

**MATTER 6 – PLANNING AND
ENVIRONMENTAL CONSTRAINTS**

POSITION STATEMENT

**NORTH WARWICKSHIRE LOCAL PLAN
EXAMINATION**

AUGUST 2018



6.4 Whilst consideration of individual sites will fall to matter 9, is the broad extent of the Meaningful Gap robustly evidenced [CD6/10], and the intended application of associated policy LP5 justified? How does the purpose of the Meaningful Gap differ to that of the Green Belt?

1.1 We separate this question into its three constituent parts and address each below. Namely:

- Is the broad extent of the Meaningful Gap (“MG”) robustly evidenced [CD6/10];
- Is the intended application of policy LP5 justified [CD6/10]; and
- How does the purpose of the MG differ to that of the Green Belt?

Is the broad extent of the MG robustly evidenced?

1.2 Draft policy LP5 has been prepared with an express a priori rationale of excluding any development west of Polesworth & Dordon (“P&D”), which is contrary to Core Strategy (“CS”) policy NW19 and the comments of the Inspector for the CS Examination at the time. Within his report in September 2014, the Inspector listed a series of ‘principal modifications’ in the Non-Technical Summary which were necessary to make the CS sound (p2). The fifth principal modification required the following alteration to the strategy:

“Deleting the presumption against anything other than minor development in the gap between Polesworth and Dordon and Tamworth (but ensuring a meaningful gap is retained).”

1.3 At para. 21, the Inspector set out his reasoning:

“Having inspected the area and considered the submissions made to the examination, I do not consider that a blanket presumption [against anything other than minor development] is justified and it is removed by MM67. This is necessary because the evidence does not support it (indeed, it would appear to conflict with the SA) and to provide flexibility. It is not necessary, in my view, to modify Policy NW4 [Housing Development] to identify an area of search between Tamworth and Polesworth and Dordon. The modifications will enable options to be explored through the Site Allocations DPD taking into account the need to maintain a gap and landscape considerations.”

- 1.4 NWBC incorrectly interpreted the Inspector’s recommendations as seeking to bring forward a MG designation on land between Tamworth and P&D. Clearly, it was his intention that options for housing development should be explored through the Site Allocations DPD. Had his intention been to apply a spatial policy allocation (i.e. the MG under LP5 and the Proposals Map), he would have explicitly stated so. On the contrary, it is clear that the requirements for a MG vary greatly in different locations between Tamworth and P&D and that this is a matter of fact and degree which can be suitably defined through the submission and determination of planning applications on a case-by-case basis.
- 1.5 The correct interpretation, therefore, in relation to NW19 and the changes made to it (and therefore also LP5), would be to instruct an qualified, experienced and objective person to identify suitable sites for housing development which provide opportunities to maintain or enhance the separation of Tamworth and P&D, with reference to prevailing landscape qualities and the opportunities which exist for the improvement of such, through the implementation of green infrastructure (GI) and tree planting/screening. Such an exercise has not taken place, contrary to the Inspector’s recommendations detailed above from the CS examination.

1.6 In the case of the evidence base which underpins LP5, there has been an assessment of what constitutes the MG, albeit, as demonstrated below, this evidence is fundamentally flawed. However, there has been no exercise to assess the opportunities which exist to allocate sites for housings whilst, crucially, maintaining and enhancing a MG. Indeed, there are very few references in the LP evidence base where the merits of future development are stated as offering potential to positively manage/change the landscape in the MG. One example is contained in the MGA 2015, where it is noted in relation to Area 8 that:

“Development along the eastern edge [land immediately west of Dordon, within the ownership of HE] may also provide the opportunity for softening the urban edge through appropriate landscaping.”

1.7 The benefits of development of land west of Dordon to *“provide a more successful settlement edge”* are also noted in the North Warwickshire Landscape Character Assessment (p101), under the heading ‘Potential for Built Development’. Furthermore, it is stated that *“New built development may be possible, linked to the existing settlement on the higher ground.”*

1.8 Regardless of this, the evidence base which underpins LP5 is deficient as it has not properly assessed the opportunities that exist to reinforce the MG and provide landscape enhancements through the release of land between Tamworth and P&D for housing. Failure to undertake this exercise has meant that land west of P&D has been unjustifiably discounted from an appropriate assessment of the most suitable/sustainable locations for housing allocations. For this reason, the extent of the MG is not fully justified as it does not comply with para. 158 of the NPPF, which requires Local Planning Authorities (“LPAs”) to collect *“up-to-date and relevant evidence”*. The extent of the MG is therefore unsound.

1.9 Furthermore, given the known development constraints on land to the east of P&D it would be unwise to place a moratorium on development of land west of the

settlements until there is incontrovertible evidence that the requisite number of houses can be delivered. Such evidence should include, inter-alia, a comprehensive survey of ground conditions, subterranean coal reserves and ecological conditions, as well as a detailed assessment of infrastructure requirements, costings for these and of scheme viability given the significant costs involved. Even so, not until the development has been fully built out could it be conclusively demonstrated that the required number of houses can be delivered east of P&D, given the risk of unforeseen issue arising associated with the legacy opencast coal mining operations and the near-surface coal reserves there, as well as the designated heritage and environmental assets.

- 1.10 It should also be noted that had NWBC sought to promote Green Belt in this location, then it would have had to demonstrate the existence of exceptional circumstances, and it would have had to make provision for safeguarded land for long term future development adjacent to the urban area. As it is, the Council has done neither but seeks to promote a poorly evidenced policy which would be as preclusive as Green Belt without any of the policy safeguards required to do so. It is wholly unsound to do so.

Is the intended application of policy LP5 justified [CD6/10]?

- 1.11 The evidence base informing policy LP5 consists solely of CD6/10. Other relevant source material includes the Meaningful Gap Assessment (“MGA 2015”), which no longer forms part of the Local Plan Examination Library and policy NW19 of the adopted Core CS.
- 1.12 As part of SLP429, Hodgetts Estate (“HE”) instructed Nicholas Pearson Associates (“NPA”) to appraise CD6/10 – please refer to SLP429 for full details of their appraisal. At the time, NPA also appraised MGA 2015.

Critical appraisal of CD6/10

General comments

1.13 NWBC published CD6/10 during the course of the consultation on the Draft Submission Local Plan (DSLPL) in January 2018. It is a problematic approach to publish evidence which justifies a policy after having first promoted the policy itself. Plainly such work should have been prepared and presented in the public domain before and not after publication of the DSLP.

Errors of methodology

1.14 As noted by NPA, CD6/10 uses a Green Belt assessment methodology to appraise the MG study area. The methodology is inappropriate in such circumstances (strategic gaps); furthermore, it is considered to be an attempt to give the MG area a strategic importance that it does not warrant. whilst it might be appropriate to have, as one of many planning objectives, the retention of the separation between Tamworth and P&D, there are many other relevant objectives which should be taken into consideration and accorded appropriate weight, including the need to identify sufficient suitable sites for housing and other uses. The swathe of land proposed to be recognised as a MG is not designated Green Belt and cannot be accorded similar status without all other planning considerations being given due regard also.

1.15 CD6/10 includes a range of errors in methodology which prevent a robust assessment being prepared, for example:

- Omission of some land parcels between Tamworth and P&D, e.g. parcels 4 and 5 (which form proposed housing allocation H13); and
- Inconsistent commentary on the nature of each parcel within the MG, e.g. reference to the varying width of the MG in relation to some parcels but not others.

1.16 CD6/10 carries forward areas / parcels used within the MGA 2015 prepared in house by NWBC. By using areas arbitrarily defined by NWDC in a report that does not form part of the Examination Library, the assessment does not reflect an independent approach as claimed at CS6/10 para. 1.1.

MG review

1.17 CD6/10 assesses the parcels in the MG against the key purpose of the proposed policy designation (policy LP5) (i.e. to prevent merging of settlements and maintain a meaningful gap between them). This is achieved by applying purpose two of the Green Belt criteria at NPPF para. 80 to each, by *“examining...how [the] land parcels perform with regard to prevent neighbouring towns merging into one another”* (CD6.10, para. 3.5).

1.18 It is confirmed at CD6/10, para. 3.5 that *“the contribution of the parcels to separation has been considered in terms of both physical and perceived separation.”* A scoring system is then used to measure physical and perceived separation, with both factors being given equal weight.

1.19 This approach is contrary to advice at p6 of the Planning Advisory Service Advice Note¹, which advises that reliance on such a *“‘scale rule’ approach should be avoided”* and that *“the character of the place and of the land in between must be taken into account.”* Furthermore, that *“landscape character assessment is a useful analytical tool for use in undertaking this type of assessment.”* In other words, physical distance should be accorded limited weight and a landscape character assessment should be undertaken when assessing against purpose two. CD6/10 fails to carry out such a landscape

¹ Planning on the Doorstep: The Big Issues – Green Belt, Peter Brett Associates for the Planning Advisory Service, 2015

assessment and yet seeks to draw conclusions as to the how the parcels perform with regard to providing separation between settlements.

- 1.20 The perceptual characteristics of the parcels are then considered against purpose 2b in Table 3.1 of CD6/10 – “*What role does the parcel play in the sense of actual or perceived separation between settlements?*” Scores are marked against the relative contribution which each parcel makes towards the sense of separation. This methodology is problematic as it fails to consider the existing characteristics of each settlement, a significant omission.
- 1.21 Based on its assessment methodology, CD6/10 cannot conclude with absolute certainty that all parts of a particular land parcel are unsuitable for development. CD6/10 should not carry weight above a detailed qualitative assessment of a sub-area of a defined parcel which is based upon an up-to-date landscape character assessment and defined development parameters. Such an assessment was prepared by NPA in relation to proposals for development of part of parcel 8 and submitted as part of SLP429.
- 1.22 CD6/10 incorrectly refers to the presence of a pre-existing defined or designated area of ‘Meaningful Gap’ (para. 1.1). At an Inquiry into the refusal of planning permission for an employment park on land within the MG in September 2016 (Ref: APP/R3705/W/15/3136495), it was agreed by NWBC in a pre-action protocol letter that the MG does not have “policy status” and it was formally conceded that MGA 2015 is merely evidence to inform the emerging Local Plan. The starting point for CD6/10, therefore, should be policy NW19 of the CS. Incidentally, Policy NW19 refers to a “meaningful gap” as per the comments of the Inspector into the CS, not a “Meaningful Gap” (capitalised) as stated at Box 1.1 of CD6/10 or “The Meaningful Gap” at bullet point 1) of policy LP5. Prima facie this is a seemingly innocuous error of linguistic interpretation. However, its effect is to cause a fallacy due to a fundamentally flawed interpretation of the Inspector’s CS recommendation. This belies the fact that the

report assumes that a gap policy is already established. Such an a priori assumption infects the overall approach.

1.23 CD6/10 does not consider the opportunity for development between P&D and Tamworth to respect the separate identities of the settlements and maintain a MG between them, which is in line with adopted CS policy NW19 and the Inspector's comments on the CS at Examination (para. 21, Inspector's Report). At the least, a capacity analysis should be undertaken to inform the effect of development in this location – rather than simply providing ex post facto justification for the gap.

Eastleigh Test

1.24 CD6/10 does not use the assessment criteria set out in 'Strategic Gap and Green Wedge Policies in Structure Plans', Main Report, ODPM, 2003, commonly referred to as the 'Eastleigh Test'. The Eastleigh Test is considered to be a far more appropriate assessment process for considering the spatial functions of 'Strategic Gaps' and 'Green Wedges'.

1.25 The criteria in the Eastleigh Test form an established appraisal method for assessing the spatial functions of strategic gaps such as this. This document took forward principles and criteria first used in the Inspector's report for the Eastleigh Local Plan Inquiry in 1998, and the approach has been used for a number of subsequent planning examinations, appeals and applications, and is a robust and appropriate methodology for assessing such locations.

1.26 Para. 4.15 of the ODPM report considers the criteria for defining the effectiveness of strategic gaps and green wedges to be:

- Distance;
- Topography;
- Landscape character/type;

- Vegetation;
- Existing use and density of buildings;
- Nature of urban edges;
- Inter-visibility (the ability to see one edge from another);
- Intra-visibility (the ability to see both edges from a single point); and
- The sense of leaving a place and arriving somewhere else.

Conclusions

1.27 Overall it is considered that CD6/10 provides a flawed and inappropriate basis for informing future patterns of development and that draft policy LP5 would prevent high quality and sustainable development opportunities being realised. The report does not comprise a sound basis for the assessment of a strategic gap and it is strongly recommended that the assessment needs to be recast without a preconceived outcome informing the analysis.

1.28 These amount to serious flaws and as such, CD6/10 does not provide a suitable or robust reference documents upon which to justify policy LP5. On this basis, policy LP5 is not justified as it is not founded on appropriate evidence.

How does the purpose of the Meaningful Gap differ to that of the Green Belt?

1.29 The stark contrast between the purpose of the MG and the Green Belt is highlighted at para. 2.2 of CD6/10:

“Areas designated as ‘Meaningful’ or ‘Strategic’ Gaps are concerned with preventing the coalescence of smaller settlements (villages and hamlets). In comparison, Green Belt seeks to prevent the coalescence of towns, and should serve five main purposes, as outlined in the Box 2.1. The NWBC report on

Meaningful Gaps (August 2015) states that ‘Gaps are spatial planning tools designed to shape the pattern of settlements’. Gap policies do not have the aim of preserving the setting of historic towns or checking unrestricted sprawl in the same way that Green Belt does.”

1.30 Furthermore, it is noted at para. 2.3 of CD6/10 that:

“Gap policies tend to allow for small scale development which does not ‘significantly diminish’ the extent of the gap. A Green Belt designation would be stricter than this, and would not allow any inappropriate development within designated areas, as detailed in paragraphs 87-91 of the [2012 version of the] NPPF.”

Policy wording

Policy LP5 bullet point 1)

1.31 It is clear that CD6/10 contains significant errors, both of methodology and fact, and in places fails to apply the correct weight to relevant factors. In this regard, the evidence base underpinning LP5 is fundamentally flawed and is not a sound basis upon which to apply a blanket spatial policy which presumes against anything other than minor development on land between Tamworth and P&D.

1.32 LP5 is not based on sound evidence. As such, it has not been positively prepared and is not in accordance with national policy – it is therefore unsound. Furthermore, there has been no proper assessment of the local gap between Tamworth and P&D, meaning potentially suitable and more sustainable locations have been overlooked without proper consideration having been given to the inherent planning benefits of locating development there.

1.33 Until the evidence base supporting the proposed MG under LP5 has been supplemented further, it would be inappropriate, unjustified and unsound to place a blanket spatial

policy designation on land between Tamworth and P&D as proposed. As such, the proposed MG policy designation, as defined on the Proposals Map, should be deleted and bullet point 1) deleted from LP5.

Policy LP5 bullet point 3)

- 1.34 As outlined at para. 87 and 88 of the NPPF, Green Belt policy allows for even “*inappropriate development*” where “*very special circumstances*” exist. Para. 89 also allows for a series of further “*exceptions*” for development, such as buildings for agriculture, facilities for outdoor sports and limited infill, within the Green Belt.
- 1.35 Bullet point 3) of LP5 would place an effective moratorium on all built development within the MG, without exception. As a matter of fact, any development above ground would cause at least some visual intrusion and reduce the size of the gap to some extent. In its current guise, LP5 is more restrictive in its terms than Green Belt policy and would prevent the types of exceptional development allowed in the Green Belt under NPPF para. 89.
- 1.36 As noted in CD6/10, the exceptional circumstances necessary to justify designation of new Green Belt do not apply to land between Tamworth and P&D. It is, therefore, wholly inappropriate for LP5 to be more restrictive in its terms than Green Belt policy. Bullet point 3) is Draconian and should be deleted accordingly.
- 1.37 Furthermore, given the known development constraints on land to the east of P&D it would be unwise to place a moratorium on development of land west of the settlements until there is incontrovertible evidence that the requisite number of houses can be delivered. This point is exacerbated by the CD0/1 commitment to provide a minimum of 5,808 dwellings (net) by 2033, with an aspiration to deliver a further 3790 dwellings

– up to 9,598 dwellings in total. By contrast, the CS commits to build 3,650 dwellings (net) between 2011 and 2029. To deliberately set its face against consideration of land to the west of Dordon because of a long-standing political aspiration for a gap policy west of Dordon is deeply misguided.

1.38 These criticisms are mirrored in representations DLP85 and SLP333 by St Modwen Developments Ltd, DLP329 and SLP343 by Taylor Wimpey and DLP355 and SLP336 by Hallam Land Management.

Modifications necessary to make the matter sound

- Delete bullet point 1 from LP5;
- Delete bullet point 3 from LP5; and
- Delete the associated MG designation from the Proposals Map.

Hodgetts Estates

August 2018