for a myriad of reasons:

300. Firstly, two development plan inspectors have made clear projecting forward past trends is inappropriate here

301. Second, the approach adopted is based entirely on the concept of demand. That does not address need. It shows market demand based on a projection of past take up, derived largely from what was available in specific locations.

302. Third, in their evidence they give the average annual take up rate as 400,000 sqm per annum,<sup>229</sup> and use this figure to determine future need. Unhelpfully, the source of these figures was not referenced in Cushman and Wakefield study which was submitted in evidence. However, it was established under cross-examination that it was derived from the West Midlands Strategic Employment Sites Study 2021, and represented a combined figure for industrial and logistics take up for the period 2015 to 2018.<sup>230</sup>

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<sup>229</sup> CD-D29/C, Appellant's Proof of Evidence Appendices, Employment Matters, §3.65.

<sup>230</sup> CD-I2, §4.58

Given the failure to disaggregate the industrial and logistics take up, the past rates are, from the outset, overstated and unreliable as are by extension the future need requirements.

303. Fourth, having determined the projected need in the West Midlands region, the Appellant turns to consider the specific requirements of the M42 corridor, stating that there has been 5-year average take up rate of 2.2 million sq ft between 2019 and 2023.<sup>231</sup> Converting this figure into meters gives a figure of 204,380 sqm to account for the area's future land need projection.<sup>232</sup> On the Appellant's case, therefore, Area A (plus Junction 11 of the M42) should deliver half of the 400,000 sqm required for B8 units in the West Midlands region. Even removing past take up of land at Junction 11, one is left with a figure of 1.85 million sq ft which, when converted, comes to 171,865 sqm. That is an absurd level of concentration.

304. Fifth, none of this has any regard to planning. The WMSESS has no regard to planning and the past take up rate has no regard to planning. This appeal is a planning decision.

305. Sixth, the use of Junction 11 demonstrates that not even the Appellant itself thinks one should restrict the assessment here to Area 2 of the WMSESS 2021. That leaves their attempts to cling to that Area as the only relevant consideration in this case as hopeless. Obviously LP6 refers specifically to Area A (now Area 2) and in terms of the significant weight that it seeks to convey on a case demonstrating immediate need, then that has to be the area looked at. But looking outside of Area A and looking at the areas around is plainly material. In this location on the boundary of the East and West Midlands, it is plainly sensible to look at both to see what is available. The Appellant refuse to look wider to meet the need, despite the existence of millions of sq feet of built floorspace and vast areas of allocated or consented land in the Midlands.

306. Seven, all of the land the Council has highlighted is in the Golden Triangle. Without details about the occupier, it must be assumed that the occupiers are footloose firms that could locate anywhere in the Golden Triangle.

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<sup>231</sup> CD-D29/C, Appellant's Proof of Evidence Appendices, Employment Matters, §4.73

<sup>232</sup> 2.2 million ft<sup>2</sup> \* 0.0929 = 204,380m<sup>2</sup>

307. Eight, the Appellant has also been inexact with the timeframe over which they have determined their take up figures. In their study they claim that they have looked at the take up figures along the M42 corridor between 2019 and 2023.<sup>233</sup> However, elsewhere they state that they exclude the years 2020-2022 because of the destabilising impacts of the Covid pandemic. In reality, therefore, the five-year take-up figures actually only cover 2 years, rendering them unstable and therefore unreliable.<sup>234</sup> The response that was led by PTKC in re-examination was not easy to follow. A lack of clarity is usually indicative of a flaw.

308. Ninth, quite apart from being unreliable (as there is no way to tell how much floor space has been taken over for industrial uses), these figures are simply absurd. And more than absurd, it is bad planning, as noted by the HEDNA's authors who caution against over-concentration in one location.<sup>235</sup> Bluntly put, the Appellant cannot convincingly demonstrate immediate need and, by extension, cannot argue that there is inadequate supply.

309. Tenth, despite the Appellant's claims that there is only a very limited supply of land within the Borough and the broader area, the Inquiry spent a significant amount of time demonstrating evidence to the contrary. There are both land and units available in the broader area. In the absence of any threshold or target in the policy, this must be sufficient to demonstrate there is no immediate need for employment land, and accordingly LP6 does not apply.<sup>236</sup>

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<sup>233</sup> CD-D29/C, Appellant's Proof of Evidence Appendices, Employment Matters, figure 36

<sup>234</sup> Agreed under cross examination of Mr Turner, 27 June 2024

<sup>235</sup> CD-I4, Coventry and Warwickshire Housing and Development Needs Assessment (HEDNA) 2022, §11.25

<sup>236</sup> Evidence in Chief of Mr Collinson, 3 July 2024



**Land and Buildings Immediately Available in Area 2**

<b>Location</b>	<b>Site Number from CD-D24/B Appendix G and/or CD-D36/B</b>		<b>Land and Buildings square feet</b>
Tamworth Logistics Park (St Modwen)	26		118,000 sq ft
Hams Hall	30	a)	b) 160,000 sq ft buildings c) 260,000 sq ft (vacant)
Redditch	18	1)	2) 289,000 sq ft unit) 3) 161,900 sq ft unit)  Total 450,930 sq ft
Peddimore excluding the Birmingham City Council Site 1 million sq feet site proposed for B2	54	1)	2) 180,500 sq ft unit)
Peddimore (IM Properties Site)	54	1)	2) 151,700 sq ft 3) 70,000 sq ft 4) 145,500 sq ft  Or a total of 400,000 sq ft vacant land)
Prologis Park Midpoint	40		164,103 sq ft

**Total = 1,733,540 sq feet**

**Land and Buildings Available or allocated ot with consent in the Midlands**

<b>Geographical area</b>	<b>Site name</b>	<b>Site identifier</b>  <b>CD24/B Appendix G and/or CD 36/B</b>  <b>Or ID number</b>	<b>Space available</b>
M42 Corridor North-west Leicestershire	G Park (GLP)	51	Total of 753,477 sq ft (BTS – vacant unit)
M42 Corridor Castle Donnington – South of Junction 1 of A50	St Modwen	ID-13C	92,500 sqm (vacant land)
M42 Corridor North of Junction 1 of A50	IM	ID-14A	78,967sqm (vacant unit)
Hinkley Borough, Leicestershire Junction 3 M69	Hinkley 340	75	340,000 sq ft (vacant unit)
Hinkley Strategic Rail Freight Facility	Hinkley Strategic Rail Freight Facility	24	8 million sq ft <b>(pending outcome of DCO process)</b>
Land South of the A5, padge Hall Farm, Hinckley	Padge Hall Farm	ID 10	599,985 sq ft (80,610 sqm). The total site was 136,350 sqm minus the Tesco of 55,740 sqm)
Warwickshire M6/A444 Coventry	Wilsons Lane NBBC EMP2 – Strategic Land Allocation	33	Panattoni to develop 540,000 sq ft. (currently vacant land)  Opportunity to develop additional 40,000 sq ft and 20,000 sq ft (vacant land)
Bowling Green Lane, Coventry	NBBC Local Plan Allocation EMP7 – Strategic Land Allocation	34	26 hectares (vacant land)
Coventry Ansty Park	Apollo 1-4	43 & 48	117,000 sq ft

			170,000 sq ft <sup>237</sup> 269,000 sq ft 300,000 sq ft (units available)
Coventry Eastern Green	Pickford Gate	38	60,000 sq m
Rugby	Symmetry Park	44	390,694 sq ft 338,000 sq ft 170,474 sq ft (land available)
Rugby	DRFT	46	1) 327,689 sq ft (unit DC327 available)  2) 217,785 sq ft (DC218 vacant unit)  3) 380,000 sq ft (DC380 BTS vacant land available)
Birmingham	The Hub, Witton, Birmingham	41	119,499 sq ft (HUB 100 unit available)  100,529 sq ft (HUB 120 – unit available)
West Midlands	Spark Walsall	Mr Binks CV in proof	600,000 sq ft
West Midlands	West Midlands Interchange	55	8 million sq ft, with the first phase now being developed
Leicestershire	Magna Park	47	189,000 sq m

310. Whatever the final amount that is available as at today's date, there is quite clearly vast areas of land and millions of square feet of buildings presently or soon to be available if one looks outside Area A within the Midlands, especially up the M42 corridor north of the site and in the Coventry and Rugby areas along the M6.

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<sup>237</sup> Size in prospectus given as 150,000 sq ft, but updated in cross examination by Mr Binks' following building out of the site.

### *Locations for employment land*

311. The Appellant has cherry-picked the available evidence, focusing relentlessly on the area in which the site it promotes is located, while ignoring the wider subregion. Their argument appears to be that logistics occupiers are only interested in Area A. It should be noted in passing that the Appellant only applies distinct boundaries to the area of land in which it is interested. Elsewhere, when remarking on the location for strategic allocation of employment land, the Appellant has noted “planning for development needs doesn’t work to boundaries.”<sup>238</sup> It is also relying to a very great extent on a report which covers the whole of the West Midlands.

312. The Site is one of the best performing sites in the West Midlands. But this is a market driven report. It is only concerned with commercial issues., When land is not available in Area A where do occupier go – up one junction to Junction 11. There is also a lot of land available at Junction 12. And lots more available at Castle Donnington at the top of the M42. Lots and lots of options. Footloose firms can go to lots of locations in the Midlands. Firms with local employees like JLR and DSV can go one junction up.

313. Planning considerations are of course a legitimate basis for the market having to meet demand in different locations. But to listen to the Appellant case, one could be forgiven for thinking planning is irrelevant or at best to be treated as a very minor factor.

314. Added to which as soon as planning consideration are examined the context is far different. The Coventry and Warwickshire Housing and Development Needs Assessment describes four corridors which could accommodate strategic B8 development, of which the A5/M42 is only one.<sup>239</sup> The HEDNA also cautions against an over-concentration in the area of the appeal site, and specifically recommends the promotion of other sites elsewhere, particularly in South Warwickshire, in order to avoid highway and labour-market concerns.<sup>240</sup> Essentially, the HEDNA is recommending the Warwickshire local authorities work together to share responsibility

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<sup>238</sup> Cross examination of Mr Hann, 3 July 2024

<sup>239</sup> CD-I4, Coventry and Warwickshire Housing and Development Needs Assessment (HEDNA) 2022, §11.24.

The others are: M42/A446; M6; A5.

<sup>240</sup> Ibid, §11.25

for the location of strategic B8 land, in order to maximise efficiency and ensure sustainable development.

315. The Appellant has also sought to persuade the Inspector that need should be determined, broadly, within boroughs, arguing that each borough must be responsible for meeting its own need. This argument is flawed in two respects. First, it ignores the specific nature of strategic sites, which respond not to the individually assessed borough needs, but to the overarching regional requirements and therefore, by definition, cannot be confined to borough boundaries. Second, it overlooks the permissions which were granted by NWBC at Hams Hall and Birch Coppice, each of which accounted for approximately 200 and 160 hectares of land respectively, and between 8,000 and 10,000 jobs. By any argument, NWBC has taken its fair share of allocations.<sup>241</sup> It is also an argument which the Appellant applies selectively, as evidenced by them straying beyond Area A when it is required to strengthen their argument.<sup>242</sup>

316. It also seems to ignore their own case which is to say this is a strategic need to meet the needs in the West Midlands. All the evidence they rely upon of course is based on demand.

317. The Appellant offers no alternative way to assess demand, and certainly no way to assess need, let alone immediate need. There are buildings and land available in Area 2 now. We don't know the size of units any future occupiers might want. The Appellant's own letter to WSP – HPG's written letter to John Coleman dated shortly before the exchange of evidence refers to 330,000 sq ft - does not reveal the occupier. It is in fact a letter written by the Appellant to the Appellant to set up a size of unit required for an unknown occupier designed to show there is nothing available. As self serving documents go, is is the bees knees. It should attract no weight.

318. Given the inability to demonstrate need, as discussed above, the Appellant has no choice but to demonstrate demand and hope that the Inspector is persuaded to accept it as a substitute. Both Mr Binks and Mr Turner were keen to explain the way in which logistics operators determine their preferred locations and how, having determined

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<sup>241</sup> Evidence in Chief of Ms Barratt, 25 June 2024;

<sup>242</sup> CD-D29/C, Appellant's Proof of Evidence Appendices – Employment Matters (Cushman & Wakefield), §4.73. Including the 3.5 million ft<sup>2</sup> provided at Junction 11 contributes to the inflation of the past trend data and, consequently, the future projections.

them, they are unwilling to consider alternative sites, even when those sites are available. Indeed, in Mr Binks' opinion, far from being footloose, these operators are so committed to their preferred location, they "will wait a long time for their site."<sup>243</sup> This view was contradicted by Professor Coleman who told the Inquiry that businesses have a "process of determining an optimum location which isn't necessarily single and fixed. An occupier will draw up criteria which match their commercial objectives, creating a prioritised list of objectives at the top of which is a preferred location which best matches. If the first-place location is not available you have to go to the second location, which is sub-optimal. It is also not necessarily in close proximity to the first place."<sup>244</sup>

319. Even if operators were so firmly wedded to their preferred location – a position the Council rejects – commercial preference is not a planning matter. It is not the Inspector's job to facilitate market demand. And Policy LP6 should not be read as a carte blanche to focus only on market demand. The Reasoned Justification makes that clear. Rather, for policy LP6 to avail the Appellant at all, the Inspector must decide if there is immediate market need for the land, which can be met by land and buildings. With no threshold it is difficult to say there is immediate need now. Especially when there is plainly land and buildings available in Area 2 right now.

320. Companies choosing to wait until the perfect site becomes available does not provide evidence of any sort of need, let alone immediate, and therefore cannot meet the threshold set out at LP6.

321. The Appellant has tied itself in knots in an attempt to demonstrate an immediate but non-specific need, with the result that the Appellant's evidence on the market is inconsistent and contradictory. On the one hand, Mr Binks tells us that suppressed demand is a factor in the current market where, due to lack of supply occupiers simply do nothing, and therefore demand manifest itself.<sup>245</sup> This is a convenient position to take, in that it allows them to ask the Inspector to accept the absence of evidence as

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<sup>243</sup> Cross-examination of Mr Binks 27 June 2024

<sup>244</sup> Evidence in Chief of Professor Coleman, 28 June 2024

<sup>245</sup> Evidence in chief of Mr Binks, "If the supply isn't there, the demand can't take it. If there is no apple on the shelf I can't buy it. That leads to demand not manifesting itself in the market, so occupiers will make choice not to do anything. If no prepared site they won't take it forward or wait until right site comes up."

evidence of demand. Mr Binks went on to tell the Inquiry that DSV Logistics looked for 10 years for a site around Junction 10 of the M42 and, when unable to find and appropriate site, was forced to move... to a site at Junction 11.<sup>246</sup> These two junctions are approximately 9 miles apart. It is accepted that, as Mr Binks said, that for some occupiers a move of a mere 10 miles may result in additional costs and environmental damage. But how can that really be the case for a global logistics and transport operator, whose markets are more linked to global supply chains than local customer bases.

322. These doubts grow even stronger when Mr Binks went on to describe one client “very recently looking for a specific facility in Midlands. They couldn’t find what they wanted so relocated the whole thing abroad.”<sup>247</sup> In Mr Binks’ view, therefore, companies find a move of 10 miles out of a preferred area is too disruptive and expensive to be considered; and simultaneously are prepared to leave the country entirely in search of their ideal location. It is all rather unconvincing.

323. Added to which a trip to the East Midlands Gateway will reveal what is really going on. Firms are looking for every bigger sheds to consolidate their activity. These sheds are getting longer, wider and taller. Previous concerns about landscape impact seem to be brushed aside whilst ever larger sheds are cropping up everywhere. This is driven by commercial considerations. This is demand led. It has nothing to do with need.

324. The decision which is before the Inspector will ultimately be determined on the basis of planning considerations. While supporting the economy and bolstering markets is, clearly, a material consideration<sup>248</sup> it is not the only, or even most important, consideration. Evidence of a “hot market” does not oblige the Inspector to facilitate that market at the expense of other planning considerations.<sup>249</sup> This is particularly the case when disinterested, independent research such as the HEDNA recommends dispersing strategic employment land around the county. The Appellant’s position is one in which market demands are paramount and should, therefore, be accommodated. However, the

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<sup>246</sup> Ibid. Mr Binks said “There is the DSV requirement which looked at junction 10/M42 location but couldn’t find it. Eventually forced after 10 year to move to junction 11 site at Mercia park.”

<sup>247</sup> Ibid

<sup>248</sup> CD-F11, National Planning Policy Framework 2023, §85

<sup>249</sup> Cross examination of Mrs Barratt, 27 July 2024. Counsel for the Appellant suggested that developer willingness to promote sites in the Green Belt was indicative of a very high demand.

Inspector must balance the preferences of the market with other factors including sustainability, supporting regeneration and spatial policies.

325. The rest of that hot market seems keen to engage in the EDPD process. That was clear from the evidence given by Mrs Barratt. That is the way to address this issue.

326. The Richborough application shows that there are other options available. It is in the Green Belt. Green Belt is a more constraining policy designation. But the site has many other merits. It is a case based on very special circumstances because any amendment to the Green Belt boundary cannot take place yet. It may be determined before this appeal is determined, but that seems unlikely.

327. The application shows an applicant which may want to engage on matters like highways as the EDPD process progresses. That is perfectly normal. It does not mean that applicant will want to jump the gun like this one.

328. Many other sites are being proposed through the EDPD process. There are lots of options for getting the right solution. There is not a lack of options. Far from it.

329. Mr Collinson gives the Appellant case for the delivery of new employment land through the appeal process limited weight. There are of course some benefits, but the threshold test of immediate need in LP6 is not made out. The proposal gains no support from the policy.

330. In his proof, Mr Hann seeks to take significant weight from the policy and then give weight to 10 other elements of employment delivery. He refined this in his oral evidence to being 10 elements that feed into one economic benefit. But even then, he still double counting. LP6 is about providing land to support economic growth. The policy addresses the economic case.

***Issue (vi) Whether the appeal site represents an appropriate location for the provision of an overnight lorry parking area and associated facilities.***

331. The National Highways Lorry Demand Parking Assessment 2023 designates North Warwickshire as amber, indicating no pressing need for HGV parking.<sup>250</sup> While it is

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<sup>250</sup> CD-D24, NWBC Proof of Evidence, Employment Matters, §5.40



accepted that junction 10 and Tamworth are red, the Council's assessment of its need is, quite rightly, focused primarily upon its own area. The Council notes that, even when HGV parking is provided, there is no means of compelling drivers to use it. As a result, surveys which count lorries parking in laybys overnight may simply be indicative of those drivers who do not wish to pay to park in a designated area, rather than of an inability to find such a space.<sup>251</sup>

332. Notwithstanding, Moto Services, at junction 10 of the M42, currently provides on-site parking for 56 HGVs and 18 coaches.<sup>252</sup> This provision is supplemented by planning permission for 38 additional HGV spaces which has been commenced and are due to be completed in early 2025, and an additional 150 spaces for which permission will be sought.<sup>253</sup>

333. The Appellant has sought to characterise this as corroboration of the levels of need in the area. The Council does not agree with this characterisation. It is, instead, one commercial operator seeking to prevent the establishment of a rival commercial operator in close proximity. While the Council is disinterested as to who provides HGV parking services, it does point out the clear logic behind the agglomeration of services in one location, preventing these services sprawling into greenfield sites which are designated under a Strategic Gap policy and containing in one location the 24-hour lighting and disruption which is part and parcel of large-scale HGV parking.

334. It is accepted there is a degree of need for more lorry parking. But the question is whether it should be here in the Strategic Gap or at the existing MSA.

335. Mr Collison gives the provision of HGV parking moderate weight.

336. The Council also notes that the Appellant's highway modelling does not appear to reflect the contribution made by the HGVs which will be using the SRN in order to access the proposed lorry park. No doubt the Appellant can clarify that.

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<sup>251</sup> Evidence in Chief of Mrs Barratt, 26 June 2024

<sup>252</sup> CD-D24, NWBC Proof of Evidence, Employment Matters, §5.39 (2<sup>nd</sup> para)

<sup>253</sup> CD-ID9, Moto Letter of Representation

***Issue (iv) its effects on the nearby strategic and local highway network, and on the safety and convenience of users of these highways***

337.LP6 also requires an Appellant to demonstrate that its proposal can secure achievable and appropriate access to the strategic highway network.

338.As the County highway authority, Warwickshire County Council ('WCC') has responsibility for ensuring that all of the development allocated in the NWLP can be brought forward in an achievable, sustainable way, which doesn't undermine or disrupt existing development or prejudice future developments. In pursuit of this goal it has introduced Policy Position MS4, which emphasises the need for robust data-led decision-making when assessing the viability of new developments.<sup>254</sup>

339.This policy clearly states that WCC will form its decisions on the basis of the evidence provided by developers, as to the impacts of their proposed development. It also makes it clear that developers will be expected to use specific techniques in order to support the decision-making process.<sup>255</sup> These are all set out in detail in the WCC Modelling Protocol.<sup>256</sup> Representing WCC, Mr Muguerza Espino was clear that the modelling protocol ensures a fair, objective approach is applied to all developers.<sup>257</sup>

340.It was, therefore, with concern that WCC noticed that the Appellant sought to introduce further analysis using TRANSYT 16, introduced in Dr Bunn's Proof of Evidence.<sup>258</sup> This information was additional to that which had been agreed in the signed Statement of Common Ground, and was contrary to the policy MS4.<sup>259</sup> In Mr Muguerza Espino's view, the approach taken was too broad and not sufficiently rigorous: it does not prove the many benefits the Appellants claim the development will bring forth.

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<sup>254</sup> CD-H6, Local Transport Plan 4, Warwickshire County Council, July 23, pg 50.

<sup>255</sup> Ibid. The policy says: "We will take evidence-based decisions which may include requirements from developers for transport assessments, travel plans, modelling assessments and other appropriate data. These decisions require specific technical data, such as the use of micro-simulation modelling techniques to support Transport Assessments, where appropriate, in accordance with our Modelling Protocol. The Council will publish and regularly review this protocol, and will work with applicants to assess the individual requirements for the sites/areas being developed."

<sup>256</sup> Found in CD-D38, NWBC – Rebuttal – WCC – Highways, 070624, §2.2

<sup>257</sup> Round table discussion, Appellant and Warwickshire County Council, 25 June 2024

<sup>258</sup> CD-D32/A, Appellant's Proof of Evidence, Transport/Highway Matters, §6.25

<sup>259</sup> CD-D38, NWBC – Rebuttal – WCC – Highways, 070624, §3.1-3.12

341. By failing to apply the agreed modelling, the Appellant has left WCC unable to determine the extent to which this one, speculative, application will have an impact on those allocated under the Local Plan.<sup>260</sup> It will also be unable to determine the extent to which vehicles will engage in rat-running, with a negative impact on the local road network.<sup>261</sup>

342. At the Highways Round Table Discussion, Dr Bunn said *“Mr Espino has said that his concern is that we’re overstating the benefit to the Local Plan. Fine, we might be. It’s a simple and high-level assessment that we’ve done. What goes without saying is, if you provide half of the scheme around the M42/Junction 10, there is clearly a benefit.”*<sup>262</sup>

343. There is no conflict with policy LP6 or other highway policies in the Local Plan. But WCC has made clear the purported benefits should not be claimed.

#### **Issue (iii) Loss of Best and Most Versatile Agricultural Land**

344. The proposal will lead to the loss of a significant amount of best and most versatile (BMV) land within the red line boundary. There is some indication that additional agricultural land will be lost to the BNG requirements, demarcated in pink within the blue line area. Mr Collinson accords this concern limited negative weight in the planning balance.<sup>263</sup>

345. As Mr Hann gives this moderate, in XX he accepted the Government has expressed concern about the loss of land for food production.

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<sup>260</sup> Mr Mugerza Espino, Round table discussion, Appellant and Warwickshire County Council, 25 June 2024

<sup>261</sup> Mr Weekes, Round table discussion, Appellant and National Highways, 25 June 2024.

<sup>262</sup> Mr Mugerza Espino, Round table discussion, Appellant and Warwickshire County Council, 25 June 2024

<sup>263</sup> Ibid, §5.6

## PLANNING BALANCE

### The Development Plan

346. As per section 38(6) of the Planning and Compulsory Purchase Act 2004, regard must be had to the development plan, and determination made in accordance with that plan unless material considerations indicate otherwise.
347. In the Council's view, the Proposed Development is clearly and demonstrably in conflict with LP4, in that it will significantly adversely affect the distinctive, separate characters of Tamworth and Polesworth with Dordon. The policy clearly states that, in such a case, development will not be permitted. This should, therefore, preclude the proposed development from the grant of planning permission. However, for the sake of completeness, the Council will make additional submissions on the rest of the proposed development's compliance with the plan.
348. LP6 provides for significant weight to be given to an application in the event that immediate need for employment land is demonstrated. It is the Council's view that this immediate need has not been demonstrated. Equivalent land and buildings are available throughout the West Midlands, and the Appellant has advanced no evidence to indicate there is a pressing, specific, need for the appeal site. Nevertheless, even if immediate need had been demonstrated, it would still only result in the significant weight being given in the planning balance. It is the Council's view that, even when afforded significant weight, the proposed development cannot overcome the complete prohibition established by LP4.
349. The proposal is also contrary to LP2, LP14 and LP30 of the Local Plan and DNP1 and DNP 4 of the Neighbourhood Plan.
350. The proposal is clearly contrary to the Development Plan. There is no support derived from Policies LP6. There is support to be gained from LP34 but the Moto Services proposal are plainly a much better location.
351. A split decision could be issued, but there are problems with it, especially in terms of Plot B1. A split decision would also put the proposal at conflict with what is set out in the DAS.

### **Other Material Consideration**

352. In addition to the Council's clear view that the proposed development conflicts with the Development Plan, it maintains that the various material considerations which weight against the proposal: the extensive opportunities for meeting any immediate need outside of Area 2 of the WMSESS. Also the loss of agricultural land

353. The Appellant raises lots of other material considerations. Much of it is duplication with its case on LP6. But some of the main ones are addressed briefly here.

#### ***Rail served***

354. The Appellants describe this site as "rail served," by virtue of its proximity to the Birmingham Intermodal Freight Terminal (BIFT) at Birch Coppice. The Council understands that this is accurate in terms of the relevant "marketing speak," but queries its actual value in planning terms. BIFT's operators provided evidence that 50% of the freight which passes through it is delivered or collected in a 10-mile radius of the terminus, with another 30% within a 20-mile radius. The final 20% lies further beyond that.<sup>264</sup> There is, therefore, no requirement for a site to be adjacent to a rail terminal in order to be "rail served."<sup>265</sup>

355. The Appellant is unable to explain either the total volume of freight which arrives at Birch Coppice or the neighbouring Core 42 site, or the percentage of that freight which arrives into that site by train via BIFT.<sup>266</sup> The Appellants themselves suggest that proximity to the Birch Coppice Rail Freight Facility will reduce HGV movement by a mere 10%.<sup>267</sup> Of those few goods which do arrive by rail, all will require transportation on the strategic road network to reach the site, transported via tug.<sup>268</sup> Indeed, the Appellant admits that there is no condition or legal commitment which binds the Site's occupiers to use the rail freight service.<sup>269</sup> Without substantiating data, much of the

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<sup>264</sup> CD-E53, Consultation Response Con 53, Maritime Transport, 29/09/2022

<sup>265</sup> Evidence in Chief of Mr Collinson, 2 July 2024

<sup>266</sup> Cross examination of Mr Hatfield, 28 June 2024. In re-examination Mr Hatfield admitted that the rail service at BIFT currently brings in less than half of the freight for Birch Coppice and Core 42.

<sup>267</sup> CD-D32/A, Appellant's Proof of Evidence, Transport/Highway Matters, §9.15

<sup>268</sup> Cross examination of Mr Hatfield, 28 June 2024

<sup>269</sup> Cross examination of Mr Hann, 2 July 2024

Appellant’s argument on the environmental benefit of being “rail served” is unsubstantiated and can, therefore, be accorded only limited weight. In fact, the Inspector may find that it is another example of marketing speak.

356. In his evidence in chief Mr Hatfield suggested that this interaction between tugs and the SRN was common practice at the Daventry International Rail Freight Terminal (DIRFT)<sup>270</sup> however, on cross-examination he agreed that only a “very small proportion” of the freight moved around that site actually crosses it<sup>271</sup> The Inquiry was told that tugs have a top speed of 30 mph. It is hard to see how these tugs might cross the already busy SRN without increasing congestion. Unfortunately, the Appellant has provided no modelling related to this interaction, leaving these concerns unaddressed.

357. Given the limited evidence which has been provided to support the Appellant’s case regarding the extent to which the site can be considered “rail-served”, the Council accords this benefit only limited weight.<sup>272</sup> The Inspector will form his own judgement on the extent to which the marketing reflects the reality.

### ***Job creation***

358. The Council accepts that the benefits of the scheme include the provision of jobs in the region.<sup>273</sup> However, this figure is neither stable nor well evidenced. Professor Coleman told the Inquiry that, since the Application was submitted in 2021, more information has become available on job density in the logistics sector which has necessitated a reduction in the overall figures.<sup>274</sup> This presents an eloquent expression of the council’s concern with regard to the argument that the proposed development will provide beneficial employment to the area. In a period of three years, rates of automation in the logistics industry have increased to the extent that jobs have reduced by from 1450 to 1000.<sup>275</sup> It is, therefore, simply not tenable to accord any single figure with significant weight, as it will undoubtedly be subject to change.

359. As with so much of the evidence provided in this Inquiry, the Appellant has sought to provide the bare minimum, hoping that the Inspector will draw specific conclusions

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<sup>270</sup> Evidence in chief of Mr Hatfield, 28 June 2024

<sup>271</sup> Cross examination of Mr Hatfield, 28 June 2024

<sup>272</sup> CD-D24, NWBC Proof of Evidence, Employment Matters, §5.47

<sup>273</sup> Evidence in chief of Mr Collinson, 2 July 2024

<sup>274</sup> Evidence in chief of Professor Coleman, 28 June 2024

<sup>275</sup> Ibid

from generic options. This pattern continues to be demonstrated with regard to potential economic benefits. Without knowledge of a specific operator, Professor Coleman was left with little to rely besides generalities. The Inquiry was told that he had used a “standard approach” to calculate the number of jobs the scheme might provide.<sup>276</sup> Similarly, while the Employment Land Needs Assessment stated that Ocado employed 2,000 people at Birch Coppice, no source could be identified for this figure.<sup>277</sup> When it was put to Professor Coleman that the proposed development might employ only 50 people and a number of robots, the best he could offer was that the figures “would be determined by the nature of the occupier... even if it’s 50 jobs and they’re high quality, well paid jobs, it will be of benefit.”<sup>278</sup> However, given that the majority of jobs at the nearby Moonpig warehouse are seasonal low-skilled, zero-hour contracts, there is clearly no guarantee of the type or quality of the jobs. Frankly, the entirety of the Appellant’s evidence in this regard is based on theoretical assumptions and therefore should hold no weight in the planning balance.<sup>279</sup>

360. As Mr Collinson has pointed out, in the absence of any concrete information which can be related to a specific occupier, or even a specific sector, the theoretical assumptions provided on the part of the Appellant with regard to the potential economic benefits which might accrue from the Proposed Development offer very little help either to the Council or to the Inspector. Accordingly, they should be given very little weight in the planning balance.<sup>280</sup>

361. Where actual data could be found, little of it was helpful to the Appellant’s case. As North Warwickshire currently has a job density for the Borough of 1.36 jobs for every 1 working person, under-employment is clearly not a significant risk. Indeed, Mr Hann accepted that significantly more people work in the Borough than actually live in it.<sup>281</sup> This in-migration of labour is a departure from the norm for rural boroughs which are usually characterised by out-migration, as residents travel to larger urban centres to access employment opportunities. The Borough is heavily reliant on the logistics sector for its employment provision and, while welcoming this sector, the Council is also

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<sup>276</sup> Cross examination of Professor Coleman, 28 June 2024

<sup>277</sup> Ibid

<sup>278</sup> Ibid

<sup>279</sup> Ibid

<sup>280</sup> Evidence in Chief of Mr Collinson, 2 July 2024.

<sup>281</sup> Cross-examination of Mr Hann, 3 July 2024

acutely aware of the need to broaden the employment base, diversifying it away from the reliance on logistics and, by extension, improving the quality of jobs on offer in the borough.<sup>282</sup> The Appellant accepts that this aspiration is not unreasonable.<sup>283</sup>

362. Of greater concern to the Council is ensuring, in the first instance, that the jobs are high quality and, in the second, that those who live in the Borough have the skills to take up the high-quality jobs.<sup>284</sup> At 2%, the unemployment rate in North Warwickshire is below the national rate of 4%. While Professor Coleman sought to persuade the Inquiry that economic inactivity rates were higher in North Warwickshire than the national average, particularly in the over 50s, he was unable to point to evidence of this in his proof. Nor was he able to substantiate his claim that these elsewhere people had been brought back into the labour market to work in the logistics industry.<sup>285</sup>

363. The Council accepts that, if planning permission were granted, the site would bring some other benefits which are material considerations. There will be construction related employment, although this will only be a temporary benefit.<sup>286</sup> The buildings will add value to the regional economy.<sup>287</sup>

364. Training and employability support may provide some limited benefit. However, as already stated, given the area's already low unemployment rate, there may be limited impact for the immediate community.<sup>288</sup> Furthermore, despite a variety of commitments to "upskilling" the workforce, and NWBC's drive to enshrine measures of this sort in permissions,<sup>289</sup> the "glass ceiling" effect persists, preventing local workers from progressing beyond the warehouse floor.<sup>290</sup>

365. The Council does not accept that this proposal will align with NWBC's sustainable community strategy, which seeks to make North Warwickshire a place where people want to live, work and visit. While providing people with a place to work is important,

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<sup>282</sup> CD-F1, North Warwickshire Local Plan 2021, §2.16

<sup>283</sup> Cross examination of Mr Hann, 3 July 2024

<sup>284</sup> Evidence in Chief, Ms Barratt, 26 June 2024

<sup>285</sup> Ibid

<sup>286</sup> CD-D23/A, NWBC Proof of Evidence, Planning Matters, §11.2; Evidence in Chief of Mr Collinson, 2 July 2024

<sup>287</sup> Evidence in Chief of Mr Collinson, 2 July 2024

<sup>288</sup> Ibid

<sup>289</sup> Evidence in Chief of Ms Barratt, 25 June. Ms Barratt referred to requiring skills plans in S106 agreements

<sup>290</sup> Evidence in Chief of Mr Collinson, 2 July 2024.



the strategy seeks to balance the demands of the economy with the environmental and amenity considerations which make a place liveable. This requires protection of landscape and of open spaces such as the community gap.<sup>291</sup>

### ***Facilitating the Delivery of the Local Plan***

366. The Council also does not accept the Appellant's submission that the Proposed Development will facilitate the delivery of the NWLP. There is no evidence that the housing allocations H4 Land East of Polesworth and Dordon and H5 Robeys Lane will be prejudiced in any way if the M42 does not receive any junction improvements and, indeed, the allocations are coming forward.<sup>292</sup> The improvement that the Appellant is promoting as a benefit to the broader plan is required only to enable the development of the site and make it acceptable under LP6. It should therefore be accorded significantly less weight than the Appellant has in the planning balance.

### ***Global International Business***

367. In giving significant weight to the possibility that a significant operator will be attracted to the site and thereby boost the profile of the Borough, the Appellant is jumping the gun quite spectacularly. As has already been thoroughly rehearsed, there is no named occupier for the site, and therefore any speculation regarding an occupier's identity is just that: speculation. It should therefore be accorded no weight at all in the balance.<sup>293</sup>

### ***Supporting Local Businesses***

368. While there is value in supporting local businesses and SMEs, as per the conditions the Appellant could provide as little as 5% of the Proposed Development. There is also no definition of an SME, leaving open the possibility that the land could be used by a logistics company also looking to use a small amount of office space. Given the Council's wish to broaden the employment base, it would have been open to the Applicant to have submitted an application with meaningful provision for B2 space, as

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<sup>291</sup> Ibid

<sup>292</sup> Ibid. Mr Collinson told the Inquiry that H5 is coming forward with no highway objections from Highways England (sic), Warwickshire County Council and Staffordshire County Council. For H4, there is a named developer working with the NWBC. Discussions are ongoing with NH and WCC on detailed master planning, including any mitigation which might be required. He also mentioned allocation H2, where significant discussions have taken place with the highway authority.

<sup>293</sup> Ibid

opposed to the tokenistic gesture currently included in the Application. As has been said before, the proposals are vague and woolly and, accordingly, carry limited weight.<sup>294</sup>

### ***Addressing Regional Inequality***

369. The Council does query whether the scale of the proposed scheme can really be expected to contribute much to addressing regional inequality and supporting levelling up. This policy applies at a national level, and is mostly achieved through the provision of direct funding from the government. What impact the scheme will have will be limited, and commensurate with its size when considered within the national context.<sup>295</sup>

### **BNG**

370. The delivery of BNG when it is not required by the legislation is plainly a benefit.

### **The Pasture Land**

371. The delivery of pasture instead of agricultural land is something of a mixed blessing. It is consistent with landscape management guidelines. But it would also see the loss of land which is farmed for arable purposes.

### **Replanting Hedges and Hedgrow Trees**

372. This is a benefit for the scheme, but is really focussed on the Appellant attempts to mitigate the proposal

### **The Unilateral Undertaking**

373. These benefits are to be delivered through the UU and a covenant to do it in perpetuity. The Council has pointed out that the Appellant could seek to remove these benefits through an application of Section 106A. The only way to avoid that is to pass the land into public ownership with covenants.

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<sup>294</sup> Ibid

<sup>295</sup> Ibid

374. Without prejudice to the Council's case on the acceptability of the appeal proposals, the main parties agree that planning obligations relating to the delivery of the off-site landscaping works, the biodiversity gain plan and the pasture land are all necessary to make the development acceptable in planning terms by the protection of the remainder of the strategic gap, the delivery of landscaping and the delivery of biodiversity net gain. As such, these obligations, in principle, would be compliant with the tests in Regulation 122 of the CIL Regulations 2010.

375. Whilst there was broad agreement in relation to the principle of securing these mitigation works by planning obligation, the Council was unable to accept that the mechanisms proposed by the Appellant, initially in a bilateral agreement but ultimately in a unilateral undertaking, would actually deliver the mitigation identified.

376. With the apparent intention of the Appellant to pursue development throughout the Strategic Gap (by virtue of its submissions to the emerging local plan) and the continued inclusion of drafting which would provide flexibility for the Appellant in terms of compliance and variation to the obligations, the Appellant's position had the appearance of uncoded election manifesto promises with the Council becoming concerned that there was no intention for the Appellant to deliver the apparent commitments.

377. It is well established in law that where a decision maker has grounds for considering the delivery of necessary mitigation works to be uncertain, it is open for that decision maker to conclude that the CIL tests have not been met<sup>296</sup>

378. It was this concern that led the Council to conclude that a more robust mechanism was required to provide the certainty in delivery of the mitigation. The Council's proposed approach to ensure certainty of delivery of the mitigation in perpetuity is a mechanism to ensure that the Mitigation Land (comprising the landscaping strategy land, pasture land and OS1) was ultimately transferred to the Parish Council or Borough Council, subject to a covenant that the land must always only be used for the purpose of open space, pasture land or landscaping. An alternative

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<sup>296</sup> *Telford and Wrekin Borough Council v SSCLG* [2013] All E. R. (D) 121

solution of a requirement to transfer the entirety of the Mitigation Land to an approved Management Entity was also suggested.

379. For its own reasons, the Appellant did not accept that certainty of delivery of the mitigation required the transfer of the Mitigation Land to the Parish Council, Borough Council or even a Management Entity. As such, the form of the planning obligations was converted to a unilateral undertaking by the Appellant although the Council has continued to assist with the drafting to narrow the position down between the parties (and without prejudice to the Council's position that the unilateral undertaking does not provide the certainty of delivery of the mitigation as required).

380. In the Council's view, the final unilateral undertaking does not provide the certainty of delivery of the mitigation due to flexibility inherent in the drafting. Whilst flexibility to ensure delivery of development is often a good thing, in the context of this scheme and the reasonable concerns raised by the Council identified, certainty rather than flexibility is required here:

- a) Other than high level information, by reference to a plan, all details for the Landscape Strategy, which only relates to specific parts of the Mitigation Land (the areas hatched green on Plan 1 and shaded gold and pink on Plan 3 but not the Pasture Land or OS1) are left for a future submission to the Council. Whilst the Council will technically have the ability to refuse the details submitted at that point in time but, given the importance of the Landscape Strategy to the acceptability of the development and the context of the Appellant promoting the Mitigation Land for development in the emerging local plan, detailed parameters are considered necessary within the unilateral undertaking pursuant to the Appeal. The lack of detail and parameters also raises concerns with the ability of the Council to refuse unacceptable details at a later date and the risk that, if refused, such details unacceptable to the Council would be considered acceptable pursuant to dispute resolution as the Unilateral Undertaking does not provide sufficient detail or parameters as to what will or will not be acceptable;
- b) In relation to the Landscape Strategy Scheme, it is entirely in the discretion of the appellant as to whether it is transferred to a Management Entity; the

Appellant could retain the whole of the Mitigation Land. Therefore, there could well be no involvement of a Management Entity, thereby removing a further element of control (and certainty of delivery);

- c) In the event the Appellant chose to establish a Management Entity, the full details including how it is to be funded, are to be approved by the Council (with the associated similar concerns as identified above in relation to the Landscape Strategy). The Appellant has also included a deemed approval after 40 working days;
- d) The Appellant also retains the flexibility to agree amendments to the Landscape Strategy in writing rather than requiring a formal Deed of Variation which means any dispute would be resolved pursuant to the dispute resolution provisions in the ;
- e) There is no requirement for public access to any of the Mitigation Land other than the land hatched green on Plan 1 which accounts for 3.41 hectares out of a 41.66 hectares of Mitigation Land, around 8% of the Mitigation Land;
- f) The Pasture Land is also subject to the submission of future details rather than fully detailing the parameters at this point. In terms of the limited detailed parameters, the unilateral undertaking requires the land to be sown for a minimum of 5 years. The 5 years' period, explained as taken from DEFRA guidance for the creation of grassland may be an indicator of the Appellant's intention; that after 5 years it will be making an application under s106A to vary or delete the Unilateral Undertaking;
- g) The Pasture Land is not required to be transferred to any third party and will remain in the ownership of the Appellant and managed by the Appellant. This is consistent with the concern of the Council that the certainty required to protect the Strategic Gap is not secured by the unilateral undertaking;

- h) There is no requirement to deliver OS1; the only relevance in the drafting of OS1 is to enable the Pasture Land and/or the Landscape Strategy land to be varied.

381. To compound the concerns with regard to the flexibility included in the Unilateral Undertaking, the drafting include overlapping provisions and inconsistent approaches to different elements of the Mitigation Land. For example:

- a) Within the Mitigation Land, the Pasture Land will be retained and managed by the Appellant but the Landscape Strategy land may be transferred to the Management Entity. There could well be different management regimes for these different, but clearly related, areas of the Mitigation Land;
- b) The BNG provisions require the delivery of biodiversity enhancements within the Landscape Strategy land and the Pasture Land thereby complicating both the Landscape Strategy and the Pasture Land management, especially if the areas are subject to different management and maintenance regimes;
- c) The public rights of way provisions contained in the unilateral undertaking from the Appellant to the County Council involve land which appears to be within the Pasture Land;

382. This piecemeal and uncoordinated approach to various elements of the Mitigation Land provide unnecessary complication further casting doubt on the certainty of delivery of the required mitigation. It could well be that the Appellant has always intended to retain the whole of the Mitigation Land and so avoid the need to transfer any of the Mitigation Land nor set up a Management Entity to maintain and manage the Landscape Strategy land separately from the Pasture Land. This, of course, would be contrary to the stated objectives for the Mitigation Land.

383. Overall, the Council conclude that the final Unilateral Undertaking does not provide the necessary certainty of delivery of the mitigation within the Mitigation Land to demonstrate compliance with Reg 122 meaning it cannot be given weight as a reason for granting any planning permission.

384. Whilst the Council concludes that the current drafting does not provide the necessary certainty of delivery of the mitigation, the apparent intention of the Appellant to promote the entirety of its land pursuant to the emerging Local Plan also raises concerns for the future of the Mitigation Land in the event that the land is not transferred to the Parish Council or Borough Council given the availability of s106A for an application, and appeal, to be made to vary or delete the obligations.

385. The relevant test pursuant to a s106A application or appeal against refusal of such an application, would be whether the obligations continue to serve a useful purpose. As it stands, the protection of the strategic gap together with mitigation of landscape and biodiversity impacts clearly serves a useful purpose. All parties seem to accept that its protection in perpetuity is necessary although the Appellant's are clearly unwilling to agree what the Council considers is the only certain way to secure this; its transfer to the Parish Council or Borough Council.

386. However, the outcome of a s106A application, and appeal, in 5 years' time is clearly unable to be predicted. There is clearly the prospect that a decision maker will determine that the obligations no longer serve a useful purpose (notwithstanding the parties' current agreement that the Mitigation Land should be protected in perpetuity). In this regard, there is an added degree of uncertainty arising from the potential for the Appellant to seek to utilise s106A.

387. Accordingly, with regard to the unilateral undertaking:

- a) It, as drafted, does not provide the certainty required that the mitigation will be delivered;
- b) Even if it is concluded that the current drafting does provide certainty that the mitigation will be initially delivered, there is a risk that, after 5 years, the Appellant will seek the variation or deletion of the covenants restricting the Mitigation Land
- c) The Council's desired mechanism of securing the transfer of the Mitigation Land to the Parish Council or Borough Council would provide this certainty

## OVERALL PLANNING BALANCE

388. The proposal is plainly contrary to the Development Plan as a whole. A number of explicitly relevant policies are breached through this proposal. There are additional material considerations weighing against the proposal. The material considerations raised by the Appellant do not outweigh the conflict with the DP and the other material considerations weighing against the proposal.
389. The Proposed Development will impose itself into a defined Strategic Gap which, contrary to the position when the St Modwen development was consented, is designated in the adopted Local Plan, having been given due weight at examination. The existence of the St Modwen development makes it all the more important that the Strategic Gap remains open, to maintain a sense of place and space, allowing travellers to clearly appreciate passing from one location to another.<sup>297</sup> The Inspector is reminded again of the potential scale of the buildings – up to 21m in height – in addition to the bunds and planting which will be required to mitigate the worst impacts of the scheme but which will have their own impact.<sup>298</sup> By allowing development of this scale the Gap, its impact will be diluted, which can only be considered a significant adverse impact and, therefore, can only be contrary to LP6.<sup>299</sup>
390. The proposal should not attract the significant weight suggested in LP6 because it does not meet the policy test.
391. There are material considerations such as a loss of a significant area of Grade 2 BMV agricultural land which weigh against the proposal.
392. Mr Collinson is firmly of the view that the material considerations said to weigh in favour of the proposal by the Appellant in this case are exaggerated, repetitious and in some cases purely speculative. They do not outweigh the conflict to the Development Plan as a whole.

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<sup>297</sup> Evidence in Chief of Mr Collinson, 2 July 2024

<sup>298</sup> Ibid

<sup>299</sup> Ibid



393. Against the 10 economic benefits that Mr Hann finds to weigh in favour of the scheme, he can find only three disbenefits, which he dwells on but briefly. He considers the policy to be compliant with LP4, notwithstanding the fact that the physical size of the Strategic Gap will be significantly reduced, the clear defensible boundaries of the A5 and M42 will be breached, and the development will impose itself on the land which, currently, is all that stands between Dordon and its envelopment by Tamworth.<sup>300</sup>

394. Mr Hann's unorthodox approach to considering the harms in this respect may perhaps be explained by his approach to considering the scale of the building. Under cross-examination he would not accept that the buildings could reasonably be described as "very large", accepting only that they were "large". It was put to him that the Inspector, when judging his assessment on the landscape character and visual harm that will be caused by the Proposed Development, should consider his conclusions on the basis that, in Mr Hann's view, a building of 1 million sq ft does not, in fact, constitute a very large building.<sup>301</sup>

395. Contrary to the case put forward by the Appellant at Inquiry, there is no requirement in the NPPF that applications in the Green Belt need to consider alternative, non-Green Belt sites. In the West Midlands, the Green Belt is very extensive, up to 20 miles wide in some places. This is contrasted with the Strategic Gap which is only 1.45km to 1.2km wide on its east/west access. Despite the Appellant's attempts to compare the two policies, the Council resists the approach. They are distinct policies, which operate in very different ways. It is accepted that the Green Belt policy is of national significance and application and is an important planning consideration. Notwithstanding, it permits development through two possible approaches: the first is through a Local Plan allocation process through demonstration of exceptional circumstances; and the second is by having recourse to very special circumstances (VSC). The Strategic Gap, on the other hand, establishes a policy threshold beyond which no development will be permitted, and that is the identification of "significant adverse effects on the distinctive and separate character" of Tamworth and Polesworth with Dordon. That is the correct approach to interpretation of the policy, and it is the one which the Council has applied.<sup>302</sup> It is this approach which has led Mr Collinson to determine that the

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<sup>300</sup> CD-D28/A, Appellant's Proof of Evidence, Planning Matters, §6.3

<sup>301</sup> Cross examination of Mr Hann, 3 July 2024

<sup>302</sup> CD-D23/A, NWBC Proof of Evidence, Planning Matters, §11.10

substantial harm which will be caused by the Proposed Development conflicts with the Development Plan. He further determines that there will be moderate harm to the landscape character and moderate visual harm.<sup>303</sup>

396. There are a series of other proposals to which the Appellant has given significant weight, but which Mr Collinson considers to be neutral. These benefits include highway improvements, off-site landscaping, improved accessibility and developing healthy and safe communities. In Mr Collinson's view, these merit only neutral weight because do not contain intrinsic benefits, rather they are necessary requirements to make the proposed development acceptable.<sup>304</sup>

397. The Council has given the proposal for HGV parking moderate weight in the planning balance. While accepting that there is some level of need, it is the Council's view that this need can be met elsewhere – notably in the Moto MSA – without the need for development in the Strategic Gap. The proposal will include significant surfacing of a current green-field location, commercial restaurants, lighting and round-the-clock activity, all of which have a significant adverse effect on the identity of Dordon, and on the amenity its residents.<sup>305</sup>

398. When taken as a whole the Council accepts that the Proposed Development does have benefits. The determination of weight to be accorded in the planning balance is not, as has been agreed, a mathematical exercise. It is not a question of breaking the economic benefits down into their 10 constituent parts as Mr Hann has done and adding benefit to benefit to reach a total. Rather, Mr Collinson invites you to take a more reasonable planning approach, it is about assessing the benefits cumulatively, according an overall weight to the economic benefits offered by this scheme.

### **The Role of the Council**

399. The Council has been criticised for not requesting from the Applicant a hybrid submission or suggesting conditions specifying a shorter timeframe for completion.<sup>306</sup>

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<sup>303</sup> Ibid, §§11.12-11.13

<sup>304</sup> Evidence in Chief of Mr Collinson, 2 July 2024

<sup>305</sup> Ibid

<sup>306</sup> Cross examination of Mr Collinson, 2 July 2024

This is a strange criticism. It is not for the Council to make acceptable a speculative proposal from a commercial operator, who has the benefit of being professionally advised and stands to benefit significantly from an approval. The Council is not required to consider multiple alternative proposals in assessment but, rather, has assessed the proposal in front of it, and drawn its conclusions accordingly. It was always open to the Appellant to modify its proposals.<sup>307</sup> That they chose not to do so is a matter for them, not for the Council.

400. The inspector is invited to dismiss the appeal.

**10 July 2024**

**CHRISTOPHER YOUNG KC**

**ANNA STEIN**

No5 Chambers

Birmingham – Bristol – London

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<sup>307</sup> Re-examination of Mr Collinson, 2 July 2024