

LAND NORTH-EAST OF JUNCTION 10 M42
NORTH WARWICKSHIRE

CLOSING SUBMISSIONS ON BEHALF OF THE APPELLANT

Introductory Matters

1. This appeal is against North Warwickshire Borough Council's ('NWBC') failure to determine an outline planning application pertaining to land north-east of junction 10 of the M42 motorway, North Warwickshire ('the site') for:

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

2. At the end of an unnecessarily lengthy inquiry, it is worth standing back and asking what this case is really about. Thus, there are some big points to note in closing by way of overview, not least of which is Mr Weekes' observation at the end of his evidence, which mirrors the Appellant's opening, that what this case is actually about is balancing the effect on the objectives of the "gap" against the need for additional employment. Despite the multiple rabbit holes that the inquiry has been invited to have gone down by the Council, that central debate is, with respect, firmly submitted to be the determinative issue in this case.
3. Firstly, Professor Coleman's evidence makes it abundantly clear that the ailing UK economy desperately needs improvements in growth and productivity. And that structural changes since the Millennium have meant that there is an acute need for the economy to be properly served

by large scale logistics development. Furthermore he, Mr Turner and Mr Hatfield all explained that there is an obvious and growing need to maximise the transfer of freight to rail for both economic, commercial, and sustainability reasons. The consequences of not having sufficient large-scale logistics available in key parts of the UK, which can be adequately served by rail, is a direct and harmful effect upon the UK economy and the rightfully ambitious decarbonisation goals of the businesses operating within it.

4. Secondly, the issue of how to address the need to accommodate further large logistics sites in NWBC has been a live issue for well over a decade. The revocation of regional planning in 2012 and its replacement with the DtC has essentially resulted in individual LPAs quantifying and then meeting their appropriate share of regional needs for this type of strategic development. The history of large-scale strategic logistics sites is, with respect, lamentable. The Core Strategy inspector in 2013 advised that the CS was only sound on the basis that there was a promise that the LPA would undertake an immediate review if there was clear evidence of need for additional regional logistics sites (RLS). When the West Midlands Strategic Employment Sites Study 2015 ('WMSESS 2015') was published, the LPA didn't undertake an immediate partial review but instead progressed an Allocations LP than was soon abandoned. They then moved to prepare a full new LP. However, despite the evidence of an unmet regional need, that plan too did not allocate any sites for more than local employment needs, but left it to the vagaries of the development management process. Now, over six years after the submission of that plan (March 2018) – there is still no plan which seeks to make such an allocation, no regional level of agreement between LPAs as to how the acknowledged regional need might be distributed and only the promise of another plan coming over the horizon¹. And that, despite the clearest possible evidence, that there is a continuing substantial and immediate need for additional large scale logistics sites (most recently in the HEDNA). The plan led system has failed in this regard and it is simply no answer to addressing the immediate need to say, 'don't worry, there's another plan on its way'.
5. Thirdly, it seems to have been entirely lost on the Council that the site it is seeking to resist from being developed, despite the apparent acute need for such development, has been recognised as joint top-performing site in the West Midlands Strategic Employment Sites Study 2021 ('WMSESS 2021')² for the entire West Midlands area when assessed against the range of relevant criteria including motorway/trunk-road access, Local Plan allocations, statutory

¹ At present there has been only scope issues and options paper CDF7 that did not expressly state it would address the need for strategic employment land supply.

² Appendix 1 Cushman & Wakefield Employment Land Study May 2024 (C&WELS) Para 3.80 and Figure 11 on page 35 CD-D29/C and CD-I2

designations, public transport, flood risk, ground conditions, ecology, topography, proximity to existing settlements and air quality³.

6. Fourthly, the Council's focus at the inquiry on alternative sites much further afield entirely misses the point that the focus of the need case at the inquiry is the M42 corridor as defined by WMSESS 2021⁴ (J2/3 M42 to J10 M42) and which is synonymous with Area 2 of that Study. The Council correctly stated that the WMSESS 2021 sites assessments was undertaken on a 'policy off' basis. However, on a 'policy on' basis, within Area 2, the appeal site is the only developer promoted site out of 11 sites assessed that is located outside of the GB. The consequence of this, in the context of this inquiry, again, seemingly lost on the Council, is that the Council is resisting a scheme outside of the GB when the alternative would be permitting schemes within GB. The point, which is even more self-evident now that Richborough Estates, has submitted an application (ref. PAP/2024/0297) on a GB site at J9 M42 relying on VSC, and relying upon the same immediate need policy LP6 that the Appellant does in this case, and which is argued against by the LPA.
7. And this is in the context of the Council having conceded that the Strategic Gap policy is patently less onerous than GB policy, (discussed below).
8. The obvious consequence of the stance adopted by the Council is that if the future LP was to identify a need for sites in Area 2 (or indeed Area A); given that the majority of Area 2 and Area A are in the GB, then the Council are duty bound to assess whether there are reasonably alternatives outside of the GB first.
9. During the XX of Ms Barratt, it was revealed that not only are the LPA already engaged in this exercise – but that officers at least have concluded that there is a demonstrated need for at least one large scale logistics site(s) and that the emerging LP will be looking to allocate such a site(s). Given that there are no non-GB alternatives that could accommodate development of the scale proposed here – it can only be presumed that the Council is considering GB release or is considering allocating the Appeal site. Either way – it makes a literal nonsense of the tour around the whole of the Midlands by Ms Barratt, pursued with gusto by Mr Young KC; as well as the odd stance of Mr Collinson in his rebuttal of arguing that GB isn't more onerous than Strategic Gap policy.

³ Mr Hann SPoE para 1.2.7 CD D28C

⁴ WMSESS 2021, para 6.52, page 67

10. None of that is to say that consideration of the effect of developing this site upon the LP4 objectives are to be disregarded. Far from it. But rather that in the context of an LPA who accepts that there is a regional need for additional large-scale logistics⁵, and accepts that there is a local need for making provision for such development,⁶ and is seemingly resisting this development on three grounds – ie:
- there is a need but it isn't "immediate";
 - the acknowledged impact upon the gap is not merely 'significant' but would be enough to outweigh any benefits from helping to meet the acknowledged need for such development; and
 - if you look across the whole of the Midlands, and disregard whatever need those areas may have, then there are other locations that an occupier can go.
11. On the evidence, the first point is unarguable and the last point is an ill-judged attempt at obfuscation. The second point, as Mr Weekes pointed out – is the real determinative issue, and overall, the Council's evidence comes nowhere near displacing the contention that they have got the balance badly wrong. This is a scheme which complies with LP4 and LP6 and ought to have been consented long ago.

Putative Reasons for Refusal

12. There are three putative reasons for refusal. Mr Collinson made it clear that the Council does not invite dismissal on any other basis save for the first two, now that the third has been resolved. It should also be noted at the outset that, whilst Mr Leithead and Mr Weekes have contributed their company, the Rule 6 party's evidence, is expressly said to be aligned to the Council's case and is not addressed separately below. Mr Weekes confirmed that there are nuances, as opposed to differences as between the two.⁷
13. Overall, therefore, in respect of RfR 1 and 2 the Rule 6 party case stands or falls with that of the Council.

1st RfR

⁵ Ms Barratt Rebuttal para 2 D36/A

⁶ Ie the inevitable consequence of

⁷ Mr Weekes XX Day 2 *Nuances not differences?* – Yes.

14. The first reason relates to the impact of the proposal on the Strategic Gap and its alleged non-compliance with LP4 of the North Warwickshire Local Plan 2021 ('the Local Plan' or 'LP'). It also asserts that the requirements of LP6 and LP34 of the Local Plan are not 'fully⁸ demonstrated'.

Need & LP6

15. LP6 is not especially well drafted. It provides (broken into separate elements and emphasised):
*“**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 2015 (or successor study) **which cannot be met via forecast supply or allocations.**”*
16. Mr Young KC was right in his XX of Mr Hann that the “significant weight” in the policy is given to any development which supports economic growth and productivity **and** that the second part could cover any type of employment land. He was, with respect wholly wrong to suggest that the ‘prize’ is to obtain the ‘significant weight’ of the policy – rather the “prize” is to demonstrate compliance with the policy as part of the s.38(6) challenge. And that requires looking at the policy properly and reading it in context.
17. The starting point is that LP6 is locationally specific. It refers to Area A⁹ on Figure 4.10 of the WMSESS 2015 or successor study (which is now Area 2 as defined by WMSESS 2021). It does not refer to any other location, and it is right to understand LP6 as included by the LP Inspector to address an identified need in a very specific geographical area, described in the WMSESS as ‘urgent’. Indeed, it will not have escaped the Inspector’s notice that parts of North Warwickshire were included within Area B of the WMSESS 2015, but the LP Inspector recommended that the plan be modified in respect of Area A only within LP6. There can be no doubt that LP6 was introduced to address the specific issue of need within Area A (and geographically now redefined to Area 2 by the successor WMSESS 2021), with an obvious expectation that any proven need would be met in Area A – it is emphatically not a general

⁸ Emphasis added

⁹ NB C&W note that the M42 Corridor is Area A/Area 2 as defined by WMSESS 2021 should also be mindful of J11 of the M42

flexibility policy. Rightly therefore, at this Appeal Inquiry, it has been accepted by both Mr Collinson and Ms Barratt that if a need arises in Area 2 then logically that need should be met within Area 2.

18. It is Area 2 (now to be read as being synonymous with Area A¹⁰ of WMSESS 2015) that was, or at least should have been the focus of the Inquiry – i.e. the first question that ought to be asked therefore is whether there is a need within Area 2¹¹, and then whether that need is an ‘immediate’ one. Where there is such a need within Area 2 – LP6 provides means for addressing it¹² in a North Warwickshire context.
19. If there is an immediate need within Area 2 for either employment land generally or a “certain type of employment land”, which can’t be met by allocations or forecast supply then it is agreed that the proposal would be compliant with this policy as part of the s.38(6) assessment and would acquire “significant weight”. The language of the policy is a bit odd, and some time was spent on whether “immediate need” qualifies both parts of what then follows. On one view if it didn’t qualify the second part then it makes no grammatical sense; but on the other hand, that is inconsistent with the existence of the comma and since a “certain type” of employment land is a subset of “employment land”, if it did qualify the second point then why would that second point even be necessary.
20. The Courts tell us that the decision maker should not lightly go behind the wording of policy to discover what the policy actually means, beyond considering the reasoned justification. However, one is entitled to look at the background to the policy if there is any ambiguity in its interpretation – despite the general injunction not to engage in “forensic archaeology”¹³.
21. Para 7.46 of the LP reasoned justification makes it clear that the policy is directed at addressing the locational requirements of particular employment sectors; and the very briefest consideration of the examiner’s report¹⁴ makes it clear that the policy was specifically included to address the need for large scale development evidenced by the WMSESS 2015, and referenced by the CS examiner back in 2013.

¹⁰ Ms Barratt XX Day 6 agreed ‘synonymous’ with Area 2. The two areas are different (though they substantially overlap) – the point is that Area A in the policy must be read as Area 2.

¹¹ Ms Barratt XX Day Agreed

¹² Ms Barratt XX Day 6 Agreed

¹³ Phides Estates (Overseas) Ltd v Secretary of State for Communities and Local Government [2015] EWHC 827 (Admin), per Lindblom J. at para 56

¹⁴ See CD-F15 para178

22. What is also evident from that same report is that there were two reasons why the LP examiner didn't consider whether there was a need to allocate land to meet such needs – ie that the need wasn't quantified and that to consider doing so would be to unnecessarily delay the adoption of the plan¹⁵. But he went on to recommend the introduction of LP6 to fill that policy gap of not making an allocation. To seek to argue – as the LPA sought to do -- that LP6 is just generalised support for employment is patently wrong. As is the deeply misguided exercise of seeking to argue that there wouldn't be an immediate need, even if there was evidenced demand in Area 2 which couldn't be met by supply within Area 2, because it could be met somewhere else in the country (which would no doubt have its own needs – as was comprehensively demonstrated in the case of Leicestershire).
23. The expansive geographic exercise of looking to see if there is supply anywhere else in the Midlands ignores the specific words of LP6 , “...***which cannot be met via forecast supply or allocations***”. The policy doesn't say “forecast supply or allocations anywhere else in the middle of England” – it is self-evidently asking to consider supply of allocations *within NWBC*¹⁶, and forecast supply *within NWBC*. Indeed, Mr Collinson expressly accepted in XX that the latter related to commitments within NWBC, not any site anywhere in the Midlands.
24. What then of the meaning of ‘immediate need’? this is addressed below, but by way of foretaste – Ms Barratt rightly accepted that ‘need’ means an excess of demand when compared to the extent of supply; and Mr Collinson accepted that what was ‘immediate’ is a matter of planning judgment. And rightly Mr Collinson accepted that it wasn't confined to the situation of where an identified occupier could demonstrate that there was nowhere for them to go. Mr Collinson couldn't think of another example – but happily we know that past decision makers have done so:
- a. In Hams Hall¹⁷ – in 2017 NWBC granted PP in outline for large scale logistics in the GB concluding that VSC exists where the supply was only 3.7 years against proven demand making reference to the WMSESS 2015 as the relevant regional study;
 - b. In the St Modwen NWBC appeal¹⁸ consent was granted in outline based upon exactly the same poor level of supply, again with reference to WMSESS 2015;

¹⁵ Ibid para 179

¹⁶ Arguably it might include allocations & forecast supply in other adopted LP's within Area 2 – albeit that the policy doesn't actually say that.

¹⁷ CD I106 page p4/146.

¹⁸ CD K2 paragraph 51.

- c. In the St Modwen NWL appeal¹⁹ the appeal for an outline consent was allowed based on the evidence that policy EC2 was met and that there was an immediate need because demand far outstripped supply;
 - d. NWL had previously consented a site in outline on the other side of the A50/M1 junction at Netherfield Lane²⁰ on the same basis;
25. In fact, the consistent theme is that on occasion the existence of a named end user has helped to make a case of an immediate need²¹ (Unipart/JLR (in part) at J11 M42²² and Syncreon at Hinckley,²³ albeit Syncreon ultimately went elsewhere), but there has been no instance of a permission tied to a named occupier in any of the examples, and as the Hinckley example shows end occupiers may change. Indeed, at the J11 M42 Unipart/JLR scheme, the named occupier in fact released 2 buildings back to the market without taking occupation as they were no longer required, one of which was subsequently let to DSV²⁴.
26. On the evidence it is firmly submitted that demand substantially outstrips supply within both Area A and Area 2, to such an extent that the need is an immediate one and that there is patently insufficient supply within Area A/2 to meet the level of demand; let alone upon forecast supply or allocations within NWBC. This is in line with the WMSESS 2021 which concluded there was an *“urgent need to identify a pipeline of new Strategic Employment Sites”* and that *“existing supply must be supplemented in the short term.”*²⁵
27. The ‘throw everything at it’ case of NWBC reached its nadir in the argument that somehow past trends are to be disregarded. To run that case when there have been no consents in NWBC for large scale logistics since 2017, and where supply has all but run out in Q1 2022 takes a particular level of fervent opposition to this sort of scheme. However, it is also based upon a misreading of both the CS, and the LP examiners reports which do not say that past trends should be ignored; but most spectacularly it ignores the HEDNA which bases its projection of need *in part* upon past projections and upon which the Council is moving to promote an allocation for such a use within its area.

¹⁹ ID13 B & confirmed as not an issue in ID13C as it was not even contested by NWL

²⁰ ID14A & B

²¹ Albeit with a policy which also placed a focus upon immediate demand as well.

²² CD I99 page 5/111 *“...there is strong evidence to demonstrate that there is an immediate need ... for the proposed development and, as such, the in-principle element of Policy Ec2 is capable of being met, and the principle of the development is therefore considered acceptable”*

²³ ID 10.

²⁴ Ms Barratt EIC.

²⁵ WMSESS 2021, para 6.61, page 69. 1. NB the demand data used to reach those conclusions excluded the ‘Covid years’ 2020-2022 data as Ms Barratt explained in ReX.

Policy context

28. Putting the above into context, it is convenient to briefly set out the background context of how the development plan has addressed this issue. As we opened, the issue of immediate need in this case arises in a very specific context of a longstanding failure of the plan led system in the world after the revocation of regional guidance.
29. The WMSESS 2015 identified a regional need for large scale B2 and B8 development. In the 9 years since there has been no agreement between either the West Midlands or the Coventry and Warwickshire LPAs²⁶ as to what the apportionment should be of the identified need. The latest HEDNA²⁷ for the Coventry & Warwickshire area advises a need to plan for 551 ha of land to 2041, and 735 ha to 2050²⁸. for such development – and yet there is no apportionment within it and still no agreement between the LPAs²⁹. The absence of a quantified requirement for NWBC or anyone else has led to a singular failure of the plan led system to make proper provision for such development even where there are development management policies which seek to bridge the gap (such as LP6 in NWBC and EC2 in NWL).
30. The now adopted LP was founded upon clear evidence within the GL Hearn Employment Land Review³⁰ advising the Council that the figures of delivery of B8 were heavily skewed by the past strong level of delivery of large-scale distribution uses in the Borough. Consequently, in estimating the employment need to be addressed in the LP, all past ‘large scale’³¹ B8 completions were excluded from any future projections. That it will be remembered followed on from the CS Inspector’s report which had recommended that the CS was only sound if there

²⁶ Nor indeed the neighbouring Staffordshire LPAs (Tamworth and Lichfield)

²⁷ Clearly the HEDNA has used past completions taken from individual LPA’s data and then advised using completions trends to extrapolate need for short to medium term to 2031 (CD-i4, table 10.18 and para 10.43, page 230, HEDNA). That being the case, a calculation for strategic logistics need must have been undertaken at the individual LPA level and then aggregated to create a single figure (plus margin) for the entire HEDNA area’s strategic warehousing need. Whilst the HEDNA does not provide each LPA’s need, the method of calculation makes it clear that it must have done at some point, and then that data must have been removed (for reasons unknown).

²⁸ CD I3 table 10.19 page 234 of 344 (see also tables 11.2 and 11.3)

²⁹ NB the past trends figure for employment projected forward is 1493.2 Ha (see CDI3 table 9.13 p213/344) 83% of which is large scale B8 – ie 1239.4 Ha to 2050 based solely on past trends, whereas the HEDNA actually plans for 735Ha (ibid). It is not correct therefore to dismiss the HEDNA has ‘just trend based’.

³⁰ CD-I36 p53 para 6.39 ; 6.45 and 6.46

³¹ It is worth noting that in the 2013 ELR GL Hearn arbitrarily determined ‘large scale’ buildings and therefore buildings that served a regional rather than local need as being above 1,850 sqm equating to approximately only 20,000 sqft which equated to just 14% of take up.³¹ Clearly this is an extremely low threshold as can be seen by evidence on the ground at Core 42, Tamworth Logistics Park, and Birch Coppice. Para 7.53, page 86, Employment Land Review for North Warwickshire 2013, GL Hearn

was a commitment to an immediate review if evidence proved that there was a need for RLS (which it did in the WMSESS 2015).

31. This was the beginning of the route that then resulted in the LP 2021, which did not seek to allocate any land for strategic employment sites. The LP expressly did not plan for strategic sites notwithstanding that based upon past completions the employment requirement was four times what it planned for in 2021 (agreed by Ms Barratt)³².
32. Consequently, strategic employment land (particularly largescale logistics employment land) has not been planned for in the locations in which it is needed, ignoring the substantial evidence base.³³ Faced with the clear evidence of need, the LP examiner concluded that in order to make the LP sound a policy similar to EC2, which had been recently adopted in NWL needed to be introduced. That led to the MM which introduced LP6 as a mechanism for decision makers to facilitate further employment land within Area A/2 – where need was evidenced and where that could not be accommodated by allocations or forecasted supply in the LP.
33. The available supply of land capable of accommodating large scale logistics buildings ran out and reached zero years supply by 31 March 2022³⁴ (approx. 6 months after the adoption of the LP).
34. As to the up-to-date position, the inquiry has heard that there is no memorandum of understanding as between NWBC and other LPAs to set out distribution of strategic employment/ share NWBC should be planning for, as confirmed by Ms Barratt.³⁵ Furthermore, despite the duty to cooperate, the 8 LPAs within Area 2, at present, only provide a series of adopted and emerging plans which also fail to address strategic employment need.³⁶ Moreover, the major conurbations of Coventry & Birmingham in the West Midlands are surrounded by GB and both have local overspill needs as a result.
35. Consequently, an issue of fundamental economic importance falls to be addressed at a development management level.

³² Ms Barratt XX *The point is LP expressly does not plan for strategic sites notwithstanding based upon past completions the employment requirement was 4 times what it planned for in 2021? – Agreed*

³³ Mr Turner PoE Para 3.2 CD-D29A

³⁴ Mr Turner PoE para 3.16 CD D29A

³⁵ Ms Barratt XX

³⁶ Mr Hann PoE para 1.2.25 CD D28/A

36. Parenthetically, one of the many kites flown by Mr Young KC during the inquiry was that it was somehow unfair for NWBC to be saddled with yet more large-scale logistics development. Hams Hall and Birch Coppice were essentially redevelopments of large scale redundant industrial uses and had been identified as strategic employment sites in the last Regional Strategy³⁷. NWBC is a rural authority with a small population which has already done its fair share – he posits and merely rolling forwards past delivery trends would be an unwarranted burden upon the local population absent a regional level agreement. Whilst that may play well to the gallery (albeit that the gallery in this inquiry has been largely made up of logistics promoters and planning consultants), it is a travesty of the evidence base before the inquiry and in particular it is precisely NOT what the LP inspector concluded. Had that been the LP examiner’s conclusion then LP6 would have been unnecessary, not ‘necessary to make the plan sound’. Moreover, as Mr Turner responded in XX by Mr Young KC, the Appeal Site is seeking c. 20ha of predominantly B8 employment land and the HEDNA evidences a need to 2031 (using past completion trends) of a far greater amount in NWBC alone.³⁸
37. Worse, that bucolic narrative flies in the face of what the Council are actually doing. We are told it relies upon the HEDNA³⁹ – which for the Coventry & Warwickshire evidences a need of 551ha to 2041 – not based solely upon past trends, but based in part on past trends and in part upon other considerations (as Ms Barratt accepted in XX). That is not a rogue report which the Council gives no credence to, but part of the evidential foundation for its emerging local plan – upon which it is intending to make at least one allocation to address strategic employment needs. It is only with the pen of Lewis Carroll that one could try to reconcile that position with Mr Young KC’s enough is enough argument. It is – with respect – an untenable argument.
38. Ms Barratt’s argument is actually very different to that put by Mr Young KC in XX. Her position is that the need is not immediate because there is no identified occupier (which she wrongly took to be the test) and that any short-term need is being met by the not yet emerged allocation in the emerging LP.
39. With respect that latter argument goes nowhere. The Council have rightly not argued prematurity as a basis to dismiss the appeal, but somehow seek to argue that salvation is on its way. However, the LP is still at the very start of what is an uncertain process. The eLP consultation is already some 3 to 6 months behind the period (Autumn 2023) indicated in the Local Development Scheme of July 2023 and 15 months behind the Autumn 2022 consultation

³⁷ NB phases 2 & 3 of Core 42 adjacent to and surrounded by Birch Coppice were all approved in outline by NWBC on ‘greenfield’ land.

³⁸ Mr Young KC XX

³⁹ Ms Barratt XX

date proposed in the Local Development Scheme iteration of April 2022. Even if no more delays occur, the adoption of the LP would be anticipated at the very earliest in 2026, some five years after the adoption of the LP.⁴⁰

40. To further add to the above issues of delay – with regards to LP consultation process – the majority of land in Area 2 lies in GB i.e. a full GB review might be needed which could itself delay the process of the LP or even result in a wider review of the LP.⁴¹ But any such GB review will patently add to the level of controversy of the plan.
41. In any case, even if the draft LP is taken forward as expected it will be unable to respond quickly enough to meet the employment land needs in light of the evidence base and market signals outlined by the C&W Study. Put simply, the ongoing existing ‘gap’ in logistics land provision will continue until such time as a site is released via LP6. This is especially the case noting, as does the WMSESS 2021 the: “very substantial lead-in times for promoting and bringing such sites forward.”⁴²
42. Assuming the LP is adopted in 2026, and in the hope that it actually allocates strategic employment land for the large-scale logistics, and, again assuming thereafter planning consent is achieved in rapid time, it is still inconceivable of such land being capable of delivering serviced plots that can be occupied so as to meet market demand until at the very earliest 2030.⁴³
43. It should be emphasised that the Council, during its oral evidence re an emerging LP, has confirmed that there is a need to allocate strategic employment sites within the district, thereby clearly conceding that the need exists, and implicitly accepting that the approach of the adopted LP of not allocating unless and until the level of need has been quantified is defunct.⁴⁴ Indeed, despite the two WMSESS studies, the HEDNA, and the long line of logistic promoters who apparently have been queueing at Ms Barratt’s door desperate to bring sites in NWBC forward – not a single square metre of additional strategic logistics space has been delivered in the Borough since the plan’s adoption or under LP6.

⁴⁰ Mr Turner PoE para 4.17 CD D29-A

⁴¹ Mr Hann PoE para 8.10.10 CD D28A

⁴² WMSESS 2021, para 7.25, page 76

⁴³ Mr Turner PoE para 4.21 CD D29A

⁴⁴ Ms Barratt XX *Your judgment here today [is that there is a] need to allocate strategic employment site (s) within the district? – Yes; Fair inference will include B8? – Agreed*

44. Overall, in view of the timescale involved, the only way NWBC can contribute to the provision of strategic logistics employment land at least before 2030 is through the triggering of LP6 and the delivery of new sites.

Economic context

45. As has been demonstrated by Professor Coleman⁴⁵ – the logistics sector is critical to the effective functioning of the UK economy. He has emphasised the facilitative role of the sector in the development of other sectors.⁴⁶

46. Ultimately, an efficient and effective logistics sector needs land supply to be available in the right places and at the right times⁴⁷ to meet the specific needs of the sector’s operators to enable them to support growth, innovation, and increase productivity, and consequently ultimately benefitting the customers it serves and the UK economy. A position supported by DfT’s long term national freight plan.⁴⁸

47. Professor Coleman’s evidence on its own, ought to demonstrate the dangerous oversimplification in the Council’s line of argument, which, ultimately, boils down to saying that a logistics business can be expected to take up what is on offer/ move on to an alternative available site, if their preferred location(s) is unavailable. The logic absurdity of which would be that no new logistics site should be occupied until there are no buildings or land which could meet any need. A position which is both absurd and economically illiterate. It is perhaps unsurprising that the Council have not produced any market evidence to support their position that there is not an immediate need for the appeal proposals.

48. Professor Coleman has demonstrated, and this appeal is to be considered in the context where the UK economy is struggling currently and has, for some time, performed poorly in respect of productivity growth and more recently in terms of overall economic growth. In this context,

⁴⁵ Professor Coleman Summary PoE para 1.2 CD D32/B

⁴⁶ Professor Coleman EIC

⁴⁷ As Professor Coleman observed, the Logistics industry requires to see a choice of sites across the West Midlands to meet the evolving and diverse needs of the sector.

⁴⁸ CD I13

economic boosts, especially those that are productivity enhancing, are to be welcomed,⁴⁹ which is a euphemism for ‘desperately needed’.

49. Helping to meet the strong national and regional need is the primary role of the proposed scheme.⁵⁰
50. Professor Coleman has also noted that NWBC draft Economic Development Strategy and Action Plan⁵¹ states that the overall vision is one of growth development and investment; it identifies logistics and automotive, as important sectors⁵². A position which Mr Hann noted in ReX is wholly inconsistent with the Council’s case before the inquiry.
51. The draft Economic Strategy says North Warwickshire’s nationally strategic location, technical base, and the strength of the sub-regional automotive and logistics sectors mean that NWBC has a major role to play in supporting the Government to deliver its growth plans, in terms of each of the three core pillars of growth⁵³.
52. The Inspector will no doubt form his own view as to the dissonance between these ambitions and the inconsistent ‘tap off’ argument advanced by the Council at the inquiry.
53. Mr Turner’s evidence helpfully emphasised the need to ask the question of – why is the relevant development in NWBC in the first place? The answer is simple – because of the locational requirements; the relevant factor being where the goods are coming in from and where these are supplied to. NWBC contains lots of logistics because the A5 and the M42 run through it, and it contains the only two currently operational SRFI in the entire West Midlands (BIFT and Hams Hall). It is not an island it is a key part of the wider West Midlands and it benefits from hosting key road and rail corridors. In answer to the implicit point that the proposals are somehow out of scale with NWBC, the obvious retort is that they are on the edge of Tamworth, on the M42 motorway junction, which through an accident of history happens to be located in one Borough rather than another. Had Tamworth’s boundary encompassed the appeal site there can be little doubt (not least from TBC’s express support for these proposals), that they would have been consented long ago.

⁴⁹ Professor Coleman Summary PoE para 1.8 CD D32/B

⁵⁰ Professor Coleman Summary PoE para 1.20 CD D32/B

⁵¹ CD ID17

⁵² Professor Coleman EIC

⁵³ CD ID17 p8

The Council's flawed approach

54. The Council's evidence on the issue of employment need has been demonstrated to be not only deficient to rebut the Appellant's clear evidence of need, but – it has sought to invent gloss on policy, offered misleading analysis and demonstrated a lack of understanding of the appeal proposal's ability to deliver buildings of scale and of bespoke layout⁵⁴.
55. For instance, the Council suggested that the WMSESS 2015 sought to fill the gap of regional planning by determining the need for wider than local employment sites⁵⁵; it then suggested the study did not provide any notion of the amount of land NW should deliver.
56. It was of course never the purpose of WMSESS 2015 to indicate an amount of land that NWBC or any other LPA should deliver. It was meant to inform a process that would do so under the DtC, which has never happened. The study rightly equated demand against supply in market terms, which demonstrated that Area A, which is referenced directly by Policy LP6, has the lowest level of immediate available supply measured by years' supply of any of the areas within the West Midlands considered by the study. It also put the 3.7 years supply in context by suggesting that a minimum of 5 years supply was needed in order to ensure a properly functioning market for such uses. In reality, this would need to be across multiple locations to provide a choice of sites (as the HEDNA states⁵⁶) avoid a monopoly.
57. Similarly, the Council sought to argue that the successor study WMSESS Phase 2 (2021) again did not indicate the amount of land that the Council should be seeking to deliver – again, this shows a clear misunderstanding of the significance and purpose of the successor study.
58. The Study again identified Area 2 as the location with lowest immediate supply in the whole of the West Midlands.⁵⁷ It identified the Appeal site as the joint best among the potential sites in terms of its suitability to deliver strategic employment land in the whole of the West Midlands, with 2 other sites receiving the same joint score both located in the Green Belt. And if the site is the joint best site to meet needs in the whole of the West Midlands, then it is the joint best site to do so within Area A/2 (or any other Area detailed by either WMSESS for that matter).

⁵⁴ Rebuttal PoE Mr Turner p7;8;11 CD-D40

⁵⁵ Ms Barratt PoE para 4.32 and Mr Turner Rebuttal CD D40 comment on para 4.32

⁵⁶ HEDNA, para 10.44, page 230, CD-i4

⁵⁷ Mr Turner Rebuttal comment on para 4.33 p6 onwards CD D40

59. The Council went further and, through Ms Barratt, sought to ‘change’ the policy by arguing that in order to benefit from LP6 the Appellant needs to demonstrate no other sites are available or could be made available ahead of the appeal site and that economic growth and productivity would be lost in the absence of such a site⁵⁸ – these matters are simply not contained in LP6 policy, nor anywhere within its RJ, nor within the LP examiner’s report. These additional requirements seem to have been invented. Rightly Mr Collinson backed away from that proposition and said that a named occupier was merely an example of immediate need, but then said that he couldn’t think of another way to demonstrate it. That position is in light of the WMSESS 2015 stating a 3.7 years’ supply and planned land supply falls “severely short”⁵⁹ along the M42.
60. Perhaps a reduction in supply from 3.7 years supply in Area A (WMSESS 2015) which has reduced to less than a year’s supply (C&W Study Appx. 1), might have been thought to evidence such immediacy of need – but not in the eyes of Mr Collinson.
61. The Council sought to suggest that it would be unusual for an unallocated or unconsented site to be considered to meet an immediate need⁶⁰. An assertion which flies in the face of the fact that the very purpose of LP6 is to allow a mechanism for decision makers to release employment land that meets a need within Area 2 which is not accommodated by allocations or forecasted supply. So, the complete opposite is true – the unconsented or unallocated sites are the ones that trigger LP6 (moreover supporting text to LP6⁶¹ makes clear it refers to GB and Strategic Gap which by definition are unallocated sites).
62. What has become apparent during the inquiry is the Council’s new emphasis is on the assertion that the Appellant’s evidence on the immediacy of need is, in effect, unreliable as it rests heavily on data for past completions i.e. past trends. Which is yet another instance of late in the day kite flying.
63. The HEDNA itself is the document which forms part of the evidence base for the Council’s own emerging LP, as is made clear in its Introduction, it having been commissioned by the local planning authorities of Coventry & Warwickshire, including NWBC. It considers past

⁵⁸ Ms Barratt PoE para 5.8 and Mr Turner Rebuttal CD D40 comment on para 5.8 p 7

⁵⁹ WMSESS 2015, para 6.5, page 57

⁶⁰ Ms Barrat PoE para 5.9 CD-D24

⁶¹ Para 7.46 of the Local Plan CD-F1

completions showing NWBC’s average annual figure for 2011-2019 (excluding 2020-22 ‘Covid Years’) being that of 15.2ha⁶² with the trend now continuing post covid; with proportion of strategic logistics sites in its past supply equating to 83%. No new supply for new large-scale logistics has been brought forward in NWBC since consents at Hams Hall and Tamworth Logistics Park – as agreed by Ms Barratt⁶³. Ready supply of land dried up by Q1 of 2022 – and whilst Ms Barratt sought to argue the HEDNA takes a ‘policy off’ approach, this document tells the reader what the objectively assessed need is (clearly relying on past trends as part of its assessment– it addresses the need against completions, which is an approach accepted by NPPF and key for considering future supply of land⁶⁴).

64. Overall, the line of argument that past completions should be ignored is entirely misconceived. Mr Binks has explained that projecting past completions forward is an entirely conventional approach⁶⁵; Mr Turner then emphasised that completions remain a principle base bedrock of understanding need in employment land review; stating there are other metrics in the HEDNA but that those are used to offer a level of prudence.⁶⁶

65. The HEDNA demonstrates and contains a forecast based on completions for NW – it provides an average over the period 2011 to 2019 (15.2ha) it then forecasts forward need for period 2021to 2031 by using the average completions and adding a margin to support a choice of sites in a competitive market and ensure that there is some flexibility of supply to allow for some unforeseen delays in delivery without constraining the market⁶⁷ ⁶⁸. As it states, “*completions data is likely to be the best representation of market needs for the next phase of plan making for industrial / warehousing floorspace particularly for the short/medium-term.*”⁶⁹

66. Given the Council is relying on the HEDNA as part of its own evidence base and given that this is the HEDNA’s approach – the argument advanced at the appeal to the effect the completions are not to be relied upon is unfathomable.

⁶² HEDNA Table 9.12 pdf p210 CD I4

⁶³ Ms Barratt XX Day 6 – *I don’t recall of any*

⁶⁴ Mr Turner EIC

⁶⁵ Mr Binks Re E

⁶⁶ Mr Turner EIC

⁶⁷ HEDNA, para 10.44, page 230

⁶⁸ HEDNA p210 table 9.12 CD I4

⁶⁹ HEDNA, para 11.10, page 234 CD I4

67. The CS Inspector⁷⁰ noted that the Borough was well placed to accommodate RLS development, but noted that there were other places that could accommodate such development and therefore just using a past trends approach to allocate sites would not be prudent (para 45 last sentence). However, at para 47 he observed:

“However, a regional perspective is required and I do not consider there to be sufficient evidence before me to set a requirement for North Warwickshire I do not consider that it would be in the interests of the proper planning of the area to delay the adoption of the Core Strategy by reviewing employment provision at this stage. MM42 introduces a commitment to review the Core Strategy should these studies identify a need for more RLS floorspace in the Borough. I have amended the consultation version of MM42 as I agree with some representors that it should be clearer with regard to when a review may be necessary.”

68. The WMSESS 2015 did indicate that there was an acute need within Area A for more RLS, but did not provide a distribution amongst LPAs. However, it would be an odd misreading of the CS examiners report to say that he rejected past trends as a consideration. If the studies showed a need, then there was an obligation on the LPA to institute an immediate review to meet it – and that was not done.

69. Similarly, the LP examiner⁷¹ did not reject consideration of the use of past trends – rather he rejected the simple “linear projection of past growth” (para 172), and obliged the introduction of LP6 as a clear basis for decision taking. That is, with respect exactly what the HEDNA doesn’t do. It doesn’t project forward simple past growth – otherwise its figure would be well over 1000 Ha – rather it reduces that based on a series of metrics to 551Ha to 2041, which whilst still large is not a simple linear projection of past trends.

70. It is true that WMSESS 2015 calculates its figure of 3.7 years supply on the basis of past trends, and the C&W ELS uses past trends to conclude that there is less than a years’ supply of logistics employment land and premises within Area A/2. However, neither suggest that is the end of the assessment, but rather it is a clear indication of the extent of the need for additional sites in

⁷⁰ CD F21 para 44 to 47

⁷¹ F15 Matter 4 para 163 onwards, in particular 176 onwards, see also para 36.

this area. It was acute when Hams Hall and St Modwen' Tamworth Logistics Park were consented (at 3.7 years supply against an ideal of 5 years) it is very much worse now at well under a year's supply. The latter evidences what Ms Barratt made clear in evidence – that the supply cupboard is all but bare in Area A/2 and there is an immediate need to add to the supply in this key part of the WM.

71. Mr Turner has emphasised that the approach that has been adopted was in the round, also looking at market demand and take-up as well as physical leasing (not only considering past completions). However, he said, completions remain the core part of the process of assessing need.⁷² He also clarified that all HEDNAs in the region utilise this data and whilst it is possible to take a more risk adjusted approach in terms of completions, figures can be reduced but there would still be substantial need.⁷³

72. The HEDNA itself sets out a final recommendation– of 551ha (to 2041) which is based for the first ten years on past completions and for the next ten years, potentially seeing slower growth in line with traffic growth and replacement demand modelling thereafter.⁷⁴ This very figure is contained in the Appellant's evidence i.e. not simply a linear projection of past completions but the figure containing further flexibility.⁷⁵

73. Further the HEDNA advises: *'the completions data is likely to be the best representation of market needs for the next phase of plan making for industrial / warehousing floorspace particularly for the short/medium-term. Comparing the completions data with other sources, monitoring by authorities suggests far higher levels of development have been achieved and therefore may be required in the future.'*⁷⁶

74. Overall, the entire line of 'ignoring past trends' argument is simply misconceived and not rooted in any evidence put forward by the Council. Crucially it is not a case based in anything said at any time by those charged with examining the plans, nor by those working in the market. It is a contrived argument to try to side-step what is overwhelming evidence of an immediate need.

⁷² Mr Turner XX

⁷³ Mr Turner XX

⁷⁴ HEDNA p333 table 15.2 CD I4

⁷⁵ Mr Turner PoE para 4.14 CD D29A

⁷⁶ HEDNA para 11.10 CD I4

A certain type of employment land

75. The C&W Study states that large scale industrial and logistics developments known as ‘Big Box’ are a specific market segment – ‘a certain type’ of the overall employment land market, with a distinct set of characteristics⁷⁷.
76. Ms Barratt has accepted the Big Box logistics to be a well-recognised sector within the employment market and a certain type of employment land.⁷⁸
77. Furthermore, the HEDNA⁷⁹ defines a sector of the employment development as Big Box logistics; the Appellants proposals falls within this definition, as agreed by Ms Barratt.⁸⁰
78. The proposal meets the longstanding, substantial, and immediate need as well as for being a certain type of employment land, as stated by LP6 – by nature of being a distinct market segment of the overall employment land market with specific locational requirements and characteristics. This was an accepted matter between the Appellant and NWBC during the Inquiry.

An immediate need for employment land – the Appellant’s case

79. An immediate need in respect of the Big Box sector is demonstrated by having regard to the evidence base, consideration of the specific locational requirements of this specialist sector, and the availability of readily available and serviced large scale development plots within the identified market areas⁸¹.
80. The Appellant has provided the C&W Study⁸² which is clear in its findings – the high level of market demand for I&L has significantly reduced the availability of strategic employment land

⁷⁷ Mr Turner PoE para 4.1 CD D29A

⁷⁸ Ms Barratt XX *What I am putting to you within class B8 Big Box logistics is identified sector within your own LP, then why words certain type of employment land do not apply why is it not certain type of employment land? – It is certain type; yes, I will say yes*

⁷⁹ Coventry and Warwickshire Housing & Economic Development Needs Assessment (HEDNA) November 2022 para 3.67 p54 CD I4

⁸⁰ Ms Barratt XX Agreed

⁸¹ Mr Turner PoE Para 5.7 CD D29A

⁸² C&W Study CD-I20

at a regional, sub-regional and local level leading to an unprecedented and acute shortage of supply and an immediate need for new sites to be brought forward to fill the market gap⁸³.

81. Nationally, themes covered by the studies and UK Government plans/strategies include the focus on the decarbonisation of transport and incentivisation of the use of rail freight, statements on lorry parking in relation to logistics development, recognition of the specific locational requirements of the logistics sector, the long-standing suppressed demand in the logistics sector, and the power of technology to unlock productivity.⁸⁴ All of which are supportive of the appropriateness of the Appeal Site.
82. The C&W Study evidence points to a substantial level of suppressed⁸⁵ demand⁸⁶ for new I&L Big Box development, which was calculated by the British Property Federation and Savills as being a minimum of 29% in the Birmingham market, which the Appeal site would be considered to form part of.
83. Regionally, WMSESS 2021, like its predecessor study demonstrates an identified ‘urgent’ need for additional strategic employment sites to be brought forward.⁸⁷ It finds that Area 2 – the M42 corridor (defined as J2/3 to J10) - had the lowest years’ supply of existing sites of all the prime market facing locations of the West Midlands identified, as clusters of large-scale employment land – at just 0.71 years supply⁸⁸.
84. Sub-regionally, the evidence base since the adoption of LP also continues to indicate that there is an immediate need for strategic employment land – the position reflected the Planning Housing Business Group of Coventry and Warwickshire LEP’s paper titled Strategic Employment Land February 2021 and the HEDNA of November 2022⁸⁹. The former concluding in February 2021 that “*unless more larger sites are allocated or come forward as “windfall” then inward investment into the sub region will be deterred by sites shortages.*”⁹⁰ The latter document concluding its analysis by stating that between 551 and 735 hectares of

⁸³ Mr Binks para 4.1 CD D29-B

⁸⁴ C&W para 3.4 to 3.38 CD I20 & Mr Turner PoE para 4.2 CD D29A

⁸⁵ NB Suppressed demand is when there is a lack of supply and an occupier chooses not to take any new site forward, harming efficiency, productivity, growth, and the need to decarbonise the built environment. It is perhaps telling that suppressed demand was not addressed at all in the Council’s employment need case, despite Ms Barratt relying heavily on Savill’s data to make her case.

⁸⁶ Ie demand not being met by available supply – and therefore synonymous with the concept of need, as agreed in XX of Ms Barratt.

⁸⁷ C&W para 3.59 to 3.80 CD I20 & Mr Turner PoE para 4.4 CD D29A

⁸⁸ C&W Para 3.74 CD I20

⁸⁹ C&W Para 3.114 to 115; 3.116 and figure 15B p48)

⁹⁰ C&W Appendix 1, page 104 CD I20

land is required to meet needs for large scale strategic B8 logistics warehousing to 2041 and 2050 respectively; and also noting that to support the use of rail in transporting goods consideration should be given to the providing additional warehousing capacity in locations close to the SRFI, which in Coventry and Warwickshire means J10 M42 and around Hams Hall⁹¹.

85. Mr Binks and Mr Turner through the C&W Study have demonstrated that within Area A/2 as detailed by LP6, take up over the last 5-year period 2019-2023 has reached 7.6 million sq. ft, (11 million sq. ft. if J11 M42 is included), averaging between 1.5 to 2.2 million sq. ft per year. If the pandemic years 2020-2022 are excluded the 5 years take up was 9.25 million sq. ft or 1.85 million annually (paragraph 4.74)⁹² It is salient to note that due to the severe lack of supply, there has been no recorded take up in Area 2/A since Q2 2022 (so the 7.6 million sqft take up in practice took place over just 3.5 years). Of Area A/2's total take up, 89.4% was for B8 logistics use class and 96.55% for Grade A space.⁹³

86. It has also been demonstrated that the current supply of B8 logistics Big Box⁹⁴ development land along the M42 corridor (defined by WMSESS 2021 as J3 to J10 M42) is limited to just one site capable of accommodating just 250,000 sqft of B8 logistics space at Peddimore in Birmingham (and up to c.1.3 million sq. ft of B2)⁹⁵. For Big Box logistics land, that equates to less than 3 month's land supply at the 5-year average take-up rates. This represents a critical level and an immediate need to bring forward new sites to avoid causing further harm to economic growth and productivity of businesses in the region which operate within a global marketplace. Whilst buildings are not the focus of policy LP6, within Area 2 Big Box building supply stands at between 8.5 months' and 10 months' supply on a purely quantitative basis and during the Mr Bink's evidence was shown to have fallen to 1,151,871 total sqft across just 6 buildings⁹⁶, three of which are around 160,000 sqft and two of which are between 260,000 to 290,000 sqft. In short, both quantitatively and qualitatively there is very little available supply, and no land or buildings of scale above 286,000 sqft within Area 2⁹⁷

⁹¹ C&W para 3.116 and Figure 15C p49 CD I20

⁹² Figures that withstood scrutiny despite misguided attempts to go behind them in XX, wrongly concluding the figures were based upon a 2-year figure not a 5 year one – which appears to have been put ignorance of the take up figures in appx 6 of the WMSESS 2021.

⁹³ C&W Figure 36 on page 77; paragraphs 4.68 to 4.76 CD-I20

⁹⁴ Ie Buildings equal to or greater than 10,000 sqm

⁹⁵ Area 2 analysis by NWBC CD-iD11

⁹⁶ CD-iD16

⁹⁷ C&W Figure 44 on page 90 CD-I20

87. It should be noted that the Council made no meaningful criticism of the calculations offered by the Appellant within C&W Study in its written evidence. Neither did it argue the evidence to be in any way unreliable let alone propose any alternative figures or call any employment need consultant to support its case
88. Ms Barratt agreed that on the Appellant's evidence Area A has about 8 months' supply.⁹⁸ She also conceded that applying the HEDNA's approach or the C&W Study's approach or indeed GL Hearn's approach in their Leicester and Leicestershire Study⁹⁹ – the outcome is that there is an immediate need.¹⁰⁰ That concession is important – since her case was that immediate need was only proven by an identified occupier, a position not pursued by Mr Collinson.
89. In view of the HEDNA's approach in focusing forecasted need based on past completions for the reasons it provides, given that no new strategic logistics consents have been granted since 2017 and that the supply had dried up by Q1 2022, and, taking into account the fact that need considered does not take account of the wider need (Area 2 is covered by 8 LPAs, who will have their own need information for Area 2) – it is clear that the need for NW is both significant and immediate.¹⁰¹
90. Ms Barratt also agreed there is need in Area 2¹⁰² and that the presence of a developer/promoter willing to engage significant amounts of capital to promote a GB site, which comes with the highest level of protection, in itself is very strong evidence of market demand.¹⁰³ A position which is not retracted by the question asked in XX of Mr Hann "how do you know that Richborough aren't just pursuing the LP examination route?", when their application is predicated upon demonstrating VSC exist.

⁹⁸ Ms Barratt XX *The point is you have got about 8 months supply on the figures of appellant's evidence? – Agreed*

⁹⁹ CD I29 Warehousing and Logistics in Leicester and Leicestershire Managing Growth and Change, GL Hearn April 2021 (updated March 2022), report to Leicestershire LPAs. See also the earlier study referenced in JLL Employment Land Statement CD A13 para 2.73

¹⁰⁰ Ms Barratt XX HEDNA approach, Hearn approach, C&W approach inevitable consequence is immediate need? – Yes.

¹⁰¹ Mr Turner EIC

¹⁰² *Why doesn't the point I have just put to you mean there is immediate need within area 2? – Agreed*

¹⁰³ Ms Barratt XX Agreed

91. The Council's argument that when considering whether there is an immediate need for the purposes of LP6 one needs to look beyond Area A/2 and indeed the borough goes nowhere, as it fails to appreciate the fact that just like there may be available sites beyond the borough, there would also be additional need beyond the borough (as proven by the various Leicestershire studies, and the evidence base of the neighbouring local planning authorities as examined in the C&W Study¹⁰⁴). Notably the Council, whilst seeking to look beyond Area 2 and the borough, has not provided any evidence of associated demand/supply. As such, these alternatives sites do not assist the Council's position, and take the inquiry no further.
92. Thus, the Council's reliance on Appendix G, setting out industrial and logistics pipeline in the East and West Midlands',¹⁰⁵ is entirely out of touch with the relevant policy under consideration – LP6, which is specific to employment land need in Area 2.
93. Even following corrections to the numerous mistakes in Appendix G the position has not moved on with the Council entirely unreasonably maintaining that the availability of plots at other locations outside Area 2 and across the entire Midlands is important. The proposition that a need is not immediate within the terms of LP6 because a prospective occupier could take up a unit somewhere in Derbyshire or Northamptonshire is, with respect, risible.
94. Mr Binks has nonetheless performed an analysis of the various sites referred to by Ms Barratt in her evidence in reliance on the initial Appendix G.¹⁰⁶ That analysis that has clearly illustrated that only a handful of the sites referred to by the Council are within Area 2, and included: one for residential use and car show rooms , one for B2 use only ; one for a 'paused' sites and projects; referred to sites that are only permitted to have an ancillary B8 (Horiba MIRA); and overall, referred to entirely irrelevant sites outside Area 2.
95. It is plain there is very limited available and suitable land to meet Big Box development demand in Area 2 (6.26 ha at Peddimore) and zero hectares within NWBC (inside or indeed outside of Area 2). With no suitable supply of sites in NWBC – there is zero years of supply¹⁰⁷.

¹⁰⁴ C&W para 3.121- 3.151 CD I20

¹⁰⁵ Ms Barrat PoE Para 5.20 CD-D24

¹⁰⁶ Mr Binks Rebuttal para 2.29 -2.36 CD-D41

¹⁰⁷ C&W Study p91 para 5.39 CD-I20

96. Of the North Warwickshire Local Plan Employment Allocations, the only allocation potentially for market facing large scale B8 development is E2 – Land to the West of Birch Coppice of 5.1 hectares on a gross area basis, which is subject to numerous constraints, allowing for which a maximum of 3-.35 hectares of net developable land are available for construction of buildings and associated car parking/yard space. This allocation has significant site constraints and requires a number of parties to be amenable to its development. Not least the allotment holders on land owned by NWBC and the access through 3rd party land.¹⁰⁸ Whilst in due course it may be deliverable – it is wildly optimistic to think that it could be delivered in the near, let alone immediate future. It was agreed by Ms Barratt during XX that this E2 allocation could accommodate a total of 150,000 sqft (and likely over 2 buildings each below 100,000 sqft). In any event this site was allocated to meet only the local needs of NWBC.¹⁰⁹
97. This is also the case for all other remaining allocations identified¹¹⁰ by the LPA. Allocations E1,E3 and E4 can all be safely discounted – as has been demonstrated in evidence¹¹¹ and by Ms Barratt’s evidence in particular.
98. Ultimately, it has been demonstrated that the consequence of the current position where land supply is critically low with strong demand is that it has created an immediate need for new large-scale employment sites for logistics use.
99. On the only market evidence before this inquiry, this imbalanced supply/demand dynamic has created a substantial suppressed demand and, occupiers, if at all possible (after lengthy searches taking a number of years), are required to find alternative solutions leading to leakage to sub-optimal locations.¹¹²
100. The Council’s insistence on consideration of wider areas outside of Area 2 is irrelevant to the central issue in this case in relation to LP6 – which relates specifically to Area 2. It was put to Mr Binks that WMSESS 2021 looked at the whole of West Midlands – but he has explained that whilst the Study considered the entirety of the West Midlands and split it into 5 market areas, the focus of LP6 is on Area 2 as a functional market area and primary market.¹¹³ Moreover, in XX Mr Turner reconfirmed the specific locational requirements of operators in

¹⁰⁸ Mr Binks PoE para 4.25 CD D29-B

¹⁰⁹ CD ID11 and XX with Ms Barratt

¹¹⁰ Mr Binks PoE para 4.24 to 4.26 CD29-B

¹¹¹ Mr Turner PoE Para 5.20 to 5.22 Cd D29-A

¹¹² PoE Mr Binks para 5.1 CD D29-B

¹¹³ Mr Binks XX

the logistics sector and stated that he would go further than WMSESS 2021 by dividing Area 2 into two halves, being the north and south areas, noting for example that occupiers looking at the north of Area 2 will simply not go to Redditch let alone Derbyshire or Northamptonshire.

101. Mr Binks's evidence is clear – in market terms these are entirely different locations of the golden triangle (e.g. Rugby, Northampton); the demand does not transcend these locations in addition to the fact that they are long way outside the area identified in the policy under consideration. The approach to considering sub-areas is by no means unique to the West Midlands and is expressly reflected in HEDNA.¹¹⁴ Mr Turner has emphasised in his evidence that consideration of the relevant areas is hugely important when it comes to delivery of logistics and operations – there being very specific typologies of take-up. According to WMSESS 2021 there are five different market areas in the West Midlands alone¹¹⁵, whilst the Council's line of argument would appear, on the face of it, to treat the entire golden triangle as a single market – which is plainly not the case.

102. Furthermore, there was no analysis of the various constraints and needs of other areas explored at the inquiry – for instance, Birmingham, Tamworth, Coventry, Rugby – all being constrained by GB but all potentially having unmet needs of their own¹¹⁶.

103. It is right that the Appellant has presented evidence, specifically showing an ongoing commercial discussion (ongoing since 2020/21) with a logistics user for a 20+ years lease term for a bespoke facility which would equate to a building of approx.330 000 sq ft of maximum 12m in height,¹¹⁷ as well as other interest over the almost 3 years of this application being live. But just focusing upon the example given by HPG – Mr Collinson agrees – there would be nowhere for it to go within Area A/2¹¹⁸ i.e. in relation to the space required.

104. In passing it is worth noting, on instructions that the Council's case on occasion took the route of disparaging without reason. Thus, for example the letter from HPG Developments

¹¹⁴ Mr Binks Re E

¹¹⁵ Mr Turner EIC *In terms of the role of M42 corridor, important re sector? – Hugely important re delivery of logistics and operators; key node re road network. Very specific typologies of take-up. It is important West Midlands study typically divides the region into 5 areas and this is area 2; I would actually area 2 can be divided into north and south; there are 5 different market areas not that golden triangle is single market.*

¹¹⁶ C&W para 3.121- 3.151 CD I20

¹¹⁷ CD D41p22

¹¹⁸ Mr Collinson XX

was characterised by Mr Young KC as ‘merely Edward’ (ie Edward Hodgetts). That ignores the role of HPG in generating up to 1000 jobs locally through the delivery of Core 42.

105. Similarly, the Appellant has drawn the Inspector’s attention to JLL’s letter¹¹⁹ – whereby it is said that the agency is currently tracking up to 15 million sq ft of requirements ranging from 100 000 sq ft to 1 million sq ft along M42 corridor which would be suitable for the appeal site.

106. With these documents in mind, along with the Appellant’s employment need evidence, and seemingly most of the logistics industry providers in the country visiting Ms Barratt in recent weeks, the Council has not offered any market evidence to counter the evidence produced, which points to a red-hot market.¹²⁰ Indeed, Ms Barratt’s own evidence relied on information from CBRE, a consultancy which has provided supporting market and occupational documentation to support the Richborough application in the GB.

107. On the evidence, occupiers prefer to focus on development where speed and risk are reduced and minimised, typically seeking delivery of a development within a 2-year time period¹²¹. Consequently, the majority will not accept an uncertain planning environment or extended delivery timescales, whilst planning is granted, as explained by Mr Binks.¹²²

108. This point alone addresses in direct terms the misguided position advanced repeatedly by the Council both in respect of there being a need for a known occupier to demonstrate an immediate need and in the context of theoretical future sites being taken into account when determining any forecast future supply. It also removes the foundation of the daft argument that if there isn’t a detailed application then the need can’t be immediate. As noted above – this is a point which is contrary to the evidence of almost all other applications for logistics before this Inquiry.

¹¹⁹ CD B47

¹²⁰ Mr Collinson XX *Is there any market evidence you put before Inspector to suggest any of this information is wrong, because it points to red hot market? – No.*

¹²¹ The Appellant has demonstrated via the occupier development programme at Appendix 3 of the C&W study CD D29/C that an early access date for occupier fit-out work is 6 April 2026 and a practical completion of base build works 14 May 2026

¹²² PoE Mr Binks para 5.6 CD D29-B

109. In terms of the former point – the Inspector has heard the evidence about NW Leicestershire Local Plan employment land policy EC2¹²³ – which clearly differentiates between an immediate need vs demand – the very issue Ms Barratt has conflated in her evidence by suggesting an immediate occupier is evidence of immediate need. Notably, Ms Barratt accepted in cross-examination that the proposition of NW Leicestershire granting consents based on their policy simply on the basis of there being an identified occupier – are not borne out;¹²⁴ she did not seek to argue that LP6 and EC2 are dissimilar; and agreed that NW Leicestershire’s approach mirrors that adopted by the C&W Study i.e. need is demand against supply. Her analysis of the draft replacement of EC2, when the policy is read properly also did not support her case.

110. In any event, the Appellant has explained that due to a non-disclosure agreement the identity of the prospective occupier cannot be revealed. However, the Appellant has provided evidence and demonstrated there has been strong, uncontested demonstrable interest in the site.¹²⁵ That is not undermined by the fact that part way through the tortuous application process that the application was not ‘pulled’ and recast as a hybrid application. Despite all of the enthusiasm with which the point was pursued (or rather that this kite was flown) there is no support on the evidence, nor in policy for the proposition that one can infer from the fact that the application is in outline that the need is not immediate. With respect it is unthought syllogistic nonsense. Indeed, the recent Richborough outline application in the GB is firmly founded upon a contention of there being an immediate need supports the Appellant’s case.

111. Apart from this, it has been demonstrated by Mr Hann in his evidence that an outline application is the standard method for bringing strategic land such as this forward – with numerous examples in the evidence of outline applications having been made (such as Ocado – wrongly put in XX by Mr Young KC) and yet, whilst insisting that there needs to be a named occupier, the Council could not recall when it had last granted a detailed/ hybrid large scale logistics development.¹²⁶ The foundation for this part of its case appears to have been JLR and JLR alone on part of a single application at J11 M42, which didn’t tie the occupier in any way.

¹²³ Mr Binks Rebuttal para 2.5 CD D41; Employment Study at CD-D29/C Figure 4 p16

¹²⁴ Ms Barratt XX Day 5

¹²⁵ PoE Mr Binks para 4.30-4.38 CD D29-B

¹²⁶ Mr Collinson *When was the last time you consented detailed or hybrid app for large scale logistics? – Not we have not for a while.*

112. The Council’s criticism of the Appellant on the basis that it has not submitted a detailed application is demonstrably misplaced.
113. The argument re identified occupier is hopeless and not borne out in evidence and whilst arguing that there is this need to know the occupier – Ms Barratt agreed in cross-examination that whether there is an immediate need is a planning judgment matter which depends on all the circumstances.¹²⁷
114. Furthermore, Mr Collinson, in his cross-examination conceded having a named occupier is only an example of demonstrating an immediate need, where there is little or no supply of land.¹²⁸
115. It seemed the Council sought to rely heavily on the fact that there was a known occupier in the Mercia Park application – the Appellant established in evidence that a) the outline element of the Mercia Park application was made without any known occupier and it was only later confirmed, who the occupier would be¹²⁹; furthermore, the Planning and Development Report considering the Mercia Park application makes it clear the fact that all of the proposed units are subject to specific named occupiers was considered to be evidence of clear demand (and not need).
116. Given that Ms Barratt has accepted that a ‘need’ is when one has demand in excess of supply¹³⁰ – the Council’s case gains zero support from the fact that there ‘was a known occupier’ in Mercia Park because the known occupier was not considered to evidence need at all.
117. The Council sought to argue that the proposed policy for consultation for North West Leicestershire seeks to change the wording of their policy EC2 to the effect that there should be greater emphasis on the need to know the particular occupier in the future¹³¹. On a closer analysis of the text, the policy differentiates between either the named user or the development being required for the reasons set out in NPPF para 82b (now 86d). The draft policy, therefore, includes making provision where the need is to demonstrate immediacy of a use not anticipated

¹²⁷ Ms Barratt XX

¹²⁸ Mr Collinson XX

¹²⁹ CD-199 p87

¹³⁰ Ms Barratt XX

¹³¹ Ms Barratt EIC

in the plan¹³². In other words, the proposed policy supports the Appellant's case and not that of the Council – as conceded by Ms Barratt in XX.¹³³ Ms Barratt accepted in cross examination that policy does not say there is a need for a named occupier¹³⁴.

118. On the issue of 'immediacy' – Ms Barratt accepted that immediate need can exist even if the scheme that comes to meet that need takes time to deliver.¹³⁵

119. During his EIC, the Council's planning witness – Mr Collinson, sought to argue that the Appellant had not sought to offer to reduce time periods for the submission of reserved matters thereby, on the face of it, alluding to there not being an immediate need.¹³⁶ A point which had never been raised before this point in the inquiry. And yet, at the start of the conditions session Mr Young KC submitted that not offering this before, called into question the professional competence of the Appellant's counsel and consultants. For the avoidance of doubt that contention is unworthy, wrong and ought to have been immediately withdrawn. But in any event, it is an emphatic 'so what' point – since the Appellant has immediately said that they would be happy to accept such a condition. Thus, if there was force in the proposition that seeking a shorter time period for reserved matters is consistent with there being an immediate need – then the point now assists the Appellant and not the LPA.

120. Mr Collinson in cross-examination agreed that whether the need is immediate is a matter of planning judgment when looking at the policy¹³⁷. Mr Collinson also agreed that he could not identify any support within the Examiner's report in respect of the approach adopted by the Council on the issue of immediate need i.e. that there needs to be an identified occupier who cannot move elsewhere.¹³⁸

¹³² '(d) be flexible enough to accommodate needs not anticipated in the plan, allow for new and flexible working practices (such as live-work accommodation), and to enable a rapid response to changes in economic circumstances.'

¹³³ Ms Barratt XX

¹³⁴ Ms Barratt XX Day 5

¹³⁵ Ms Barratt XX

¹³⁶ Mr Collinson EIC *Since app submitted has the Appellant at any stage suggested reducing the standard periods for the submission of reserved matters or commencement of development? – No, no discussion on that; last week they said open to that being suggested. Developer with immediate need would be keen to? – would suggest that as an option, if they knew who the end occupier would be. If trying to show immediate need.*

¹³⁷ Mr Collinson XX

¹³⁸ Mr Collinson XX *Do you find any support for your approach and her approach within examiner report reason for justification of the policy i.e. immediacy can only be judged by there being identified occupier who cannot move elsewhere? – Not in terms that it should show a specific end user.*

121. The dissonance between the Council's own witnesses is a clear illustration of its failure to grapple with the evidence – little wonder then that Ms Barratt's approach wasn't put to any of the Appellant's witnesses in XX.

122. As to the reliance upon the call for sites the LPA's position is to say at the least somewhat odd. No weight is to be given to the eLP as policy, but some weight is to be given to the LPA's evidence base, including the HEDNA & apparently some cognisance should be afforded to the 127 sites submitted through the call for sites exercise. However, none of those sites have been scrutinised let alone promoted by the Council as draft allocations.

123. These sites would simply not feature in the market participants minds as a meaningful consideration of any likely future market supply¹³⁹; confusingly, Ms Barratt understandably invites the Inspector to attribute the call for sites negligible weight – this is despite Ms Barratt giving no weight at all to issues and options document.¹⁴⁰

124. The biggest point made in respect of the call for sites exercise was the most surprising. In XX of Mr Hann, Mr Young KC put that the submission to the call for sites of its full landholding between Tamworth and Dordon of 73 Ha for a mix of uses became in XX an argument of precedence (put to Mr Hann in XX for the first time). Precedence wasn't part of the Council's evidence – indeed Mr Collinson expressly confined his case to the two reasons for refusal and nothing more. Still Mr Young KC once again went kite flying, suggesting that if permission was granted then there was nothing to stop another bite being taken out of the Strategic Gap. There is literally nothing to this point. Firstly, it isn't led in evidence from his witnesses; secondly the call for sites exercise is on his own witnesses case a matter of negligible weight; thirdly, the primary approach should always be that every case should be decided on its own merits; and fourthly, the mix of uses and amount of floorspace proposed by the Appellant in the call for sites exercise is actually consistent with the appeal proposals – indeed, despite the vigour with which the point was advanced – the documentation produced yesterday¹⁴¹ is explicit that the amount of floorspace for which an allocation is being promoted is 100,000 sq m. This is a point which goes literally nowhere and, with respect, should never have been raised in the first place.

¹³⁹ Mr Binks Rebuttal para 2.2 CD D41

¹⁴⁰ Ms Barratt XX

¹⁴¹ ID25, first document – column 'BL', second row CFS115.

125. A point which was flagged in the Council’s evidence but which was unsupported by actual market evidence was to assert that Big Box logistics operators are footloose and therefore any need which arises in Area 2 can be met somewhere else in the UK – so it isn’t immediate. Such an argument might be true for a small sub-set of occupiers – but Mr Binks, providing the only market evidence before the inquiry robustly rejected that this was true for the vast majority of such occupiers. He explained that occupiers when identifying sites do not do so on a whim, but based upon extensive research, with the multi-million pound investment decisions involving undertaking a considerable amount of location planning to identify the correct area for operations. This includes assessment of access to markets and customers and the transport costs of accessing them. Availability and cost of labour are also major considerations. Frequently a considerable amount of this demographic assessment is undertaken before selecting a location and before the search for a site commences.¹⁴² The research undertaken is ‘almost scientific’¹⁴³ and involves modelling transport cost; customer accessibility. It deploys very sophisticated models and looks at very specific locations.¹⁴⁴

126. If a site is not available, then Mr Binks explains why the consequence is not merely to decamp to a location a bit further away. Businesses might go further, but many will just make do, and remain in sub-optimal locations or even relocate work-forces to a more distant location which may not even be in the UK. The proposition is that logistics sites merely hop to the next nearest site is just not right on the actual evidence before the Inquiry (rather than the Council’s unproven supposition). This was corroborated by Professor Coleman’s evidence which stated that plan B might very well be to not invest at all. There are a whole series of dynamics which will inform the decision as to what an operator will do if there isn’t a site to go to in their preferred area – but *on the evidence* it is grossly over-simplistic to suggest that they will just locate a bit further away – a proposition unsupported by any expert market or econometric evidence on the part of NWBC.

127. As such, the notion put forward by the Council to the effect that the businesses can simply move elsewhere being ‘footloose’ fails in being an oversimplification and out of touch with the commercial reality of the Big Box development market, where occupiers conduct almost scientific search for locations¹⁴⁵.

¹⁴² PoE Mr Binks para 5.10 CD D29-B and Mr Binks XX

¹⁴³ Mr Binks EIC

¹⁴⁴ Mr Binks EIC

¹⁴⁵ Mr Binks EIC

128. In that regard, Professor Coleman has emphasised that the relevant location is determined by multiple stakeholders i.e. an investor and occupier determining criteria – the process of selecting a site does not equate to a suggestion the business can go anywhere.
129. As to the notion that there is some inconsistency in the fact that there could be one occupier taking potentially several buildings as indicated on one the indicative Master Plan (which appears to be the recent point alluded to by the Council) – it is neither here nor there.
130. The Council’s own witness – Mr Collinson has commented in his oral evidence that at Birch Coppice for instance, Euro Parts occupy 2 or 3 buildings which are not next to each other;¹⁴⁶ Mr Hatfield gave an example of Tesco occupying 3 buildings at DIRFT.¹⁴⁷
131. Similarly, the suggestion that a logistics firm would not wish to have three buildings – again, it was explained that this is dependent upon the requirements of an individual occupier¹⁴⁸. A close proximity example of the Rhenus Logistics campus occupation across multiple buildings on one site near Nuneaton was provided by Mr Binks. What needs to be remembered here is that the Council, whilst making all these assertions – has not provided any evidence to substantiate them.

Continuing demand

132. Despite the Council’s attempt to suggest the contrary – it has been amply demonstrated that there is resilient and strong demand for I&L following the pandemic¹⁴⁹. The stance advanced by the Council on this issue i.e., that there has been a slowdown in the take up of space from the highpoint of 2021 etc. is unsustainable. The demand has tempered since the effects of lockdowns, but it now returned to pre-Covid levels, which, in themselves are considered strong markets and a continuation of pre-2020 trends.¹⁵⁰ It is worth noting that Ms Barratt agreed take up had returned to pre-Covid levels in her own written evidence¹⁵¹.

¹⁴⁶ Mr Collinson EIC

¹⁴⁷ Mr Hatfield XX

¹⁴⁸ Professor Coleman XX

¹⁴⁹ C&W Study para 4.8 to 4.10; Figure 23 CD-I20 and Mr Binks PoE section 4 CD-D29-B; also, Professor Coleman Summary PoE para 1.4 CD D32/B

¹⁵⁰ Mr Binks Rebuttal para 2.40 CD-D41

¹⁵¹ Ms Barratt’s PoE, para 5.14, page 20, CD D24/A

133. Equally, Professor Coleman has confirmed the prevalent view is that the internet sales will continue to grow¹⁵², which in turn, requires expansion of the logistics sector and changes to logistics operators.¹⁵³

Unique characteristics of the appeal site

134. The Appellant has demonstrated that the appeal site benefits from the existing cluster of freight, logistics and distribution facilities that have been developed over the last 20+ years in close proximity, which means that in contrast to the ‘normal’ long lead times associated with delivery of strategic employment land the Appeal Site can be delivered rapidly (2-3 years – which is considered to be ‘immediate’ in both market terms and the context of delivery of large-scale strategic employment sites) with all the benefits that exist in its location. This is due to its proximity to the existing infrastructure and businesses already associated with the Big Box logistics supply chain¹⁵⁴.

135. Seemingly the Council has sought to argue the appeal site is not especially ‘unique’ in the sub region or Area 2 – thereby demonstrating the Council’s misunderstanding that it is the taking of all of the characteristics identified in the JLL Employment Land Study in combination that means that the appeal site enjoys an ‘almost unique combination of advantages’.¹⁵⁵

136. Ms Barratt’s analysis of the criteria for selection of sites for strategic warehousing¹⁵⁶ (which she dismisses the site for not meeting) – gives a misleading impression as the analysis is applied to a site which does not claim to be and is not purporting to be an SRFI (for which the criteria is set).¹⁵⁷

137. Given the evidence presented in the C&W Study and the evidence put forward by Mr Binks and Mr Turner, it is clear that the Appeal Site continues to be the most appropriate location within North Warwickshire, sub-regionally, and regionally for a new strategic site to be identified, to meet a need which was acute and urgent at the time of the WMSESS studies

¹⁵² Both in absolute terms as population grows and as an increasing proportion of retail sales.

¹⁵³ Professor Coleman RE-E

¹⁵⁴ Mr Binks PoE section 3 CD D29-B

¹⁵⁵ Para 5.23 p64 JLL Employment Land Statement CD-A12

¹⁵⁶ Ms Barratt PoE CD D 24A para 5.33

¹⁵⁷ Mr Hatfield Rebuttal para 12;13 CD D42

and has only become more so since. As Mr Binks states in his proof of evidence, “frankly it is the ideal site in market terms.”¹⁵⁸

Rail connected site

138. The Appellant has demonstrated that rail freight generally offers a more cost competitive transport option when compared with other modes, principally road haulage.

139. Furthermore, rail freight is recognised as being a substantially more sustainable mode of transport, which generates wider societal benefits when compared with road haulage. This is consistent with both national policy¹⁵⁹ as well as the commercial realities – especially as firms move to improving their sustainability credentials based on decarbonisation goals and improving their ESG credentials. This is further corroborated by the letter of support from the BIFT SRFI operator¹⁶⁰ and the overarching industry body, Rail Freight Group, in which proximity to rail freight was stated to now be of importance across the logistics sector and the closer an occupier can locate to an SRFI the better. To paraphrase RFG, in NPPF terms suitably accessible locations¹⁶¹ means as physically close to rail freight infrastructure as possible.

140. The Appellant’s case in respect of proximity to rail is obvious and clear – there are clear commercial incentives for the site occupier to take advantage of it in view of the site’s location. It is located literally across the road from BIFT and there is unequivocal support from Maritime, its operator.

141. In practice, the scheme is rail-served and will operate as an extension to Birch Coppice and Core 42– as explained in detail by Mr Hatfield. He explained that the appeal site would be able to benefit from BIFT’s electric yard tractors/tugs being deployed between the site and Birch Coppice (<1km away) – the Inspector will recall the evidence of cost efficiency that would be brought about by deploying the tractors; the point is examined in detail in Mr Hatfield’s evidence¹⁶². This is not the same as driving to BIFT from, say J11 M42 which would be around an 18-mile round trip. There would be no ‘double handling’ of containers – there is the opportunity for containers to be delivered at, say, Felixstowe taken by rail to BIFT and then

¹⁵⁸ Para 6.2, page 13, Mr Bink’s PoE CD-D29/B

¹⁵⁹ CD I13

¹⁶⁰ CD B49 and CD B51

¹⁶¹ NPPF para 87

¹⁶² Mr Hatfield PoE para 4.14 CD D33-A

taken by tractor to the appeal site and off-loaded directly – with no need for an HGV to be involved at any stage during that process.

142. Rather than embracing this obvious benefit the LPA has sought to downplay it. Arguing that ‘rail served’ in its world means somewhere within 10 miles drive of BIFT – which would not be able to use the tractor units as described above. Or it has pointed to most of BIFT’s trade being from within a wide swathe of the West Midlands – though it is not clear what point was being made other than that it would be better for the BIFT trade to be located closer to the rail head than not.

143. Thus, the Council sought to argue that other facilities further afield could presumably equally benefit from being advertised as rail served and that ultimately there is no guarantee that the future operator would actually take advantage of the rail connectivity.

144. Firstly, both evidence of Mr Hatfield and Mr Binks has conclusively addressed the issue of cost associated with transport of goods vs distance and the implications this has in the occupier selecting the site in the first place. An operator selecting a rail-connected site likely has a reason for doing so, such as, for instance, an intention to use it. There is an obvious commercial advantage to using the rail head – so why on earth should the decision maker assume that it won’t be used?

145. Thus, when selecting a site, which allows one to deploy yard tractors operating internally within Birch Coppice Business Park through them being permitted to access the appeal site on the same terms thereby resulting in lower transfer costs accruing¹⁶³ – the operator will likely seek to take advantage of the commercial incentive.

146. It was agreed by Mr Collinson that the Inspector can have regard to what the occupier may not be compelled to do but what is in their commercial interests.¹⁶⁴

¹⁶³ Mr Hatfield para 4.19 PoE CD D33-A

¹⁶⁴ Mr Collinson XX

147. The Council argued that a significant amount of freight is coming by lorry – the point has been addressed by Mr Hatfield, who explains the current focus on decarbonisation and operators seeking to future proof their operations¹⁶⁵.
148. The Council then somewhat bizarrely went as far as to argue that the trains are not exempt from strike activities – again, Mr Hatfield has addressed the concern by emphasising that during strikes the core network was maintained for freight.¹⁶⁶ Moreover it is only through donning rose coloured spectacles that one could conclude that distance travel on UK roads is likely to be more reliable than using rail.
149. The Maritime Transport support letters¹⁶⁷ refer to potentially utilising works trucks in serving new customers at the appeal sites supports this proposition. Maritime are supportive – for the obvious reason that they anticipate an uptick in their trade from the appeal site. Indeed, as they state in the letters the proposals would allow them to increase utilisation of the BIFT SFRI and add more trains times to the terminal’s schedule.
150. Secondly, in the context of discussing terminal-warehouse transfer costs worked examples, Mr Hatfield clarified that ‘for a warehouse located away from the rail-served site, the road haulage and rail freight rates are broadly comparable’ i.e. the location and distance matter and sites further afield may not benefit from the lower cost associated with short warehouse to terminal journeys.¹⁶⁸
151. The appeal site would be treated as being rail served due to the way in which the Road Vehicles (Construction and Use) Regulations 1986 are applied in practice at rail served locations, where there is a need to drive a short distance on the public highway, being in Birch Coppice’s ‘immediate neighbourhood’.¹⁶⁹ Again, point entirely missed by the Council.

¹⁶⁵ Mr Hatfield XX *Need to be alive to that very significant amount of freights is coming in by lorry?*

Yes, but we are in the process of trying to decarbonise our supply chains; many operators are thinking long term how they will do that; future proofing their future operations;

¹⁶⁶ Mr Hatfield XX

¹⁶⁷ Appendix 7 to Mr Hatfield PoE D33/C

¹⁶⁸ Mr Hatfield PoE para 4.15 CD-D33/A

¹⁶⁹ Mr Hatfield PoE para 4.16 CD D33-A

152. The Council's evidence to the contrary is simply absent. Ms Barratt suggesting other sites being potentially rail served¹⁷⁰ misses the point entirely – the key factor is the means of transferring container units between an intermodal terminal and warehousing and whether this take place using some form of works truck type equipment rather than a fully loaded HGV.¹⁷¹
153. The argument put forward misunderstands that there are different types of rail served warehousing and confines its analysis to measuring distances as between the terminal and some alternative locations which is entirely beyond the point.
154. Mr Hatfield has explained that for instance, someone at Mercia Park (JN11 M42) might consider themselves to be rail connected – and yet, would be unable to take advantage of works trucks rules as they would not be considered to be in the 'immediate neighbourhood'.¹⁷² The appeal site is genuinely and obviously rail connected – a fact which weighs heavily in favour of the proposition that it is in the right location.
155. Finally, additional support is provided by Logistics UK¹⁷³ (one of the UK's largest business groups), which notes the importance of reducing greenhouse gas emissions and reaching net zero for the UK's logistics sector and confirms that promoting and harnessing modal shift from road to maritime and rail is vital to help achieve this. As they state, 'Highly sustainable and rail-served sites, such as those subject to the development proposals, should be supported.'

Lorry Parking and Disaggregation

156. It has been explored in evidence and demonstrated that:
- i) There is a requirement for drivers to park HGVs while operating away from their home operating depots;

¹⁷⁰ Ms Barratt PoE para 5.46 and 5.47

¹⁷¹ Mr Hatfield para 25 Rebuttal CD D42

¹⁷² Mr Hatfield EIC

¹⁷³ CD B48

- ii) Parking at locations not specifically designed for HGVs can generate serious environmental impacts, has implications for the welfare of drivers and can attract criminal behaviour;
- iii) While there is significant demand for lorry parking in the immediate hinterland of the appeal site, there is currently a clear serious short-fall in appropriate HGV parking capacity in the Tamworth area, particularly along the A5 corridor; and
- iv) The site meets the criteria defining a suitable location for HGV parking to a high level and the planned parking facilities are those required by road haulage operators and drivers.

157. HGV Parking Need Assessment¹⁷⁴ sets out why HGVs need to park at suitable and appropriate parking facilities; it also addresses the adverse social consequences of parking at inappropriate locations where sufficient HGV parking capacity is not available¹⁷⁵; which includes ‘lorry crime’ – with a major weapon against such crime being provision of off-road lorry parks.

158. Support from National Vehicle Crime Intelligence Service (NaVCIS) highlights a lack of understanding of the differences between ‘safe’ lorry parking and ‘secured’ lorry parking, and the limited provision of secured parking facilities nationally.¹⁷⁶ In terms of physical measures proposed, the appeal scheme would adhere to Level 1 TAPA accreditation requirements and also the EU SSTPA Platinum accreditation requirements. NaVCIS note there are only two TAPA accredited lorry parking facilities in the entire UK. As such, the proposals represent an exemplar secured overnight lorry parking facility that would significantly raise the bar for overnight lorry parking across the West Midlands, whilst also providing a substantial amount of parking in a secured facility with potentially multiple security accreditations.

159. Mr Hatfield has emphasised in his oral evidence and highlighted the opinion of Christine Rampley of the RHA¹⁷⁷ – to the effect that the drivers’ preference is for dedicated secure facilities, which clearly indicates there is a concern in the industry that requires addressing.

160. Quantitative assessment of the need for lorry parking facility has been addressed¹⁷⁸.

¹⁷⁴ CD-A15

¹⁷⁵ Para 3.20 to 3.34 CD-A15

¹⁷⁶ CD B50

¹⁷⁷ Appendix 8 to Mr Hatfield PoE

¹⁷⁸ CD-A15 and Mr Hatfield PoE para 3.10 CD-D33/A

161. The studies presented have demonstrated significant regional need given high utilisation rates at official ‘on-site’ facilities and high levels of parking at ‘off-site’ locations.
162. It has been shown that a significant shortage of ‘on-site’ parking capacity continues to be identified across the West Midlands region, with the average total number of HGVs parking each night being well in excess of the installed on-site capacity (458 in 2022).¹⁷⁹
163. The December 2023 beat survey identified that around 117 HGVs were parking at inappropriate non-truck stop locations each night;¹⁸⁰ this is in the context of West Midlands logistics hub being identified as one of the ‘hot spots’ (which have high unmet demand) by NH in their Lorry Parking Demand Assessment 2023¹⁸¹. This is in addition to the 80 lorries per night inappropriately parked at J9 from the beat survey provided at the Curdworth appeal (K3)
164. Mr Hatfield has explained that¹⁸² Tamworth MSA has a utilisation rate between 85% and 100%. This is in the context where utilisation rate greater than 85% is defined as ‘critical’, this being the rate where it is ‘very difficult for additional drivers to find parking spaces’¹⁸³.
165. The Council sought to rely on the ‘heat map’ within Lorry Demand Assessment¹⁸⁴ to the effect that North Warwickshire was not identified as one of the ‘high’ areas and ‘not even red’ – Mr Hatfield has conclusively resolved the issue by explaining that the map is not showing lorry parking demand and is instead a scoring system as explained within the document itself (p31). The analysis looked at demand per km – i.e. a density map which does not indicate more parking spaces; it indicates the number of parked lorries in laybys per one kilometre; it is a ranking exercise and not a measure of utilisation – as concluded by Mr Hatfield in evidence¹⁸⁵. The study also locates the Tamworth MSA in Tamworth Borough (rather than correctly in North Warwickshire) and as such the map should be considered with some caution.¹⁸⁶
166. The Council also sought to argue that drivers would ‘always park with back door open’ to deter crime and would prefer to hang on to their overnight expenses (ie in order to keep the money and avoid paying the relevant charge); Mr Hatfield’s evidence is uncontradicted and

¹⁷⁹ Mr Hatfield poE para 3.13 CD D33-A

¹⁸⁰ Mr Hatfield poE para 3.15 CD D33-A

¹⁸¹ NH Lorry Parking Demand Assessment CD-I3

¹⁸² Map 4-1 of *Lorry Parking Demand Assessment 2023 CD I3*

¹⁸³ Mr Hatfield PoE para 3.18 CD D33A; HGV Parking Facility Need Assessment Addendum para 3.2 definition of ‘critical’

¹⁸⁴ Lorry Demand Assessment p39 CD I3

¹⁸⁵ Lorry Demand Assessment p31 CD I3 and Mr Hatfield XX

¹⁸⁶ Mr Hatfield XX

clear – a) those drivers may be those that have tried to park elsewhere e.g. Tamworth and failed and b) the police could move drivers on, if capacity is available, which at present there is not in the area.¹⁸⁷ Support for the appeal proposals from Warwickshire Police underscores this point.¹⁸⁸

167. Mr Hatfield’s evidence is that despite the HGV parking available at the Tamworth MSA adjacent to J10 M42 – that parking area has been consistently found to be full and the parking beat surveys demonstrate that inappropriate parking at off-site locations locally is rife.¹⁸⁹

168. Given the level and quality of the facilities – the proposal has been demonstrated to be nationally significant¹⁹⁰

169. Overall, based on the qualitative and quantitative evidence presented by Mr Hatfield, it is impossible not to conclude that there is a significant demand for HGV parking in the area surrounding the appeal site, albeit there is currently a significant short fall in capacity at appropriate sites.¹⁹¹

170. This is the backdrop against which the Inspector should assess the assertion made by Mr Collinson to the effect that the need for lorry parking in this area is not at a critical level¹⁹².

171. Equally, this is the context for the Inspector’s consideration, of analysis applied by Ms Barratt who sought to rely on the conclusions DfT’s National Survey of Lorry Parking, Part 2¹⁹³ arguing there is not an immediate need within the region; with Mr Hatfield having clarified, as the co-author of the study, that it applies to a different area and not M42/A5 corridor, appeal site or its hinterland.¹⁹⁴

172. As to the Tamworth MSA Moto scheme - the Council rely on the fact that there has been an implementation of a permission in respect of 38 lorry parking spaces and a very recent

¹⁸⁷ Mr Hatfield XX

¹⁸⁸ CD B54

¹⁸⁹ Mr Hatfield PoE para 3.21 CD D33A

¹⁹⁰ Mr Hatfield PoE para 3.24 CD D33A

¹⁹¹ Mr Hatfield PoE para 3.25 CD D33A

¹⁹² Mr Collinson PoE para 8.7 CD D 23/A

¹⁹³ CD I11

¹⁹⁴ Mr Hatfield para 15-17 Rebuttal CD D42

aspiration to deliver a further 150 spaces. However not 1 of the 38 consented spaces have been delivered despite the permission having been granted in 2020.

173. The Council rightly accepted at the appeal that the arrival of the Moto letter on day 1 of the inquiry was a letter from a commercial rival. This is exactly how the Inspector should treat this letter and attach great circumspection to its contents.

174. Mr Collinson confirmed in his evidence that he has not been told by Moto when any a further application(s) for a 150 space extension to Tamworth MSA would come in; and when asked what confidence the Council has that delivery of a single space would occur within the next 18 months, he said there would be more confidence if ‘they were here’.¹⁹⁵

175. It is apparent that there is no such confidence that can be placed upon Moto’s letter.

176. In any event Mr Hatfield explained that the provision of 38 spaces would only ‘scratch the surface’¹⁹⁶ (if and when these are delivered).

177. However, taken at face value, Moto’s letter does indicate that there is an acute need for additional spaces in the area.

178. Mr Hatfield has also examined the list of existing and potential parking sites as presented by Ms Barratt¹⁹⁷. Overall, none (other than Tamworth MSA) are within the immediate hinterland of the site or the identified parking hotspot from Hams Hall to Dordon – with Tamworth MSA operating at capacity; with other than Lincoln Farm and Corley MSA being at distances and drive times to and between the sites far exceeding the recommended spacing between facilities.¹⁹⁸

179. As to the Council’s initially adopted stance re disaggregation (initially – because it is not entirely clear what the Council’s current case is as discussed below) – it fails to appreciate that it is entirely sensible and indeed ‘complimentary’ to integrate HGV Parking within more commercially viable land uses such as large-scale logistics, allowing subsidisation, and based upon obvious synergy of land uses; it also allows for significant operational benefits for HGV drivers/logistics operators when HGV parking facilities are co-located alongside or nearby to

¹⁹⁵ Mr Collinson XX

¹⁹⁶ Mr Hatfield EIC

¹⁹⁷ Mr Hatfield para 23 Rebuttal CD D42

¹⁹⁸ Mr Hatfield para 24 Rebuttal CD D42

major freight generators, particularly distribution centres (e.g. it helps meet strict delivery time windows). In land-use terms it results in a more efficient use of land¹⁹⁹.

180. Indeed, this stance is contrary to the stance adopted by the Council at NWBC Planning and Development Board meeting of 8th April 2019²⁰⁰ which refers to a meeting between the promoters for Peddimore in Birmingham and their planning consultants and councillors and planning officers from NWBC.

181. There, the Council clearly recognised that the existing HGV parking and welfare infrastructure at Birch Coppice does not meet modern operational requirements, therefore offsite provision is required nearby; it also evidences the acceptance by the Council that strategic scale employment development should incorporate appropriate HGV parking and welfare infrastructure.

182. Furthermore, the stance adopted is contrary to para 113 NPPF which puts the onus on developers of new or expanded distribution centres to make provision for sufficient lorry parking to cater for their anticipated use clearly implying a preference for ‘aggregation’.²⁰¹

183. Ms Barratt has confirmed in her oral evidence that she does not invite the dismissal of the scheme (if founds acceptable in LP6 terms) based on SME units, or the lorry park. Her argument is understood to be that the lorry park simply does not need to be there. On the SME units no-one has properly taken issue with Professor Coleman’s evidence that SME units are in very short supply locally and that it would be a benefit of the scheme if it resulted in the delivery of such units. If permission is to be granted for the main B8 element of the scheme, then there would be no good reason not to consent the SME units – and considerable benefits to doing so.

184. Mr Collinson seemed to indicate some uncertainty on the point and no definitive view.

185. As to the issue taken with ‘large units which could be disaggregated to sites outside the Strategic Gap’ – i) Paragraph 87 of the NPPF, references Storage and Distribution as a sector that benefits from the economics of agglomeration; ii) the benefits of clustering are manifold and entirely lacking from the Council’s analysis, whilst considered in detail by the Appellant²⁰²; iii) In terms of the proposed 5-10% of floorspace that would delivered as SME units –

¹⁹⁹ Cirencester HGV park decision notice para 3.22 of Mr Hatfield PoE CD D33-A

²⁰⁰Mr Hatfield Rebuttal Appendix CD-D42

²⁰¹ Mr Turner Rebuttal CD D40 p12

²⁰² Mr Turner Rebuttal CD D40 p12

integrating these units as part of a larger scale employment scheme allows for cross subsidisation.²⁰³

186. Overall, the appeal proposals will deliver much needed strategic logistics units in the right place and at the right time, as well as delivering the additional benefits of the SME units and much needed lorry parking. It therefore complies with LP6 and LP34. The issue then is whether those benefits are or are not outweighed by any impact upon the Strategic Gap – both in terms of its function (pRfR #1; and/or wider Landscape and Visual effects pRfR#2), which we now turn to.

Strategic Gap

187. As a starting point – LP4 is not a policy which precludes major development in the gap (as the LPA had tried to promote), nor does it presume against anything which would diminish the openness of land within it (as GB policy would). The planning witnesses all concur that the scheme has to be judged against all relevant policies and an overall view taken about compliance with the development plan taken as a whole. It is agreed that there is no pre-eminence between policies LP4 or LP6 – as the LP Inspector and the LP itself makes clear.

188. LP4's aim is to seek to prevent the coalescence of Tamworth with 'Polesworth with Dordon' – which on every witness's view would not happen in this case. It goes on to seek to achieve this objective by not permitting development which would '*significantly adversely affect the distinctive and separate characters*' of Tamworth on the one hand and Polesworth and Dordon on the other (it should be noted the policy does not seek to preserve any separation between the respective settlements and Birchmoor), and noting that there is no allegation of any effect on the character of Tamworth. The question for the decision maker is therefore a narrow one: would the proposals *significantly adversely affect the distinctive and separate character of Polesworth with Dordon as a separate settlement from Tamworth*. Cast that way the answer is obvious that it would not.

189. The policy doesn't mean avoid any adverse effect whatsoever, nor keep all of the land within the SG open, but rather it requires an overall judgment as to whether or not there would

²⁰³ See para 3.113 of C&W CD-D29/C; Mr Turner Rebuttal p13 CD-D40

be a *significant adverse effect* upon *the distinctive and separate characters* of the two settlements, mindful of the development and its mitigation, including how it will be seen over time and from where.

190. Seeing a bit more of one settlement a bit closer to the viewer doesn't mean that there is a significant effect; let alone does it mean that the settlements will no longer possess separate and distinct characters. Still less does it mean that because there is an effect shortly after construction that one should disregard the medium- and long-term effect of landscaping that will substantially reduce any such effect for most of the lifespan of the proposed development.

191. The LPA's case in respect of the SG has been problematic from its very inception, whereby it suggested the development would 'close' the Strategic Gap²⁰⁴ – which is at odds with the evidence before the inquiry.

192. Ms Oxley agreed that the gap would not be physically or perceptually 'closed' – instead, she argued it would be impermissibly reduced.²⁰⁵

193. It is common ground that one approach for assessing the effectiveness of a gap between settlements is to apply the Eastleigh Criteria²⁰⁶.

194. SLR LVIA found that: *'the separate identity of Tamworth and Polesworth with Dordon would remain both in relation to physical separation and in terms of their distinctive character. A sense of separation would remain whether travelling along the A5 or along PRoW within the gap; travellers would have a clear sense of having left the first settlement, having travelled through an undeveloped area and then entering a second settlement'*.²⁰⁷

195. Mr Smith's evidence is in line with this conclusion. He has performed his own assessment pursuant to Eastleigh Criteria as set out in his written evidence. In summary, his conclusions, are:²⁰⁸

²⁰⁴ LPA SOC CD D9 para 5.1

²⁰⁵ Ms Oxley XX Day 2 *Officer Report para 10.1 effect of the proposal is to close the gap? Physically will not close it?' – Agree; Perceptually won't either?' – There would be a perceived reduction in the gap; not eradication of the gap but impermissible reduction.*

²⁰⁶ LSCG para 37 CD D15

²⁰⁷ SLR LVIA para 10.5.52 to 10.5.89 CD-A8

²⁰⁸ Mr Smith PoE CD-D30/A p74

- i) Distance – the appeal proposals would retain sufficient straight line and travel distance between Tamworth and Dordon/Polesworth to provide a perception of separation.
- ii) Topography – with the scheme implemented, the topography between the settlements would continue to help to provide a clear sense of identity for the two settlements, and also separation between the two settlements.
- iii) Landscape/character type – appeal proposals would thus ensure that there remains an ‘unequivocal sense of separation’ between Tamworth and Dordon by continuing to provide an expanse of open, enhanced farmland between the two settlement edges.
- iv) Vegetation – retention of arable land between the settlements would continue to provide a sense of separation, and the new hedgerows and woodland would further reinforce this sense of separation by enhancing the rural characteristics of the intervening land.
- v) Existing uses and density of buildings – if the proposed development were to be permitted, the gap between the settlements would continue to be of open, agricultural land. This openness would continue to contribute to a clear sense of separation between the settlements.
- vi) Nature of urban/settlement edges – the edges of Tamworth and Dordon are both largely distinctive, and this helps to maintain their separate identities. If the appeal proposals were to be allowed the distinct character of these two edges (Tamworth and Dordon) would remain, and this would help to maintain the separate identities of the two settlements.
- vii) Inter-visibility – the settlement edges of Tamworth and Dordon are already intervisible, but the visible, extensive intervening agricultural land ensures that there remains a sense of separation. If the appeal proposals were to be allowed, there would continue to be intervisibility between the edges, but the sense of separation would continue to be maintained by the visible extent of agricultural land between the settlements.
- viii) Intra-visibility – settlement edges of Dordon and Tamworth are already intra-visible, but a sense of separation is maintained by the open arable land between the settlement edges. If the proposals were to be permitted, the edges would remain intra-visible, but an open expanse of retain arable land would maintain a clear sense of separation between the settlements. This sense of separation would then be further enhanced by the planting in the Offsite Mitigation Area.
- ix) The sense of leaving a place and arriving somewhere else – even in the worst-case scenario, at construction or year 1 when the proposed planting has not established, there would remain a walking distance of approximately one kilometre through open countryside between the settlement edges. By year 15 this would return to being approximately 1.4 kilometres. By car or on foot there would, therefore, remain a clear

sense of leaving one settlement, travelling through an intermediate (and very different) landscape, and then arriving somewhere else.

196. Mr Smith's evidence shows that the LPA's position, through the evidence of Ms Oxley in respect of the Eastleigh assessment fails in multiple regards.²⁰⁹

- i) In relation to distance – whilst stating that the gap between Tamworth and Dordon will reduce by 430 metres, it fails to explain whether this remaining distance is sufficient to provide a sense of separation.
- ii) In relation to topography, the assessment fails to consider the fact that there would be 777m of remaining gently sloping land or the fact that Dordon's elevated position creates a distinctive settlement edge (clearly differentiating it from the lower edge of Tamworth).
- iii) Same point applies in terms of consideration of character – the assessment is silent on whether the remaining 777m of open, arable land continues to provide a clear sense of separation between the settlements? And, furthermore, would the planting of native woodlands and hedgerows in the Offsite Mitigation Area further enhance this sense of separation once it has reached semi-maturity?
- iv) Its analysis of position re vegetation is inconclusive and in relation to the assertion made re lack of a strong vegetated boundary, it seemingly does not take into account the fact that the Appellant has now reinstated a new hedgerow and tree planting along the eastern edge of the appeal site; if the appeal proposals were to be implemented this boundary would then be further reinforced by 49m and 106m width of native woodland planting on the screening landform at the east of the appeal site.
- v) Re existing uses and density of buildings – whilst it is undeniable that the proposals would '*introduce buildings of a large scale*', the question is will the remaining 777m of Strategic Gap, without any buildings, still provide a sense of separation? It also raises a rather concerning point about the proposal introducing uncharacteristic woodland belts – the proposed native woodland that would be established around the appeal site, and in the Offsite Mitigation Area, would be wholly appropriate.
- vi) Re nature of the urban edges – the assessment fails to consider the key differences between the edges: there is no mention of the fact that the edge at Dordon is elevated and largely small scale and residential in nature, and how this contrasts with the commercial buildings and motorway on the edge of Tamworth.
- vii) Inter-visibility – whilst it is true that there is existing intervisibility across the gap, the analysis seems to miss the fact that there would continue to be intervisibility across an

²⁰⁹ Mr Smith PoE CD- D30A para 5.51

area of open, gently sloping arable land, and that this would therefore continue to provide a clear sense of separation.

- viii) Same issues arise in respect of analysis re intra-visibility.
- ix) As to the final criteria of leaving a place and arriving somewhere else – the assessment a) fails to acknowledge that an extensive area of open agricultural landscape would continue to be present if the proposed development were to be implemented; and b) states that the proposed development would ‘diminish the sense of leaving a place by changing the land use and character of the Strategic Gap’, thereby confusing two very different points: on the one hand it is undeniable that the width of the SG would reduce as a result of the proposals; but this does not mean that the sense of leaving a place and then arriving in a different place would diminish.

197. In so far as the last key criteria is concerned – it was put to Ms Oxley that in so far as leaving one place and arriving at another is concerned –there would remain a sense of leaving one place, travelling and arriving at another. Ms Oxley confirmed that, in her view, the ‘sense’ would not be eradicated but would be, instead, ‘diminished’²¹⁰.

198. The Inspector will inevitably form his own view as to any degree to which the said sense would be diminished having attended the site and walked the route, but it is firmly submitted that the sense of separation will remain very clear.

199. It is plain that, even with the worst-case scenario – a walking distance of approximately one kilometre through open countryside between the settlement edges would more than allow for the sense of leaving one place at arriving at another.

200. In her oral evidence, Ms Oxley has also referred to the travel as between the two settlements being more akin to a ‘*blink of an eye*’ with the development being delivered (walking distance of around 7-8 minutes.)²¹¹

²¹⁰ Ms Oxley XX Day 2 ‘*Leaving one place and arriving at another point, it’s particularly travelling the roads between the settlements, cycling, walking, taking a horse, number of different means by which you experience leaving one and arriving at another? Would still be the sense and would be diminished not eradicated?*’ – ‘*Depends on how you travel; sense would be diminished if walking; you cross that 777m in 7 minutes at the moment takes you longer; get a sense of being in open land for longer.*’

²¹¹ Ms Oxley XX Day 2 *Future traveller will have a clear sense of leaving one place and arriving at another do we not? – There would still be sense that leaving one place and arriving at another; more of a blink of an eye; 7-8 minutes’ walk.*

201. The Inspector will no doubt come to his own assessment of this proposition – and consequently, conclude, whether the LPA’s assessment is fair.
202. It is noted that the LPA has sought to place considerable emphasis on the comments made by Inspector in the St Modwen appeal²¹². In doing so, it seemingly failed to acknowledge that:
- i) That appeal was for a different proposal and concluded that there would have been no impact upon policy NW19 because there would be no harm to the Meaningful Gap and any sense of separation between Tamworth and Dordon.
 - ii) Inspector was not concerned with a reduction vs elimination of the area said to be sensitive, either generally or in respect of the appeal site in particular.
 - iii) He did not address the consequences of the development of the appeal site upon the effectiveness of the residue of the gap and its effect on character of the settlements.
 - iv) He was not asked to consider any alternative scheme north of A5 and whether amount of agricultural land that the Appellant is proposing would retain the separation.²¹³
 - v) Ultimately, the Inspector did not deal with the question the current Inspector is dealing with²¹⁴ – as agreed by the LPA.
203. Notably, in the St Modwen appeal the Council argued, similar to the present case, that the proposals at the time would erode the area south of A5 which *‘also contributes to the separation of the two settlements.’*²¹⁵
204. The same has not been born out in practice. This is in the context of the present scheme offering far more extensive green infrastructure than the St Modwen development.²¹⁶
205. The true value of the decision is in its emphasis on the fact that relying solely on a scale rule approach to maintaining separation between settlements should be avoided and the character of place and the land in between needs to be taken into account²¹⁷.

²¹² St Modwen Appeal decision CD-K2

²¹³ Mr Smith XX Day 3 *He says repeatedly what is important open land north of A5? –*

Yes, what he is not doing he is not considering any alternative scheme north of A5 and whether amount of arable land that we are proposing would retain that separation.

²¹⁴ Ms Oxley XX Agreed

²¹⁵ St Modwen Appeal decision CD-K2

²¹⁶ Mr Smith RE Day 3

²¹⁷ Ibid CD-K2 para 25

206. Mr Smith's evidence is clear – the separation of settlements is not simply a function of distance, nor is the sense of separation necessarily undermined by the visibility of the proposals; instead, it is primarily conditioned by the character and topography of the land between settlements, and the nature of the two settlement edges. Crucially, it is the sense of leaving one place, travelling through an intervening landscape and then arriving somewhere else.
207. Mr Smith has emphasised in his evidence that the sense of 'place' relates to the space between the settlements i.e. he said this is about the intermediate place (the gap) being a separate and distinct place,²¹⁸ between the settlements.
208. Clearly on the evidence the intervening gap would be perceived as a separate place through which the traveller will continue to pass from one settlement to the other.
209. For reasons which are set out above, the LPA's case is misplaced by attempting to focus on the St Modwen Inspector having referred to the intervening land being "open" agricultural land²¹⁹. The intervening gap doesn't need to be "open" in the sense of the continuation of the vast arable fields that presently exist – it rather needs to be perceptibly different to the traveller.
210. Thus, if one looks at page 34 of Mr William's proof from the St Modwen appeal,²²⁰ looking from the west side of the layby on the north side of the A5 looking to the NE; in future such a view will be across the accessway to the site (rather than over a layby) and then to the extensive landscaping south of the amenity building, thence over the extensively revegetated intervening landscaping and then finally to Dordon sitting on the ridgeline at the termination of the view. Yes, the view will be less "open" in the sense of containing more elements which interrupt the view of Dordon, but all of the elements in the view beyond the access will be consistent with the landscape character area and all will serve to reinforce the land before Dordon as demonstrably separate from where the viewer is stood.
211. Change in a view is not always harmful – especially change which is consistent with the elements of the Landscape Character area within which the land sits²²¹. In this case the blue edged land and the GI within the appeal site will achieve the following key objectives of this LCA (taken from pp42/42 of the LGA CD G1) including:

²¹⁸ Mr Smith XX Day 3 *Sense of space; sense of place defining its characteristics? – This is about the identity of the intervening land. Sense of place between them; it is about space in between; this specifically is about the place of the gap; Intermediate place has to be separate place.*

²¹⁹ Mr Smith XX Day 3

²²⁰ Ref

²²¹ See G1 page 42,43, 104

- a. Deliver robust green infrastructure on the east and north of the appeal site, and in the land edged red;
- b. Site and mitigate new industrial development to mitigate impacts (here confining the buildings to the SW to the SG and providing extensive landscaping);
- c. Introduce small to medium sized blocks of woodland planting;
- d. Convert arable land back to pasture land in the blue edged land;
- e. Encourage development of wide and diverse field margins;
- f. Maintain and reinstate historic hedgerows;
- g. Encourage hedgerow Oaks and increase tree planting in the area;
- h. Encourage ecological management

212. Mr Smith confirmed that in the context of the SG and para 7.28 of the LP4²²² of the Local Plan – the concept of space and openness does not correlate with a requirement for open agricultural land, it simply refers to something ‘*free from buildings*’.²²³

213. In respect of the Rule 6 party’s submissions – it ought to be emphasised the SG seeks to preserve the separate characters of Tamworth and Polesworth with Dordon (not Birchmoor). Even Mr Weekes readily accepted that the primary role of the SG is the E-W role and that there is no N-S role. That said it is firmly submitted (albeit in the context of the 2nd pRfR) that the proposed landscape treatment to the South of Birchmoor will provide a substantial and meaningful buffer to ensure that the character of the settlement will in no way be adversely impacted by the appeal proposals once the landscaping has matured.

214. Overall, the Appellant’s firm submission is that its evidence has established that:

- i) the proposals viewed overall and over time would not significantly adversely affect the distinctive, separate characters of Tamworth and Polesworth with Dordon, in accordance with LP4.
- ii) the Appellant would retain and enhance a large area of open agricultural land to the east of the appeal site, and this would ensure that the sense of separation between Polesworth with Dordon and Tamworth would be maintained. The appeal proposals therefore accord with this element of Policy DNPI.

²²² Local plan CD-F1 p32 para 7.28

²²³ Mr Smith XX Day 3 LP4 Local Plan Appendix F ; F1 p32 para 7.28 says purpose of policy; firstly, sense of SPACE, need degree of openness? – Yes, you do but in this sense does not mean completely open agricultural land; something free from buildings.

- iii) The appeal proposals include a large Offsite Mitigation Area which retains and enhances the agricultural use and rural character of the landscape between Tamworth and Polesworth with Dordon. Importantly, the appeal proposals also include provision for the re-establishment of native hedgerows and the planting of new native woodlands. As a result of these measures, and the different characteristics of the two settlement edges, both the SLR LVIA and Mr Smith’s own assessment using the Eastleigh Criteria have concluded that the appeal proposals would not “significantly adversely affect the distinctive, separate identities” of Tamworth and Dordon. As such, the appeal proposals comply with DNP4(4). The use of this land will not only help to consolidate that sense of separation but will be beneficial in its own right²²⁴.

2nd RfR

215. As a starting point, the Inspector is invited to note the key points as agreed between the LPA and the Appellant in relation to a number of landscape and visual matters. It is agreed that²²⁵:

- i) Whilst retaining rural qualities and characteristics which are different from the surrounding built up environment, the appeal site is an area of transitional character at the settlement edge;
- ii) The appeal proposals would result in some negative landscape and visual effects which would be “relatively localised”;
- iii) It is usual practice in a landscape and visual impact assessment to assess increased visibility/prominence of large-scale development within a semi-rural context as resulting in negative landscape and/or visual effects;
- iv) The provision of additional native woodland, and additional native hedgerow planting on existing and historic field boundaries, within and around the appeal site, would be beneficial in landscape character and visual terms.

216. In respect of an overall conclusion re 2nd RfR the Appellant’s position is that whilst it is true that the appeal proposals would result in some negative landscape and visual effects – the proposals would cause less than significant effects on the overall character of the area, partly because they propose commercial development immediately adjacent to largescale

²²⁴ LSO CG para 33

²²⁵ LSO CG para 8;32;26;27; CD-D15

infrastructure and existing commercial developments of a similar character at junction 10 and south of the A5, but also because the important and largely rural gap between Tamworth and Dordon would be essentially maintained and enhanced.²²⁶

217. The rationale for this conclusion is that, fundamentally, the proposals would introduce large new commercial buildings into a transitional area which is already partly characterised by similar buildings, and would introduce further light and noise into an area which is again already strongly influenced by lighting from the settlement edges and highways, as well as by traffic noise from the adjacent M42 and A5 and commercial uses.²²⁷

218. As well as Junction 10 itself, the existing commercial development in the area of the appeal site includes:

- i) Birch Coppice Business Park
- ii) Core 42 Business Park
- iii) Tamworth logistics Park
- iv) Centurion Park
- v) Relay Park
- vi) Birmingham International Freight Terminal
- vii) Tamworth Services

219. There is no escaping the fact that there is strong presence of commercial development in the locality with the buildings being prominent across both the appeal site as well as the Offsite Mitigation Area.

220. In respect of the character of the site, the most up to date published character assessment²²⁸ – lists some of the key characteristics of LCA 5 as, in particular, *'fragmented landscape with a complex mix of agricultural , industrial and urban fridge land uses'* - i.e. the area is truly transitional as opposed to being rural or urban.

²²⁶ PoE Mr Smith CD-D30A para 8.32

²²⁷ Summary PoE Mr Smith para 1.19 CD- D30/C; Drawing J10-1 in Appendixes to PoE of Mr Smith illustrates the strong presence of large-scale commercial development in the locality and drawing J10-3a illustrates a Zone of Theoretical Visibility for this existing commercial development (excluding Birch Coppice and Core 42) indicating that these buildings are prominent across both the appeal site as well as the Offsite Mitigation Area

²²⁸ CD G1 pp40-43

221. Ms Oxley agreed that, had the assessment been written today (rather than in 2010), the associated urban influence would have been even greater²²⁹; and that the landscape envisages of new industrial development within it²³⁰.

222. It was put to Mr Smith that Inspector could witness an example of the impact of industrial activity (lighting) of the development south of A5 without needing to travel to Magna Park. Mr Smith agreed that all the Inspector would have to do is cross the road to see the lighting as the lit commercial development is the context, which is key.²³¹ Nonetheless, the invitation to see a mature logistics site is maintained in order to give the Inspector the fullest possible picture of the likely effects of the proposals.

223. Mr Smith explained during his oral evidence that the way one reaches ‘transitional’ character is through characters of urban areas not stopping at the edge of the urban land – their influence continues over adjacent land, thereby, reaching ‘transitional’ character.²³² Indeed, the LPA’s case as advanced in oral evidence seemingly missed this important point by advancing an unqualified suggestion that there is no development of an industrial nature north of A5 as the baseline of assessment²³³.

224. Similarly, it was repeatedly suggested there are clearly defined boundaries with the adjacent roads (with M42 being a clear piece of infrastructure), as if the Inspector was charged with fixing GB boundaries. Mr Smith confirmed – there are indeed clear boundaries with a clear character transition across them,²³⁴ but frankly ‘so what’, paragraph 148(f) of NPPF which deals with fixing GB boundaries does not apply to other sorts of policy; and the test in LP4 is not failed if the effect of the proposals is to leave the SG with a less clearly defined boundary. With respect that is simply no part of the test – and verges on the irrelevant when one considers the time taken for the mitigation to become established.

²²⁹ Ms Oxley XX *Today even more heavily influenced if writing it today?* – Yes

²³⁰ Ms Oxley XX Day 2 *Third bullet point down p42 new agricultural ; new industrial buildings etc. to mitigate against impact; this landscape expressly envisages of new industrial development within it?*– Yes, was probably envisaging smaller units.

²³¹ Mr Smith XX Day 3

²³² Mr Smith EIC Day 3

²³³ Mr Smith XX Day 3 *‘No industrial nature development North of A5?’ –*

‘No but from a character point of view there is clear influence; need to appreciate how adjacent area is affecting the character; for this site it is strongly influenced by adjacent uses; say you had SG and no urban uses to the west or south, largely rural landscape, in that scenario would those road be a more effective boundary to SG? Yes, they would; the fact there is that influence that introduces that transition.’

²³⁴ Mr Smith XX Day 3

225. As noted above, the Character Assessment encourages reinstatement of historic hedge lines²³⁵. In this regard, the Appellant’s evidence is clear – as has been demonstrated through the consideration of historic maps²³⁶ – the appeal site currently represents one single field, whilst the reality is that it used to be subdivided and consistent of some seven fields.

226. It is also convenient to note that it has been seemingly suggested by the Council that the Appellant has failed to adhere to the relevant landscape management strategies, in particular, to maintain a broad landscape corridor to both sides of M42²³⁷. In this regard, Mr Hann confirmed that there is, in fact, no broad landscape character on both sides.²³⁸ It was further confirmed that in totality, the proposal engages with all the relevant strategies identified e.g. encouraging ecological management of grassland areas; encouraging planting of hedgerow oaks; reinstatement of historic hedgerows; conversion of arable land back to pasture etc.²³⁹

227. A lot has been said by the LPA about the “open” nature of the parcel of land and the need to preserve it. The thesis appears to be if there is a reduction in openness then that necessarily means that there will be harm to the gap. With respect that is just not what the policy says. It is not a GB policy where any reduction to ‘openness’ is of itself harmful – the test is very different (as Mr Collinson accepted in XX), Moreover, even in GB terms land is not considered to be less open if orchards are planted in it, land is converted to pasture or historic hedgerows are reinstated or additional public paths are created through it. The only issues in this case are whether these landscape improvements somehow cause harm in landscape and/or visual terms or somehow impinge upon the sense of separation provided by the gap. Given that all of the improvements are consistent with the LCA that would be an odd stance for the LPA to take.

228. The Inspector will doubtless have already noticed that advance planting of new hedgerows has been undertaken along historic field boundaries to the east of the appeal site. These hedgerows would be at least 2-3m tall within 15 years – which ought to be considered as part of the baseline of what the land would look like in the future in the absence of the proposal.

229. Similarly, since the original LVIA there is now tree planting on the western edge of the Kitwood Avenue Recreation Ground (by the PC) – expected to reach 7.5-8m by year 15, which

²³⁵ CD-G1 p101

²³⁶ CD-G31

²³⁷ NW Landscape Character Assessment p42 CD G1

²³⁸ Mr Hann Re-E

²³⁹ Mr Hann Re-E

would in itself further reduce the potential visibility of the proposals from viewpoint 6 in the first 5 to 10 years, particularly in the summer months.

230. Additionally, the existing copse and other planting to the west of Dordon would also continue to grow, becoming taller and also denser, as the canopy broadens. This existing planting would therefore provide further screening of views from Dordon towards Tamworth.

231. To take this issue a step further – whether the appeal is allowed or not there is potential for even more widespread and noticeable changes to both the carriageway and vegetation around junction 10, and part of the A5, as a result of highway works which are likely to be required in order to accommodate new development anticipated within the adopted Local Plan²⁴⁰. In an appeal allowed world those works would be undertaken sooner in the context of the appeal scheme, with mitigation being able to become established sooner also. Indeed even if the local plan allocations didn't proceed then even in the absence of the required Local Plan Scheme Dr Nick Bunn has identified that it will still be necessary to cut back vegetation to the east of junction 10 and north of the A5 in order to provide the necessary forward visibility.²⁴¹ So whatever happens there will be removal of vegetation along this part of J10 – the benefit of allowing the appeal is that the available land for mitigation will be available immediately and mitigation planting will be established sooner, and will establish faster at no cost to the public purse.

232. It has also been noted that the LCWIP (CD H30) envisages that there would be changes to several of the rights of way to the east of the appeal site, with several of the routes being upgraded to cycle ways.²⁴²

233. On that note, Ms Oxley's view is that these matters in themselves could lead to 'suburbanisation' of the area²⁴³ – the issue of surfacing is entirely at large (which is apparently the key concern about suburbanisation), but importantly the combined cycle/footway north of

²⁴⁰ Mr Smith PoE Para 4.45 CD-D30/A; the issue is also relevant in the context of considering the proposal resulting in the loss of vegetation – the planting would be largely replaced by new native planting on the regraded slopes; and, in any event, the further works to junction 10, including a dedicated left turn lane onto the eastbound A5 in itself could result in potential loss of vegetation.

²⁴¹ Mr Smith PoE Para 4.47 CD-D30/A

²⁴² Mr Smith PoE Para 4.48 *ibid*

²⁴³ Ms Oxley XX Day 2 *The Authority can have what it wants, have you assumed all the routes we have proposed would be tarmacked? – Haven't assumed that but would be suburbanisation of the area – So, you oppose that? – Suburbanisation of the area.*

the A5 fulfils the County Council's own objective to create such a route – again at nil cost to the public purse [REF]?²⁴⁴

234. The LPA has also criticised the proposals because of the use of bunding. Again, the point is overstated by the LPA

235. In this regard, Mr Smith has confirmed that another important feature of the local topography is the number of artificial, man-made slopes, particularly in the south and west of the appeal site²⁴⁵. Whilst not a feature of SG, it is plainly a feature of wider landscape²⁴⁶. The proposed bunds and not the steep bunds of yesteryear – but shallow 1 in 6 slopes which will be planted and over time will not be read as artificial slopes. It is a tried and tested technical approach to mitigate such structures and will not be seen to be out of place.

236. The LPA has sought to rely heavily on the technical issue that arose in respect of the building heights. The criticisms of the robustness of the Appellant's assessment are unjustified. In respect of July 2023 photomontages²⁴⁷ – whilst they show the building ridge heights 3.641m higher than those defined in the parameter plan, they still provide a very helpful visual guide to the potential visual effects of the proposals from key viewpoints. Similarly, corrected versions of the Type 3 photomontages have been provided in any event. Had the error been that the photomontages understate the visual effects then the LPA might have a point – but saying that the Appellant's assessment is flawed because effects were erroneously overstated, is untenable. Moreover, all of the wirelines were correct to the right AOD, and Ms Oxley indicated that her concern was that the lay person may have been misled (ie presumably not her or the case officers)

237. The inquiry also heard evidence in respect of visual effects of the proposals upon residential receptors at Birchmoor. The Appellant's landscape evidence is clear – whilst the proposals would result in negative visual effects for residents on the southern edge of Birchmoor in year 1 and year 15, these effects would not be significant.

²⁴⁴ Ibid

²⁴⁵ Mr Smith PoE para 4.36 CD-D30/A

²⁴⁶ Mr Smith XX Day 3

²⁴⁷ CD-B31

238. In this respect, the analysis offered by the LPA is over the top and should be approached with some circumspection, as is discussed further below in relation to the LPA's consideration of 'oppressive views'.
239. The LPA's case appears to rest on the proposition that the Appellant has underplayed the effects of the proposal. By implication, the LPA must be taken as suggesting that Mr Smith's evidence is not to be trusted.
240. It seems that the key point the LPA seeks to rely upon is the fact that the Appellant has allegedly failed to provide requisite visualisations at requisite times. The point that goes nowhere because – it has been confirmed by Ms Oxley that it is her view that in respect of landscape matters/matters of her expertise, at the time of her evidence she does not allege there to be insufficiency of information in terms of the planning merits of the scheme. She has confirmed that the Inspector has sufficient information before him to come to a view²⁴⁸. What has happened to date is hotly disputed but wholly irrelevant to the judgments that the Inspector has to form, therefore.
241. In any event methodological points in landscape assessments are rarely determinative of issues requiring the Inspector to reach his/her own judgment. Nonetheless the starting point at considering the reliance that can be attached to Ms Oxley's judgments, is that Ms Oxley seems to have misapplied the only methodology that has been set out before the inquiry.
242. Ms Oxley said she had applied the Appellant's methodology.²⁴⁹ It is uncontroversial that there simply is no other methodology before the Inspector. She then agreed in her evidence that both her and Mr Smith came to a different view when considering the 'heat map'²⁵⁰.
243. She also confirmed the position later endorsed by Mr Collinson that the mere fact that EIA effects had been identified which were concluded to be 'significant' does not mean that LP4 is thereby breached. She rightly observed that LP4 requires an overall planning judgment as to whether there is a **significant** adverse effect upon the "*distinctive separate characters of*

²⁴⁸ Ms Oxley XX Landscape Day 2 *In terms of totality of the information before inspector now, are you now alleging insufficiency of information on the planning merits of the scheme within the areas of your expertise? – I am not alleging insufficiency; but the material is insufficient and there are errors; Inspector still only have 4 block photomontages...; Now Inspector has sufficient information to form a view? – Yes; but needs to treat it with caution.*

²⁴⁹ Ms Oxley XX Day 2 *You used SLR's methodology? – Yes.*

²⁵⁰ SLR Methodology Figure 10.6 CD-B4

Tamworth and Polesworth with Dordon". That question, it is agreed, requires an intervening overall planning judgment²⁵¹.

244. It was explored in evidence, that SLR methodology is clear – the general position is that the effects falling outside the major or major/moderate categories are considered by the methodology to be not significant. The methodology then goes on to clarify that in some cases professional judgment may determine that a moderate effect is significant²⁵².

245. When asked whether she had started from the position that moderate effects are not significant to then consider any specific circumstances – Ms Oxley confirmed that she did not apply this part of the methodology²⁵³. It follows that Ms Oxley started her assessment of landscape effects from the pre-determined conclusion that moderate effects will be significant. In doing this, she has misapplied the methodology. In ReX she sought to recant that position based on a partial reading of the relevant part of the methodology – which barely improves the position.

246. Ms Oxley's failure to apply the crucial step in the methodology is one of the very reasons (if not the reason) there is a difference in judgment as between the two assessors re landscape effects – i.e. Ms Oxley assessed the position from a pre-determined view that moderate effects are bound to be significant, whereas JS applied the position that in general terms they are not.

247. In her oral evidence, Mr Oxley suggested that Mr Smith's conclusion i.e. that landscape effects on local area of LCA 5 are Moderate/Minor becoming Minor lacks credibility²⁵⁴.

248. This is in the context of the argument advanced by Ms Oxley in her oral evidence i.e. to the effect that the effects would decline over time to the point where they are still moderate

²⁵¹ Ms Oxley XX Day 2

²⁵² SLR Methodology para 10.1.54 CD-B4

²⁵³ Ms Oxley XX Day 2 *Did you start from the perspective if you are moderate, then not significant as generality, or did you disregard that methodology? – I used my own judgment whether effects are significant or not; this part of methodology is unclear; I did not apply it.*

²⁵⁴ EIC Ms Oxley Day 1 *He appears to underplay effects; his case is no significant negative effects; he characterises as minor and moderate as not having significant effects; how credible? – 'Not credible; if-was undertaking this assessment I would be recognising significant effects; arable field into industrial development.*

and nevertheless remain significant (with moderate effects being treated by her as significant) being absent from the LPA's written evidence altogether.

249. Ms Oxley agreed that it is an important point²⁵⁵, she then sought to suggest this point *'runs as a thread throughout my proof...'*²⁵⁶. No such 'thread' runs through Ms Oxley's proof, or any other evidence put forward by the LPA.

250. Whilst the LPA appears to run the case of the Appellant's understating the landscape and visual effects – Ms Oxley agreed in her oral evidence that the site is surrounded with – paddock and landscaping to the north; A5 and Tamworth Logistics Park to the south; M42 to the west (which she agreed is evident by noise). Ms Oxley agreed the junction is very evident; and that there is *'a large artificial earth work on top of which you have road infrastructure'*²⁵⁷ – and yet there is this failure by the LPA to acknowledge the totality of heavy influence the surrounding local development exerts over the 'last quadrant' of M42.

251. That said, the last quadrant of M42 is not to be equated with the last quadrant of the Strategic Gap, which extends way beyond the site, as agreed by Ms Oxley.²⁵⁸

252. The case advanced by the LPA re the importance attached to this 'last quadrant' does not sit comfortably with the fact that the development would result in 93% of the Strategic Gap remaining undeveloped (with even 70% of parcel 8 remaining undeveloped)²⁵⁹.

253. Whilst the LPA sought to suggest that the site's susceptibility to the particular development is greater due to the fact that it is heavily influenced by development²⁶⁰ – Ms Oxley then conceded that in comparing the position as between a vast open countryside of 1985 and land heavily influenced by commercial/infrastructure/artificial road works – the latter would be less susceptible²⁶¹.

²⁵⁵ Ms Oxley XX Day 2 answered 'yes'

²⁵⁶ Ms Oxley XX Day 2

²⁵⁷ Ms Oxley XX Day 2 answered 'yes'

²⁵⁸ Ms Oxley XX Day 2

²⁵⁹ Committee Report Para 10.15 CD-E59

²⁶⁰ Ms Oxley EIC Day 1

²⁶¹ Ms Oxley XX Day 2 *Point raised yesterday; suggestion susceptibility to the particular development proposed is greater because site is heavily influenced by heavy development; 1) back in 1985 vast open countryside and 2024 heavily influenced by commercial and infrastructure and artificial earth works, which one more susceptible to change?* – Confirmed it was undeveloped landscape.

254. In her EIC Ms Oxley argued it was inappropriate to rely on photomontages – she said that for an outline application one needs to consider a reasonable worst-case scenario which is ‘block montages’²⁶². Against this background, she went to agree in cross-examination that the buildings shown on block plan photomontages are not indicative of a realistic worst-case scenario²⁶³.

255. Ms Oxley’s assessment of the proposed mitigation (bunds) has also shifted significantly. In her proof of evidence Ms Oxley suggested ‘*Constructing and planting large earth bunds to the north and east of the proposed development would not fully mitigate the development. The upper levels of the buildings and their roofs would still form a prominent feature in views even once vegetation has matured after 15 years...*’²⁶⁴

256. In relation to her consideration of cross sections²⁶⁵, Ms Oxley agreed that for the proposals maximum height to be built – one would need to dig the building into the ground²⁶⁶. She also agreed that this would reduce the height of the building as measured above the proposed bunds i.e. with the difference being that of 8 metres. Ms Oxley then did not oppose the proposition that with the agreed growth rates on top of the bunds being at 7.5m in 15 years – even if one stood at the level of the trees, these trees would be effective at mitigating the views²⁶⁷.

257. In respect of her criticism of the trees (on top of the bunds) not screening the views fully, it was put to Ms Oxley that the tree belt of 120m would be likely to do just that – her

²⁶² Ms Oxley EIC Day 1

²⁶³ Ms Oxley XX Day 2 *Building shown on block plan is therefore not a realistic worst case, is it? – It is up to the applicant to define within the EIA; Your judgment, a building the block plan that you have requested and we have provided showing the building twice the size of what we will build not realistic worst case? – Yes agree.; Block plans do not show a realistic alternative it is twice the site? – Yes; but it could come forward in various alternatives.*

²⁶⁴ Ms Oxley PoE para 3.33 CD-D25

²⁶⁵ CD B30 LAJ 54D

²⁶⁶ Ms Oxley XX Day 2 Answered ‘Yes’

²⁶⁷ Ms Oxley XX Day 2 *Effect of bunding , a building 21m above finished floor level, which in turn is 8m below ground level; if bunds are 5m high , then that would be 8 meters above the height of the bunds? – Yes; much less cut on the east side; Let’s look north, bund 5m height, building 13 above ground floor level; difference is 8 meters? – Yes, in principle; If we got growth rates on top of the bunds 7.5 meters in 15y then even if one was standing at the level of the trees then these trees would be effective at mitigating the views? – Would be able to see through the trees.; Here we have 120m available? – Those bunds and trees themselves are significant impact.*

response was to then criticise the trees, on the face of it, for being too effective at screening the proposal as she has suggested these would be ‘in summer months a wall of trees’²⁶⁸.

258. It remained opaque as to whether she was contending that the proposals are insufficient to screen the views or whether are they going too far?

259. For the sake of clarity, Mr Smith has confirmed that in so far as screening is concerned – there is no requirement to have a complete screen to be effective, the key is to make it development assimilate with the surrounding landscape²⁶⁹.

260. Where Ms Oxley suggested in her evidence that the trees would be planted ‘densely’²⁷⁰ – the Inspector will note that Mr Smith clarified that the proposal relates to a broad area and not ribbons of trees. It does not necessitate the planting to be dense²⁷¹.

261. In terms of considering the effects on the Birchmoor properties, in relation to whether a view some 20m from the back of a house is considered ‘oppressive’ – Ms Oxley agreed this would depend on what they are; depends upon details of reserve matters; depends on the Council doing its job properly.²⁷² The Inspector will no doubt form his own view of these matters and whether trees 20m away from a house can be rationally described, as ‘oppressive’, which, the Appellant will say is not reasonable.

262. It is acknowledged that Ms Oxley sought to distance herself from the views she offered during her cross-examination, via providing alternative and yet again different answers, whilst being re-examined by her own Counsel. The Inspector will no doubt have a note of the clear concessions that she sought to row back from during her ReX. With respect where there is a difference of view the careful and measured evidence of JS is to be preferred over the, at times obdurate and unhelpful evidence of Ms Oxley.

²⁶⁸ Ms Oxley XX Even with 120m wide? Will you see through this tree belt? – When it is first put in at half meter high. ; When mature, unlikely? – In summer months a wall of trees.

²⁶⁹ Mr Smith EIC Magna Park – you don’t need to have a complete screen to be effective; you just need to make it assimilate with the surrounding landscape; Magna Park achieves that with buffers that are half of what we have proposed.

²⁷⁰ Ms Oxley RE Day 2

²⁷¹ Mr Smith EIC Day 3 What we are proposing are not ribbons of trees they are broad areas; you can plant at 1.5m centres don’t need to densely plant.

²⁷² Mx Oxley XX Day 2

263. Finally, it should be noted that whilst the LPA's opening statement²⁷³ has suggested there would be insufficient space to accommodate landscaping in the manner offered by the Appellant – Ms Oxley confirmed, she does not, in fact know whether it would²⁷⁴.

264. For the reasons set out above, the Inspector is invited to adopt the conclusions offered by Mr Smith and prefer his evidence in respect of the landscape and visual effects.

265. The Appellant has robustly addressed the second reason in its totality. Mr Smith's conclusions in respect of RfR 2 are²⁷⁵:

- a. Whilst the appeal proposals would result in some negative landscape and visual effects, the proposals would cause less than significant effects on the overall character of the area.
- b. In accordance with Policy LP1 the proposals would 'integrate appropriately with the natural environment', being of a similar location, scale and character to existing commercial developments around junction 10 whilst also providing enhancement to the farmland to the east of the appeal site; the proposals would also protect the routes of existing rights of way and provide new routes.
- c. The proposals are in line with LP14 in that they look to 'conserve, enhance and where appropriate restore landscape character.'
- d. Whilst, the appeal proposals would require the removal of a length of hedgerow to the north of the A5 and scrub at the north-east of junction 10, it would introduce over 10 hectares of new woodland and over 2 kilometres of new native hedgerows with hedgerow standards, which would represent a significant enhancement to the local landscape – in line with LP14.
- e. The proposal is in line with LP30, which requires that 'all development in terms of its layout, form and density should respect and reflect the existing pattern, character and appearance of its setting'. The appeal proposals seek the placement of commercial

²⁷³ LPA Opening Statement CD-ID2

²⁷⁴ Ms Oxley XX Day 2 *Is it your case there is insufficient space to the south of the site? – Nobody knows; When asked by the Inspector: You don't know? – Yes.*

²⁷⁵ Mr Smith PoE p96 onwards CD-D30A

development, of a similar scale and character to that already found around junction 10 and to the south of the A5, within a landscape character area characterised by industrial development, busy roads, movement and lighting. Furthermore, the proposals also make provision for new native woodland as well as the enhancement of the land to the east of the site. The enhancement of this area provides landscape and visual benefits, but also helps to reinforce the sense of separation between Dordon and Tamworth, an important element of the local settlement pattern.

- f. The proposal is in line with DNP1(a) – the same rationale applies as in respect of LP30.
- g. In relation to DNP1(d), the proposed new woodland and hedgerow planting around the appeal site and in the Offsite Mitigation Area has the potential to provide a ‘substantial net gain’ in biodiversity²⁷⁶.
- h. For the reasons mentioned above the proposal is equally compliant with DNP4(1).
- i. In so far as DNP4(2) is concerned – this states that ‘where possible, development proposals should take into account the key views on Map 5 in the location and layout.’ In terms of the potential effects of the proposals upon these key views there are three key views which look towards the appeal site, all of which are close to SLR viewpoints and therefore the visual effects upon which have all been assessed: Viewpoint 1 is at Kitwood Avenue Recreation Ground, close to SLR viewpoint 6; Viewpoint 2 is at the western end of barn Close, near SLR viewpoint 20; and Viewpoint 3 is on the pedestrian crossing on junction 10, east of SLR viewpoint 13. Within the SLR LVIA the visual effects upon walkers and/or residents at each of these viewpoints is assessed as being less than significant.²⁷⁷

It is convenient to note that it was put to the Appellant’s planning witness that V3 view into the site would be blocked by the development²⁷⁸. Mr Hann explained that the view would not be blocked.²⁷⁹

²⁷⁶ ES para 11.5.22 CD-A8

²⁷⁷ Mr Smith clarifies in his PoE at para 7.44 CD-D30A that in respect of Key View 3, Mr Smith also notes that the view is only a glimpsed view of Dordon seen in the context of signage, lighting and traffic at the motorway junction, is also a diminishing view due to the growth of roadside vegetation. Whilst it would be necessary to clear vegetation to the east of junction 10 as part of the proposals, it is also notable that the Local Plan Scheme and foot/cycle way improvements under imply that there would be vegetation clearance and/or regrading along this edge.

²⁷⁸ Dordon Neighbourhood Plan P26 CD F9

²⁷⁹ Point illustrated by considering P34 G19 and Masterplan at B41 – zooming into the site access allows the grey line to be seen where highway is and where the view would be i.e. standing in the location of the layby and looking towards Dordon

- j. In line with DNP4(3) – whilst there will be a removal of vegetation to the east of junction 10 and north of A5, no further affects are intended. The proposals would establish over 10ha of new woodland planting and over 2km of new hedgerow.

- k. In accordance with DNP4(5) – the management strategy for the Tamworth Fringe Uplands in the NWBC LCA includes a requirement to ‘safeguard the setting of the villages of Freasley and Whateley’, site ‘new agricultural and industrial buildings ... to mitigate against further landscape impact from built development’, ‘introduction of small to medium sized blocks of woodland planting using locally occurring native species would be appropriate within [the M42] corridor’, ‘encourage retention of hedges and management practices that reinstate historic hedge lines...’, and ‘conserve remaining pastoral character and identify opportunities for conversion of arable back to pasture’. The appeal proposals satisfy all of these requirements, siting new buildings close to existing commercial buildings and junction 10 in order to reduce landscape impacts, providing ample new hedgerow and woodland planting around the appeal site and in the Offsite Mitigation Area as well as converting arable land to species-rich grassland.

- l. In line with DNP4(6) – the Tamworth Fringe Uplands is described in the NWBC LCA as being ‘an indistinct and variable landscape’, ‘fragmented by spoil heaps, large scale industrial buildings and busy roads’; however, it is also an area characterised by ‘open arable land with little tree cover’. The proposals are sympathetic to this contrast, placing the proposed new buildings in the setting of the existing commercial development at junction 10 and providing enhancement to the agricultural landscape that extends between the appeal site and the western edge of Dordon.

- m. Overall, the proposals are in line with DNP4²⁸⁰.

- n. As to the case advanced by Rule 6 party – the Appellant has demonstrated that Birchmoor is a divided settlement, partially merged with Tamworth. It does not have an open prospect towards the site. In any event, the proposed design of the appeal proposals would protect the remaining settlement form of Birchmoor and the views of residents. It has been demonstrated that there would be substantial screening landform woodland planting and existing paddocks between the edge of the proposed new buildings/hardstanding and the

²⁸⁰ DNP4(6) provides:

“All applicants shall show that they have taken into account the matters identified above. However, the provisions of strategic Local Plan Policies LP4 (Strategic Gap), LP6 (Additional Employment Land) and H4 (Land to the east of Polesworth and Dordon) shall have priority.”

rear of properties at Birchmoor, with an additional 10 to 20 meters of rear garden before reaching the rear elevations of houses on Birch Grove. The overall effect of the massing of the proposals, combined with substantial depth of both existing paddocks and hedgerow, plus new screening landform and planting, would screen nearly all views of the proposed new buildings by year 15²⁸¹.

3rd RfR

266. The third reason related to highways.

267. Dr Bunn's evidence has demonstrated the appeal proposals accord with Local Plan Policy LP23, LP27 and LP29. It has shown that (i) the proposals would not result in an unacceptable impact on highway safety; or (ii) would the residual cumulative impacts on the road network be severe.

268. The Inspector will note that National Highways have now agreed that (i) the Transyt models were acceptable; (ii) the impact of the appeal proposals was acceptable; and (iii) the site access and the proposed mitigation measures were acceptable in principle²⁸².

269. The Transyt modelling approach and the results have also been agreed by Warwickshire County Council²⁸³ and Staffordshire County Council²⁸⁴.

270. Overall, the third putative reason for refusal is robustly addressed.

271. The National Highways and WCC have confirmed at the inquiry that the third reason for refusal is not relied upon.

272. In that context the Inspector should place no reliance at all on the issues seemingly raised by Rule 6 party with Mr Hann i.e. those pertaining to some alleged issues/harms arising

²⁸¹ ZTV drawing J10-3c in Appendix to PoE Mr Smith CD-D30/B

²⁸² Highways SOCG with NH [CD-D18]

²⁸³ Highways SOCG with WCC [CD-D19]

²⁸⁴ Highways SOCG with SCC [CD-D20]

from works to Junction 10 – none of these are live issues raised by any of the respective authorities; there is no evidence before the inquiry to substantiate any of these issues.

273. The issue between WCC and the Appellant is whether the appeal scheme gives rise to benefits by delivering elements of the Local Plan mitigation scheme for the J10. Dr Bunn gave his clear explanation as to why this was obviously the case – whereas WCC disagreed. Dr Bunn’s proposition is compelling that if the mitigation has been tested on a ‘with growth, with LP allocations and with development’ basis using the Transyt model required for the SRN by NH, then it is hard to see how it cannot (in general terms) be a positive that the appeal scheme will deliver half of the PJA designed scheme which was promoted as appropriate at the time of the LP examination. At its highest WCC’s position is ‘not proven to our satisfaction. With respect they are plainly wrong on the evidence.

BMV Land

274. The issue of agricultural land impact was not raised during the application process as a determinative issue or listed as a putative reason for refusal. But the matter has been raised by the joint Rule 6 Party.

275. A statement providing agricultural land evidence has been prepared by Tony Kernon of Kernon Countryside Consulting²⁸⁵. Mr Kernon confirms that the agricultural land quality of the site is mostly Grade 2 with an area of subgrade 3b and area of non-agricultural land. It is therefore accepted that as with so much of the agricultural land locally that this land is best and most versatile, and that the loss of the developed area within the red edge weighs against the proposals. That is emphatically not the case for the land within the blue edge which, consistent with the landscape principles of LCA5 will be returned to pastureland. Using land to take an occasional haylage/silage crop or for grazing livestock is still an agricultural use and a reversion to arable is obviously still possible in the future. To argue this as ‘lost’ to agriculture is patently wrong.

276. In summary, Mr Kernon confirms that planning policy requires the economic and other benefits of BMV land to be ‘recognised’. He says these benefits have been considered and they are not significant. Poorer quality land is not generally available. As such, development in the area is expected to involve the use of BMV.

²⁸⁵ Appendix 6 to Appellant’s Planning PoE CD-D28/B

277. In respect of the issue raised by Rule 6 party re land being taken out of arable use and into pasture being problematic – in line with the evidence adduced by the Appellant, this would not change the grade of the land i.e. in so far as it would be pasture, as agreed by Mr Weekes.²⁸⁶

278. Whilst it was argued that this would then fail to result in actively creating arable crops – the policy does not require it; in preserving BMV land, the use of the land does not make a difference, as rightly agreed by Mr Weekes.²⁸⁷

Planning matters

279. The starting point is that section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that determination must be made in accordance with the development plan unless material considerations indicate otherwise.

LP6

280. The Inspector has heard extensive evidence on the background of LP6. Ultimately, the Local Plan Inspector²⁸⁸ acknowledged that the provision of employment land at LP5 (100ha) and the allocations at LP39 met local employment needs whilst there was potential unaddressed need for large scale employment space and logistics beyond that allowed for in the plan. He concluded the plan would be sound, nevertheless, with the inclusion of what is now LP6.

281. It was made clear that LP6 was not to automatically take precedence over the other LP policies (nor vica versa). Therefore, whilst not automatically, LP6 is capable of carrying the weight that overrides other considerations, hence the word ‘automatically’. Indeed,

²⁸⁶ Mr Weekes XX

²⁸⁷ Mr Weekes XX

²⁸⁸ Para 163-168 CD F15

justification for this weight is encapsulated and aligned with NPPF para 85²⁸⁹ and 86²⁹⁰ and 87²⁹¹.

282. Significant weight is given where there is ‘an immediate need for employment land, or a certain type of employment land’. As noted above, the test is either: an immediate need for employment land exists within Area 2, or a need for a certain type of employment land within Area A2 exists. If the immediacy of need was the main factor, the reference to a certain type of employment land would be entirely unnecessary.

283. In applying the weight, the reference in reasoned justification is to a specific location; there is clear recognition of specific locational requirements specific to certain employment uses and economic benefits to addressing needs in these locations²⁹². There is specific reference to Area 2(A) encompassing land covered by the SG and GB.

284. Given that Area 2 contains GB which attracts the highest level of protection within the national framework and given that there is clear recognition of location requirements, for LP6 to have any teeth it ought to be capable, as a matter of judgment on the facts of any particular case, of taking precedence over other policies or else it could never fulfil the objective of meeting the strategic need not anticipated in the plan.

285. Therefore, when considering the weight of LP6 against the context of other policies – where those are met, the significant weight can take precedence over other policies. Where there is tension with other policies, the weight afforded to the conflict or tension is to be weighed against the significant weight attached to LP6.

²⁸⁹ Planning policies and decisions should help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development. The approach taken should allow each area to build on its strengths, counter any weaknesses and address the challenges of the future. This is particularly important where Britain can be a global leader in driving innovation ⁴⁴, and in areas with high levels of productivity, which should be able to capitalise on their performance and potential.

²⁹⁰ As the policy is designated to ‘set criteria, or identify strategic sites, for local and inward investment to match the strategy and to meet anticipated needs over the plan period’ and ‘be flexible enough to accommodate needs not anticipated in the plan, allow for new and flexible working practices (such as live-work accommodation), and to enable a rapid response to changes in economic circumstances’.

²⁹¹ Para 87 gives weight to ‘Planning policies and decisions should recognise and address the specific locational requirements of different sectors. This includes making provision for clusters or networks of knowledge and data-driven, creative or high technology industries; and for storage and distribution operations at a variety of scales and in suitably accessible locations’

²⁹² LP para 7.46 CD F1

286. Given that SG policy is permissive of some level of development and given that the Council now concedes GB policy is more stringent²⁹³ – any tension with SG policy would attract lesser weight than conflict with GB policy i.e. it is more easily outweighed.
287. For the reasons set out above it is firmly submitted that the proposals accord with LP6.
288. As part of the LPA’s case, it is suggested that if there is a need it could be met elsewhere, and yet all of the other locations within NWBC where such development is being mooted the land lies within the GB. As to that National policy advises the decision maker to focus on areas that lie outside of GB²⁹⁴. The appeal site, apart from being joint top-performing site in WMSESS 2021, is the only motorway junction site in the M42 corridor sited outside of the GB.
289. The Council’s witnesses, whilst arguing that there is no requirement to consider the GB alternatives,²⁹⁵ have been unable to identify any logical reason why the issue of alternative sites to those in GB should not be considered in terms of decision taking²⁹⁶.
290. Ultimately, it is either SG land or GB land that needs to come forward (provided the Inspector is satisfied re need) and the Council’s up to date position is that GB attracts higher level of protection – Mr Collinson agreed that GB policy is more stringent.²⁹⁷ In any event it is baffling how it could ever have been thought how unallocated GB land could comprise part of “forecast supply or allocations” so as to count for the purposes of the policy.
291. On the evidence there is a compelling need for additional strategic employment land within Area 2 and A and in particular a locational need for logistics land, with the site being the best placed site in Area 2/A to meet the need. In so far as forecast supply or allocations are concerned – again, the issue has been conclusively addressed with the evidence showing there to be a less than 3 month’s land supply within Area A/Area 2/M42 Corridor and 0 months’ supply in NWBC.

²⁹³ Mr Collinson XX

²⁹⁴ Para 145 and 146 NPPF

²⁹⁵ Mr Collinson EIC

²⁹⁶ Mr Collinson XX

²⁹⁷ Mr Collinson XX

292. In so far as the criteria of LP6 is concerned –no issue has been taken with the technical criteria, which is addressed by Dr Bunn’s evidence in any event (and in terms of amenity by that of Mr Smith).²⁹⁸

293. On that basis – the site is the most appropriate location for the development; the scheme robustly demonstrates that it lies within Area A of WMSESS 2015/Area 2 of WMSESS 2021, as required by Policy LP6 and there are no better alternative sites, within the terms of the policy.²⁹⁹

Industry support

294. One should note the amount of industry support from key stake holders with an economic and employment land interest – which in itself is a key material consideration in favour of the proposals. These involve Coventry & Warwickshire Chamber of Commerce³⁰⁰; JLL National I&L Transactions Team,³⁰¹ Logistics UK³⁰², Maritime Transport³⁰³, Rail Freight Group³⁰⁴, Tamworth Borough Council^{305, 306}.

LP34

295. The Appellant relies on the evidence of Mr Hatfield along with the studies and documents he draws upon which establishes in its overall conclusion – there is significant deficit of HGV parking capacity in the WM and, in particular, in the M42 J10 area. The need is both qualitative and quantitative.

296. The proposal is in line with NPPF para 113 which gives it clear support, as referred to above.

²⁹⁸ Mr Hann summarises the findings in respect of technical criteria in his PoE para 8.8.1 to 8.8.24
Mr Collinson EIC *LP6 Anything else you want to say ; not arguing against criteria? – No*

²⁹⁹ Mr Hann PoE para 8.6.14 CD D28A

³⁰⁰ CD B46

³⁰¹ CDB47

³⁰² CDB48

³⁰³ CDB49 and D33/C

³⁰⁴ CDB51

³⁰⁵ CD B53

³⁰⁶ Mr Hann PoE para 8.9.1 CD D28/A and CD E50; CD E41; CD E51; CD E 53; CD E52; CD E13

297. A key material consideration in respect of quantitative need is the recent planning decision for land at Marsh Lane, Curdworth, North Warwickshire (application ref: PAP/2020/0295); whereby the Council attributed substantial weight to the proposal meeting national and local HGV needs which thus accorded with LP34 and para 109 NPPF.³⁰⁷
298. Given the proximity of the site to the Marsh Lane and the clearly evidenced quantitative need justifying the location, substantial weight must similarly be applied to this appeal proposal in meeting national and local HGV parking needs.
299. Of note is the fact that the Marsh Lane proposal was dismissed on appeal through the harms to GB not being outweighed by the significant weight attributed by the Inspector to meeting the parking need, and thus VSC not being demonstrated— here, the assessment is not against the GB policy but SG policy which carries lower level of protection.
300. The accepted compelling need for lorry parking allied to the exceptional locational benefits of the site, and the express policy support of LP34 and NPPF, combine to outweigh any harm to the Strategic Gap.³⁰⁸
301. Similar to the position re employment there has been extensive industry support in respect of the proposal from: Road Haulage Association³⁰⁹; NaVCIS³¹⁰; Warwickshire Police³¹¹; Tamworth Borough Council³¹²; Logistics UK^{313, 314}.
302. Overall, the provision of an overnight lorry parking facility is of significant weight in meeting national, regional and local HGV parking needs.
303. Overall, this critical aspect of the proposal is a significant benefit and, as such, it should be afforded significant weight in the overall planning balance.

³⁰⁷ Mr Hann PoE para 9.4.3 CD D28A and CD I63

³⁰⁸ Mr Hann PoE para 9.4.7 CD D28A

³⁰⁹ CD B52

³¹⁰ CD B50

³¹¹ CD B54

³¹² CD B53

³¹³ CD B48

³¹⁴ Mr Hann PoE para 9.6.1 CD D28A

Split decision

304. Whilst it is the Appellant's case that the provision of lorry parking is a significant benefit – it is open to the Inspector, should he deem this necessary, to give permission for the employment element of the scheme only.
305. The respective positions of the parties on the issue of disaggregation has been addressed.
306. It should be emphasised that in his oral evidence Mr Collinson did not seek to argue that should the employment element come forward the lorry parking should not. Instead, his position is, in effect, that the Council is agnostic on the issue.³¹⁵

LP4

307. As a starting point, Mr Hann has considered the history of the Tamworth/Polesworth-Dordon Strategic Gap policy³¹⁶ (and its variants) in contrast to the West Midlands Green Belt, to emphasise the permanence of the latter and the various iterations of the former i.e. it is of more transient and irregular nature than the national GB policy.
308. He demonstrates that ultimately LP6 is the product of what used to be 'meaningful gap' – the policy was permissive of development and far from any kind of embargo on it.
309. The Council sought to suggest that the meaningful gap policy was less stringent than LP6 – thesis that appears to have been since rightly abandoned by Mr Collinson in oral evidence.³¹⁷

³¹⁵ Mr Collinson XX *Everything else comes forward in principle lorry parking would be a good idea? – If there is demonstrated need for that some elements are positive some negative; I'm somewhere in the middle; Don't know it's more marginal? – An argument could be; Agnostic? – Don't know.*

³¹⁶ Appendix 4 to Mr Hann's PoE CD D28/B

³¹⁷ Mr Collinson XX *You put a thesis in your evidence that if you look at St Modwen and [Taylor] Wimpey that policy approach was different because geographical area not defined at that stage; that doesn't matter if both caught by NW19? – Agreed; NW19 and LP4 are differently worded but both apply not dissimilar tests? – Now LP4 is also about coalescence; It is similar in all practical terms? – Yes.*

310. Mr Hann has drawn the Inspector's attention to Taylor Wimpey appeal³¹⁸ where the Inspector distinguished between the separate characters of the settlements, whilst noting that further development at the edge of Tamworth could be planned as an integral expansion of the town, without seriously affecting its established identity; in respect of Polesworth it was said the policy objective of maintaining a largely undeveloped gap to the west of the town was well founded.³¹⁹
311. Mr Hann has set out in his evidence that the site lies apart from Dordon, with Polesworth set further away, separated by fields. The proposal will maintain the separation from Polesworth and Dordon with the retention and preservation in perpetuity of an extensive area of species-rich grassland (i.e. pasture) between the appeal site and Polesworth with Dordon (as proposed in the s.106) to ensure that the market town character is maintained.
312. Furthermore, the development will have a far closer affiliation with Tamworth where commercial development defines the character of the settlement in the vicinity of the site. The scheme itself would be read as part of such development which has grown on the edge of Tamworth around the motorway junction, and in no way will it seem to be an extension of Polesworth /Dordon.
313. In contrast to the Taylor Wimpey appeal where the proposal would result in the gap being halved in a location where it is already relatively narrow – the scheme would leave a substantial resulting gap of 750m at its narrowest, in line with the current narrowest part of the gap with the development being of commercial character i.e. clearly distinct to residential areas.³²⁰
314. Crucially, the Inspector made it clear that a scale rule approach to evaluating separation between settlements should be avoided. An important factor was the experience of people moving between the settlements and across the gap, and their appreciation of having left one place and arrived at another.
315. As Mr Smith has demonstrated - the appeal proposals maintain a clear physical and functional gap which allows one to experience leaving one settlement and arriving at another,

³¹⁸ CD-K1

³¹⁹ Para 17 and 18 CD K1

³²⁰ Mr Hann PoE para 10.2.13 CD D28 A

which will be further consolidated by the proposed landscape and planting within the blue edged land.

316. In St Modwen appeal³²¹ the Inspector sought to emphasise the distinct character of Dordon and the fact that it reads as being materially different to Birch Coppice. The very same logic applies to the appeal site – which is for a large employment scheme, which will be of a distinctly different character from Dordon with Polesworth, and its terraced and semi-detached houses,³²² which will continue to sit on the ridge line visually distinct from the appeal site and separated by a substantial area of undeveloped land.

317. The St Modwen Inspector concluded that³²³ by reason of a) the large farmland that would remain to the north of the A5 b) the location of Dordon on higher ground to the east, and c) its materially different character and appearance to Birch Coppice, subject to an appropriate final design the proposal would respect the separate identity of Dordon. As a result, he found no conflict with the first requirement of Core Strategy Policy NW19.

318. The Council has sought to rely on the reference to the large farmland completely missing the fact that the scheme would preserve the large tract of agricultural land between it and Polesworth with Dordon. And misses that that Inspector was not considering whether losing some of the farmland would still retain a meaningful gap. The comments in the appeal decision must be read in that context.

319. The Inspector further said that: *‘However, after a very short distance, and just beyond the ‘Welcome to Warwickshire’ sign referred to by the parties the fields north of the A5 come into view. Because the farmland drops down below the road before rising up, combined with its open character and proximity to the east-bound carriageway this area of countryside dominates the foreground. Dordon becomes visible at a higher level and there is an unequivocal gap in between. The undulating, open character of the farmland to the north of the A5 would therefore ensure that drivers entering the Borough and heading east would still be faced with a predominantly rural setting to Dordon. Based on the evidence provided the scheme would not conflict with the spatial vision of the Core Strategy’*.³²⁴

³²¹ Para 16 CD-K2

³²² Mr Hann PoE CD D28 A

³²³ Para 18 CD-K2

³²⁴ Para 29 CD K2

320. As Mr Smith's evidence confirms, substantially the same situation will exist with development at the appeal site in place, albeit that the view will be over the new junction rather than a layby.

321. It should be emphasised that this appeal proposal finds itself a situation similar to St Modwen appeal – a compelling evidence base of need, a scarce and inadequate supply of land to meet the need, an adopted local plan that only seeks to meet local need and not strategic need, and no regional guidance which previously supported strategic sites and strategic logistic sites³²⁵. There are two differences, however:

- a) at the time St Modwen was allowed the need measured 3.7 year supply³²⁶ and now it is less than a year and therefore far more critical; and
- b) policy LP6 has been inserted into the plan to provide the significant policy weight to delivering additional employment land since.

322. Mr Collinson agreed that both Hams Hall and St Modwen were consented when supply was 3.7 years within M42 corridor.³²⁷ He also agreed that since that point the position is much tighter i.e. less than 1 year supply either land or building³²⁸.

323. It is plainly obvious that the need has become more acute since 2017, and this consideration therefore much more weighty. There have been no new strategic consents in NWBC since 2017 despite its key role at the junction of the A5 and the M42 and the capacity of BIFT to increase rail freight throughput.

324. It should be emphasised that the Local Plan Inspector, in assessing the then Policy LP5 (now LP4) considered that it was unsound as drafted as it sought to 'reintroduce' the presumption against anything other than minor development in the Strategic Gap.³²⁹

325. He also emphasised that *'whilst the broad extent of the Strategic Gap is justified, it may well be the case that alternatively defined parcels of land have differing degrees of sensitivity. Similarly, Warwickshire County Council Landscape Guidelines point to a somewhat mixed*

³²⁵ Mr Hann PoE para 1.2.27 CD D28/A

³²⁶ Para 49-51 CD K2

³²⁷ Mr Collinson XX

³²⁸ Mr Collinson XX

³²⁹ Para 231 CD-F15

*landscape character between Tamworth and Polesworth with Dordon, including certain 'urbanising features'. In that context it is conceivable that certain schemes could be designed so as to be suitable accommodated within the Strategic Gap without undermining its purpose*³³⁰

326. The Council has confirmed in oral evidence that it is not pursuing the case of any lesser scheme being acceptable³³¹ (despite referring to the scheme's scale and size having impact). The unavoidable consequence of this is that the Council must be taken as taking issue with the principle of development, which, in itself, is contrary to the LP Inspector's observations.

327. That being said, Mr Collinson agreed in his cross-examination that major development in SG is not in principle to be taken as giving rise to significant adverse effects.³³² Put another way the Inspector anticipated that the right scheme for large scale strategic logistics could come forward in a way that did not significantly adversely affected the SG. This is such a scheme.

328. Crucially and in line with the submissions made re GB sites coming forward which ought to be less desirable than a SG site – the LP Inspector found that '*...policies that apply to the Strategic Gap must be proportionate to its aims and justification.*'³³³

329. This demonstrates that SG is not to be confused with GB. It also demonstrates that the policy is clearly permissive of development and there are schemes that can be brought forward that will preserve the purpose of the gap i.e. maintaining the separate identities of the settlements – the appeal site does precisely that.

330. The SG's only purpose is to prevent coalescence of the settlements i.e. there is no other purpose for it at the policy level (e.g. landscape quality, amenity etc.) There is no overarching bar on development – the threshold is high i.e. significant adverse impact on the distinctive separate characters.

³³⁰ Para 239 CD-F15

³³¹ Mr Collinson XX *Principle of a big box in this location; or is it the detail that is your concern? – both parts as scale and size also have impact; But not making a case that a lesser scheme would have acceptable impact, are you? – No.*

³³² Mr Collinson XX *Restriction to preclude major development expressly rejected by the inspector starts at p38 within 204; Council sought to argue gap should preclude anything other than small development and inspector rejected? – Yes; Major development in SG is not in principle to be taken as giving rise to significant adverse effects? – Yes; The logic of what he said is that can have major development that does not cause significant adverse effect fair inference? – Yes.*

³³³ Ibid para 240

331. The policy threshold though – is simply not met, and LP4 is not breached.
332. In terms of assessing the impact, policy is clear that ‘*consideration will be given to any effects in terms of the physical and visual separation between those settlements*’. These are not the only factors and Policy LP6 and significant weight in decision making of meeting strategic employment need is also another important consideration.³³⁴
333. The ultimate bottom line and the point of judgment comes down to whether there would be meaningful separation between the settlements. Would the traveller have a clear sense of having left the first settlement, having travelled through an undeveloped area and then entering a second settlement?
334. Given the configuration of the gap and the careful design of the features of the proposal the obvious answer to his question is – yes.
335. The proposed commercial development in land use terms reflects the character of the Tamworth, whereas once you have travelled across the gap to Dordon with Polesworth you reach a residential settlement (as you do with Birchmoor), clearly a settlement with a different and separate character.
336. The gap at almost 1km as you travel along the A5 more than allows for the separation and different characters to be appreciated and understood.
337. Overall, the proposals accord with LP4. In according with LP4 the proposal also accords with DNP1 and DNP4 of the Neighbourhood Plan as referred to above.
338. In the interplay between Policy LP4 and LP6, in the context of the proposals being compliant with Policy LP4, the significant weight afforded by Policy LP6 tips the balance of plan support firmly in favour of development.

³³⁴ Mr Hann Poe para 10.3.6

Accordance with other strategic policies

339. Mr Hann has set out his analysis re accordance of the proposal with other strategic planning policies – concluding that the proposal accords with all of the strategic planning policies in the Development Plan – these include LP1, LP2, LP5, LP11 and LP12 and policies DNP1, DNP12.

Landscape and Visual impact

340. The Appellant's has demonstrated that whilst the appeal proposal, which comprises built development on greenfield land will result in some localised landscape and visual harm, nonetheless, with the adoption of mitigation measures this harm will reduce over time as planting matures. Furthermore, there are public benefits arising from the proposal that would enhance the retained land and associated landscape character.³³⁵

341. As discussed above the Appellant has established (through the evidence of Mr Smith) that the proposals comply with LP14, LP30.

342. In relation to DNP4 – the position is clear: strategic Local Plan Policies LP4 and LP6 take priority over the criteria contained within Policy DNP4. Given the compliance with LP4 and LP6, there is arguably no resultant requirement to demonstrate compliance with Policy DNP4. However, for the avoidance of doubt compliance with the criteria of Policy DNP4 has been demonstrated by Mr Smith.

Highways

343. It has been formally confirmed by National Highways and WCC that the third reason for refusal is no longer relied upon.

344. The Appellant has adduced compelling evidence addressing the issues raised through the evidence of Dr Bunn.

³³⁵ Mr Hann PoE para 12.3.6 CD D28A

Agricultural land

345. As set out above, the Appellant has adduced evidence to address the concerns raised by the Rule 6 party in the form of statement produced by Mr Tony Kernon, which updates and expands the agricultural land assessment work undertaken as part of the ES at application stage as referred to above.

Planning Obligation and Conditions

346. It is important to emphasise that the proposal of the Council to the effect that the land edged blue should be transferred into the LPA's ownership is entirely unjustified and unnecessary, therefore, does not meet the relevant tests. That this was only raised half way through the inquiry despite the application being lodged in 2021 may evidence yet more kite flying behind the scenes; or worse a Council being guilty of affecting a stance so as to improve a case that it could see was weakening as the inquiry progressed. Either way the request isn't warranted, and the LPA have had ample opportunity to include whatever additional protections that they think fit into the s.106 obligation --- and despite that they unhelpfully indicated that they were unwilling to enter into a bilateral. It would be harder to think of a more unhelpful approach to the inquiry process.

347. Persisting in the approach the LPA have argued that such protections within a planning obligation don't give much cause for comfort because they can always be varied. With respect it has been emphasised during the inquiry that the test for discharging s106 under s.106A is a high one and provided there remains a useful land use purpose fulfilled by the obligation it would simply not be discharged even in the eventuality of this being sought by the Appellant i.e. so long as Polesworth with Dordon needs to be kept separate from Tamworth.

348. Notably, when offered opportunity to justify the request Mr Collinson has been unable to offer any reasonable argument other than to say this was related to longevity and maintenance i.e. there is simply no justification for the transfer of ownership proposed.³³⁶

³³⁶ Mr Collinson XX

Planning Balance

349. Overall, the proposal accords with the Development Plan when taken as a whole.
350. In particular, it accords with LP4, LP6 and LP34 as set out above.
351. The proposal fully accords and gains the significant weight of Policy LP6, which overrides any limited harm to the Strategic Gap.
352. The proposal also accords with other strategic policies in the Development Plan (namely Local Plan Policies LP1, LP2, LP5, LP11, LP12 and the relevant non-strategic Dordon Neighbourhood Plan Policies).
353. The proposal therefore accords with the plan and under S38(6) should be approved.
354. The proposal generates a multitude of benefits. The vast majority of these benefits are true ‘added benefits’ and not those that arise from mitigation. These are key material considerations that weigh heavily in favour of the proposal in the overall planning balance. These, in summary, are:
- a. The proposal will result in construction employment – the proposed development is estimated to generate around 255 to 283 person years of temporary construction employment. This net additional construction employment would generate gross value added (GVA) to the regional economy of around £17.9 million to £19.9million – this benefit attracts significant weight.
 - b. Once complete and operational the proposed development will create in the range of 1,000 to 1,400 Full-Time Equivalent new jobs; jobs of a wide range of salary levels and skills that are well-located and highly accessible in respect of nearby settlements – this benefit is ascribed a very significant weight.

- c. The proposal attracts moderate weight through its alignment with NWBC sustainable community strategy – through directing significant new employment opportunities close to build up areas represents positive planning, offering equality of opportunity for people to access work, including residents of Tamworth.
- d. Significant weight is attached to training and employability support that the scheme will deliver (details of proposed construction and occupation employment schemes are set out in the Employment, Skills and Training Statement³³⁷.)
- e. Very significant weight is given to the proposal providing a significant contribution to the sub-regional strategic employment requirement.
- f. Similarly, very significant weight attaches to the proposal supporting and helping to facilitate delivery of the Local Plan as signalled by the last sentence of policy LP1. The Inspector has heard the evidence on the point of the scheme being an enabler in relation to the delivery of the LP whereby the delivery of the majority of the LP allocations is predicated on the A5 improvements being implemented; as has been set out by Dr Bunn due to the financial constraints there is now a considerable uncertainty as to the delivery of the scheme to the LP timetable or at all. The appeal proposal can provide a notable infrastructure boost – up to 80% of the Local Plan could be accommodated at Junction 10 M42. At Dordon Roundabout, the Local Plan is currently constrained, and the technical assessment work evidenced in the proof of Dr Bunn also shows that up to 30% of the Local Plan traffic can be delivered prior to the need for any improvements.
- g. Significant benefit attached to the proposal attracting significant operator(s) to boost the profile of the Borough.
- h. Significant weight is attached to supporting local businesses and SMEs.

³³⁷ CD-B45

- i. Significant weight attaches to addressing regional inequalities. The delivery of up to 100,000sqm of new employment floorspace supports the Government's objectives to address regional inequalities (e.g. levelling up).
- j. Significant weight is given to co-location of employment and housing growth.
- k. Very significant weight is attached to active travel proposals – these are vast and include over 8.5km of new and enhanced on and offsite public footpaths, bridleways and footway/cycleway routes, linking the site with Birchmoor to the north, Dordon to the east, and opening up foot, wheel and bicycle commuting opportunities from settlements further afield including Polesworth and Tamworth. In addition, there are vast on and off-site travel improvements.
- l. Significant weight to encouraging healthy and active lifestyles – this ranges from new enhanced fully signalled controlled crossing for the A5; improved footpaths and bridleways; to cycle parking and other features, including showers and changing facilities available to use by the general public, including staff from neighbouring business parks, located at the ancillary Hub Office; as well as the fitness trail including hydraulic gym equipment.
- m. Significant weight to bus connectivity that is being enabled – through provision of new enhanced bus stop within the site boundary, providing bus turning area and bus shelter, linked by a segregated cycleway and footway and associated street furniture; and an enhanced eastbound bus stop on the A5.
- n. Very significant weight is given to the sustaining the operation of bus service 766/767 – which was recently cancelled and would otherwise be unable to continue its operation. The 766/767 bus service is currently the only route serving Birch Coppice Business Park, Core 42 and Local Plan Site Allocations E2 and E3, and is a key service for several North Warwickshire settlements along the route between Nuneaton and Tamworth, including Dordon, Polesworth, Atherstone, Grendon, Baxterley, Baddesley Ensor, Mancetter and Hartshill.
- o. Moderate weight is given to creation of an ancillary Hub Office which will also act as communal training facility for use by local training and education programmes associated with the site as well as site occupiers.

- p. Significant weight attaches to the proposal combating anti-social behaviour and crime – this will be done through the provision of a 150-space overnight lorry parking facility and associated welfare facilities.
- q. Significant weight is attached to the scheme delivering training education and skills – a series of new work placements and apprenticeships on site, during the construction phase. These work placements and apprenticeships will offer hands-on experience and training to young people, through partnership with the local training colleges (e.g. North Warwickshire and South Leicestershire College).
- r. The proposal would bring significant benefit of on-site green infrastructure i.e. it would result in Creation of over 9ha of green infrastructure incorporating significant habitat creation, to include native woodland, native shrubland, mixed native hedgerows, wildflower meadows, wetland meadows and amenity grassland in addition to formal planting surrounding the buildings.
- s. It would result in the significant benefit of off-site green infrastructure – an additional 6.5ha of offsite green infrastructure incorporating native woodland and hedgerow planting and a community orchard, along the route of the existing and enhanced PRow network.
- t. The scheme would come with the very significant benefit of BNG – the on and off-site landscaping, habitat creation and enhancement would deliver significant biodiversity net gains across the site of +26.5% for habitat biodiversity and +298% for linear biodiversity.
- u. It would come with the significant benefit furthering zero emissions goods – the proposal will include a significant portion of charging and fast-charging points for EVs (and the ability to retro-fit additional points at a later date), could support the receipt and storage of hydrogen and, should the electric road system emerge as a suitable alternative, it is more than likely that the M42 and A5 would be included given that they form part of the long-distance strategic highway network. Furthermore, the proposed flexible building design, incorporating measures such as ‘solar PV ready’

steel portal frame and connected battery technology, would facilitate up to 100% of EV charging from on-site renewable energy sources 24/7. Taken together, the measures mean the scheme has the potential to be ‘all-electric’, with connected battery technology serving SMART EV charging and rapid charging points and up to 100% electricity generated from maximum solar PV coverage.

- v. The scheme comes with the very significant benefit of decarbonising transport – the features of the benefit are vast and include creation of new pedestrian, wheel and cycle links; locating the development proposals at the site will provide an opportunity to support the two nearby rail freight terminals (Birmingham Intermodal Freight Terminal) and Hams Hall, which are far more sustainable mode of freight distribution than road.
- w. The scheme has an aspiration to create the Greenest Business Park in West Midlands through sustainable design measures – which attracts significant benefit.

355. It also carries significant weight that the proposals attract broad industry, public sector and local authority support, with expressions from Coventry and Warwickshire Chamber of Commerce³³⁸, JLL National Industrial & Logistics Transactions Team³³⁹, Logistics UK³⁴⁰, Rail Freight Group³⁴¹, Maritime Transport³⁴², Road Haulage Association³⁴³, NaVCIS³⁴⁴, Warwickshire Policy / Warwickshire Police and Crime Commissioner³⁴⁵, Stagecoach³⁴⁶, Cycling UK³⁴⁷, Ramblers Association³⁴⁸ and Tamworth Borough Council³⁴⁹.

356. During the course of the inquiry the Council sought to diminish the economic benefits of the proposed scheme. Amongst other things it was put to the Appellant’s witnesses that there is a ‘trend’ for multilayered buildings – the idea rejected by Professor Coleman³⁵⁰ with Mr Binks clarifying that most developers would say no to such proposals³⁵¹. It was suggested

³³⁸ CD B46

³³⁹ CD B47

³⁴⁰ CD B48

³⁴¹ CD B51

³⁴² CD B49 and D33/C

³⁴³ CD B52

³⁴⁴ CD B50

³⁴⁵ CD B54

³⁴⁶ CD E55

³⁴⁷ CD E39

³⁴⁸ CD E10

³⁴⁹ CD E13

³⁵⁰ Professor Coleman XX;

³⁵¹ Mr Binks XX

without knowing the occupier one cannot know a number of jobs the scheme would create – Professor Coleman confirmed that a standard approach to calculate employment has been deployed³⁵²; in any event, it is somewhat odd that the Council had the information about the proposed employment figures since 2021, has not asked once for the basis of the information provided, then decided to challenge it at the appeal.³⁵³ Professor Coleman has confirmed that the approach adopted is in line with that as required by HM Treasury in business cases³⁵⁴.

357. Furthermore, the Council, in line with its ‘tap off’ approach sought to emphasise the low levels of unemployment in NW. In this regard, Inspector heard from Professor Coleman, who has confirmed that when considering unemployment rates in NW he should also bear in mind the position re Tamworth,³⁵⁵ which the site sits next to. NW is not a self-contained economy, nor a self-contained labour market. Therefore, the notion that it (i.e. the local authority geography) has got ‘enough jobs’ is both misguided, unsupported by policy at any level (including the Council’s own draft Economic Strategy, and flies in the face of the evidence before this inquiry. This was not a kite flying exercise of Mr Young KC’s own making in this instance – but it is still a thoroughly bad point.

358. The Council also sought to argue that there is no added benefit in relation to the proposal resulting in enabling LP allocations being brought forward on the basis that the improvements in highway terms are simply meeting the technical criteria of LP6. It has been agreed by Mr Collinson that the position is the fact that the element is a requirement of LP6 does not mean it cannot have beneficial consequences; Mr Collinson agreed the benefit attracts positive weight (but lesser weight).³⁵⁶

359. Against the compelling gravity of benefits the Inspector is presented with:

- a. Limited weight that is attached to the physical reduction of the SG (with there being no significant adverse effect on the respective character of the settlements as discussed above);

³⁵² Professor Coleman XX

³⁵³ Professor Coleman RE-E *Any request from the council asking for the basis of that information prior to now? – No; Can provide it? – Yes*

³⁵⁴ Professor Coleman REE

³⁵⁵ Professor Coleman REE

³⁵⁶ Mr Collinson XX

- b. Limited weight attached to the disbenefit in relation to landscape and visual effects (whereby it is agreed by the Council that the appeal proposal would result in localised negative landscape and visual effects). This is also in the context where these effects would reduce over time due to the proposed new native woodland and hedgerow planting both around the appeal site and the offsite area;
- c. Moderate weight to the loss of potentially 29ha of BMV land (which is addressed by Mr Kernon).

360. It is plain that the benefits on offer are fully aligned to the economic, social and environmental objectives defined by paragraph 8 of the NPPF and the strategic objectives and policies in the Local Plan and DNP.

361. That said, even if the Inspector takes the view that the appeal proposals conflict in some way with the development plan; then there are still ample and substantial material considerations which would justify allowing the appeal in any event.

362. On that basis the Inspector is respectfully invited to allow the appeal.

10th July 2024

Paul G Tucker KC
Arevik Jackson

Kings Chambers

Manchester, Leeds,

Birmingham, London

