



## Appeal Decision

Inquiry opened on 18 June 2024

Accompanied site visit made on 21 June 2024

**by David Wildsmith BSc(Hons) MSc CEng MICE FCIHT MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 5<sup>th</sup> August 2024**

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

### **Land north-east of Junction 10 of the M42 Motorway, Dordon, North Warwickshire**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
  - The appeal is made by Hodgetts Estates ('the appellant') against North Warwickshire Borough Council ('the Council' or 'NWBC').
  - The application Ref PAP/2021/0663 is dated 2 December 2021.
  - The development proposed is 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; and development of overnight lorry parking facility and ancillary infrastructure and associated works. Details of access submitted for approval in full, all other matters reserved.
  - The inquiry sat for 12 days on 18–21 June, 25–27 June, 2–4 July and 9–10 July 2024.
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### **Decision**

1. The appeal is dismissed.

### **Preliminary and procedural matters**

2. The appeal was made as a result of the Council's failure to determine this proposal, with the Council subsequently indicating that if it had still been the determining authority it would have refused planning permission for 3 reasons<sup>1</sup>. In summary these were that the proposed development would not maintain the separate identities of Tamworth and Polesworth with Dordon; that it would result in a range of significant adverse landscape and visual effects which would fail to respect or respond positively to the key characteristics of the surrounding area; and that it would result in a severe impact on the road network.
3. The application was for outline planning permission with the exception of the means of access, for which full details were submitted. On this matter discussions between the appellant and the relevant highway authorities continued after the appeal had been lodged. As a result the appellant agreed Statements of Common Ground (SoCG) with the strategic highway authority<sup>2</sup> (National Highways (NH) - the highway authority for the M42 and the A5 Trunk Road), and the 2 local highway authorities, Warwickshire County Council<sup>3</sup> (WCC) and Staffordshire County Council<sup>4</sup> (SCC). NH appeared at the Inquiry as a Rule 6(6) Party and participated in a round table discussion on highways matters, as did a witness from WCC. Agreement was

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<sup>1</sup> Core Documents (CDs) E59 & E60

<sup>2</sup> CD D18

<sup>3</sup> CD D19

<sup>4</sup> CD D20

reached on the principal highways matters and this meant that the Council did not pursue its third putative reason for refusal. That said, objections on a number of highways matters were maintained by Dordon Parish Council, Polesworth Parish Council and Birchmoor Community Action Team who appeared at the Inquiry as a Rule 6(6) Party ('the Local Rule 6 Party'), and by interested persons. I deal with these matters under the third main issue.

4. After the Inquiry had closed, but in accordance with an agreed timescale, the appellant submitted 2 completed planning obligations in the form of Unilateral Undertakings (UUs) made under section 106 (S106) of the Town and Country Planning Act 1990, as amended<sup>5</sup>. I deal with these under the sixth main issue.
5. The proposed development meets the applicable thresholds of Schedule 2 of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 2017 and the appellant has submitted an Environmental Statement<sup>6</sup> (ES) and an ES Addendum<sup>7</sup> which have assessed the likely effects of the proposal on a wide range of environmental receptors. I consider that the ES and its Addendum are compliant with the requirements of the aforementioned Environmental Impact Assessment (EIA) Regulations and form an appropriate and robust assessment of the environmental implications of the appeal proposal. Along with other relevant documentation submitted with the planning application and as part of this appeal process these documents constitute the 'environmental information', which I have taken into account in coming to my decision.
6. In its planning and employment evidence the Council questioned whether the proposed industrial development and the proposed lorry parking needed to be co-located on this site and, as a result, the Inquiry considered whether these elements could possibly be disaggregated and a split decision issued. I deal with this matter later in this decision.
7. I undertook an accompanied visit to the appeal site and surrounding area in the company of representatives of the appellant, the Council and the Local Rule 6 Party on 21 June 2024. On the same day, and on other days throughout the course of the Inquiry, I visited other locations in the vicinity of the appeal site and further afield, as suggested and requested by the main parties, on an unaccompanied basis<sup>8</sup>.

### **Site description, surrounding area and details of the appeal proposal**

8. Details of the appeal site and the surrounding area are given in the main SoCG<sup>9</sup> and Landscape SoCG<sup>10</sup> agreed between the appellant and the Council, and in the Officer's Report to the Planning and Development Board<sup>11</sup>. In summary, the site comprises some 32.4 hectares (ha) of agricultural land located in the north-eastern quadrant of Junction 10 of the M42, bounded by the motorway which lies in a cutting to the west, and the A5 to the south. Further agricultural land, amounting to about 41.7ha, also in the ownership of the appellant, lies to the east<sup>12</sup>. All of this land, together with more land to the north and north-west, lies within a Strategic Gap defined in the North Warwickshire Local Plan (NWLP) 2021<sup>13</sup>.

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<sup>5</sup> Document (Doc) 37

<sup>6</sup> CDs A7-A10

<sup>7</sup> CD D14

<sup>8</sup> See Doc 33

<sup>9</sup> CD D13

<sup>10</sup> CD D15

<sup>11</sup> CD E59

<sup>12</sup> See the Red and Blue Line Plan at CD A3

<sup>13</sup> CD F1

9. The village of Dordon lies to the east of this agricultural land, with the small settlement of Birchmoor lying to the north of the appeal site, separated from it by a narrow area of paddocks. The southern part of the appeal site contains a small hardstanding area of some 0.5ha which was used a few years ago as a compound associated with the maintenance of the A5 and M42. The current land levels are between about 92 metres (m) above Ordnance Datum (AOD) in the south-western corner, rising up to about 115m AOD in the north, adjacent to Birchmoor.
10. A mature tree belt lies to the west and south-west along the route of the M42, and there is a mature hedgerow along the A5 boundary, gappy in places, together with some thickets of self-set younger trees and shrubs. The appeal site has an existing access onto the A5 leading to the hardstanding area referred to above. Public bridleway AE45 crosses the south-eastern part of the site north-south, with public footpath AE46 passing in a south-easterly direction from the bridleway, across the further agricultural land owned by the appellant to meet with the A5. These public rights of way (PRoW) are also used for agricultural access to the land.
11. Tamworth, within Staffordshire, lies to the west of the M42, with the north-western quadrant of Junction 10 containing a Motorway Service Area (MSA - within the NWBC boundary) along with an industrial and warehousing complex at Relay Park within Tamworth Borough. Similar industrial developments are located in the south-western and south-eastern quadrants of Junction 10 – Centurion Park and the Tamworth Logistics Park (formerly St Modwen Park) respectively. Further to the east, the Birch Coppice and Core 42 Business Parks, containing the Birmingham Intermodal Freight Terminal (BIFT), are located on the southern side of the A5.
12. Under the appeal proposal the appellant seeks to construct buildings to provide up to 100,000 square metres (sqm) (about 1.07 million square feet (sqft)) of mixed Class B2, Class B8 and Class E(g)(iii) floorspace, with no more than 10% or 10,000sqm of this being within the B2 and E(g)(iii) Use Classes. In addition, an overnight lorry parking facility with up to 150 spaces is proposed, together with an amenity building of up to 400sqm floorspace. The proposed development would be served by a new signal controlled all-movements access junction onto the A5, and there would also be landscaped buffer zones around the site perimeter.
13. An Amended Parameters Plan<sup>14</sup> has been submitted to define how development could be set out on the site. This, together with further information provided within a Design Guide<sup>15</sup> (DG) and a Design and Access Statement<sup>16</sup> (DAS) indicates that the tallest buildings would be at the western end of the site (Plot A1), with a maximum height of up to 117.8m AOD. The height limits for plot A2 (closest to Birchmoor) would be up to 113m AOD with up to 102m AOD for plot B2 (towards the A5 frontage). The lorry parking elements would be within plot B1 towards the eastern side of the site, with a height of up to 111m AOD. As part of the proposal public bridleway AE45 would be diverted within the development site, as necessary.
14. Surplus 'cut' material from the developable area would be utilised in the creation of landscaped buffer zones around the perimeter of the site. In the north the proposed buffer would be some 134m at its widest point, reducing to 75m at the closest point to Birchmoor. In the east the buffer would be about 106m at its widest point, reducing to 49m to the north-east of Plot A2, and extending to 65m to the east of Plot B1 and Plot B2. The buffer would have a minimum width of 35m to the south of

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<sup>14</sup> CD B37

<sup>15</sup> CD B35

<sup>16</sup> CD B34

Plot A1, extending to 58m in the south-west corner of the site close to M42 Junction 10, and 35m-37m to the south of Plot B2. There would also be a minimum 10m wide landscape buffer to the west of Plot A1 and Plot A2, alongside the existing screening vegetation for the M42 motorway.

15. In addition, by means of the submitted UU between the appellant and the Council (see later), the proposal would result in additional off-site green infrastructure on the 'blue edged' land owned by the appellant, incorporating native woodland and hedgerow planting along the route of the existing and enhanced PRow network, the provision of a community orchard on the western side of Dordon, and the conversion of arable land to species-rich pasture.

### **Main issues**

16. Having carefully considered the detail and extent of the evidence put forward by the parties I have decided to combine the first 2 main issues, for ease of reasoning and to avoid unnecessary repetition. In addition, I have assessed how the proposed development would perform against the objectives for achieving sustainable development set out in the National Planning Policy Framework<sup>17</sup> (NPPF) under the benefits and disbenefits heading, towards the end of this decision. With these points in mind I consider the main issues in this case to be:

- the effect of the proposed development on the character and appearance of the surrounding area, and whether it would maintain an effective Strategic Gap between Tamworth and Polesworth with Dordon;
- its effect on the best and most versatile (BMV) agricultural land;
- its effect on the nearby strategic and local highway network, and on the safety and convenience of users of these highways;
- whether the proposed development would address an immediate need for employment land, or a certain type of employment land and, if so, whether the appeal site is an appropriate location to meet such a need;
- whether the appeal site represents an appropriate location for the provision of an overnight lorry parking area and associated facilities; and
- whether any submitted planning obligations and/or planning conditions would adequately address the impacts of the proposed development.

17. Following my assessment of the main issues I look briefly at other matters raised, before moving on to assess the benefits and disbenefits of the proposal, carry out a final planning balance, and reach my overall conclusion.

### **Reasons**

18. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning applications to be determined in accordance with the development plan for the area unless material considerations indicate otherwise. The main SoCG states that in this case the development plan comprises the NWLP, adopted in September 2021 and the Dordon Neighbourhood Plan 2022-2033<sup>18</sup> (DNP) adopted in December 2023. Both of these plans are up-to-date, and there was no suggestion that their policies should carry anything other than full weight. The Council's putative reasons for refusal allege conflict with a number of NWLP and DNP policies and I discuss these, along with other relevant policies, under the various main issues.

19. The NPPF is a material consideration in this appeal. Its paragraph 11(c) explains that development proposals that accord with an up-to-date development plan

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<sup>17</sup> CD F11

<sup>18</sup> CD F9

should be approved without delay. I address the relevant NPPF policies as necessary throughout this decision. The Planning Practice Guidance (PPG) is also a material consideration in the determination of this appeal, as are a number of the Council's adopted Supplementary Planning Documents and Guidance<sup>19</sup> (SPD/SPG) and other relevant documents as detailed in paragraph 30 of the main SoCG.

***Main issue 1 – the effect of the proposed development on character and appearance, and whether it would maintain an effective Strategic Gap***

Policy framework

20. In summary, the Council's first putative reason for refusal alleges that the proposed development would not maintain the separate identities of Tamworth and Polesworth with Dordon, and is consequently in conflict with NWLP Policy LP4 and DNP Policies DNP1 and DNP4. It goes on to also allege that the benefits of the proposal as outlined by the appellant do not outweigh this significant harm as the requirements of NWLP Policies LP6 and LP34 are not fully demonstrated<sup>20</sup>.
21. The second putative reason for refusal points out that the appeal site lies outside any settlement boundary and is thus within the open countryside. As such it alleges that the proposed development would result in a range of significant adverse landscape and visual effects which would fail to respect or respond positively to the key characteristics of the surrounding area. Accordingly the Council considers the proposal to be in conflict with NWLP Policies LP1, LP14 and LP30, as well as with DNP Policies DNP1 and DNP4. It also alleges conflict with the NPPF, although no specific references are given in this regard.
22. With regards to the identified NWLP policies, Policy LP1 seeks the achievement of sustainable development. Amongst other things it requires development proposals to integrate appropriately with the natural and historic environment, protecting and enhancing the rights of way network where appropriate and demonstrating a high quality of sustainable design that positively improves the individual settlement's character, appearance and environmental quality of an area. It also requires new development to provide, conserve and enhance biodiversity; create linkages between green spaces, wildlife sites and corridors; and protect the existing rights of way network and, where possible, contribute to its expansion and management.
23. Under Policy LP4 a Strategic Gap has been identified on the Policies Map in order to maintain the separate identity of Tamworth and Polesworth with Dordon, and prevent their coalescence. The policy states that development proposals will not be permitted where they would significantly adversely affect the distinctive, separate characters of Tamworth and Polesworth with Dordon, and explains that in assessing whether or not that would occur, consideration will be given to any effects in terms of the physical and visual separation between those settlements.
24. Policy LP14 deals with Landscape and makes it clear that development proposals should look to conserve, enhance and, where appropriate, restore landscape character as well as promote a resilient, functional landscape able to adapt to climate change. Specific reference is made to the Landscape Character Areas (LCAs) as defined in the North Warwickshire Landscape Character Assessment (2010)<sup>21</sup> (NWLCA). In terms of landscaping proposals the policy requires new development, as far as possible, to retain existing trees, hedgerows and nature

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<sup>19</sup> See CDs F2 & F3

<sup>20</sup> NWLP Polices LP6 'Additional Employment Land' and LP34 'Parking' are outlined under later main issues

<sup>21</sup> CD G1



conservation features. It further explains that new landscape features will be assessed against the descriptions in the LCAs.

25. Policy LP30 deals with Built Form and indicates that as a general principle all development should respect and reflect the existing pattern, character and appearance of its setting in terms of its layout, form and density. To this end the policy requires, amongst other things, that development proposals should ensure that all elements of the proposal are well related to each other and harmonise with both the immediate setting and wider surroundings.
26. From the DNP, Policy DNP1 sets out criteria to ensure that all new development is sustainable. Amongst other things these require development proposals to maintain the sense of space, place and separation on land to the west of the Parish, taking into account the amenity of Dordon residents; enhance the biodiversity of the site in accordance with biodiversity net gain requirements; be well located in relation to public transport and local services; and promote active travel (cycling and walking).
27. Finally, Policy DNP4 seeks to protect landscape character. It requires development proposals to take account of the landscape, landscape character and topographical setting of the neighbourhood area and its urban environment which contribute to the distinctive character of the Parish. Where possible, new development should take a number of specified key views into account in its location and layout, and should also take account of the way the development contributes to the wider character of the neighbourhood area, with its layout, scale and boundary treatment seeking to retain a sense of space, place and (where relevant) separation.
28. The policy also requires development proposals to demonstrate that they are sympathetic to the landscape setting as defined in the NWLCA, and demonstrate how they have taken account of the landscape management strategies recommended for the relevant LCA. The policy ends by explaining that whilst those promoting new development need to show that they have taken the matters identified above into account, the provisions of strategic NWLP Policies LP4 (Strategic Gap) and LP6 (Additional Employment Land) shall have priority.

#### The effect on character and appearance

29. At the local level the appeal site lies within the northern part of LCA5, Tamworth Fringe Uplands, as designated in the NWLCA. It is listed as having a wide range of key characteristics, including 'gently undulating indistinct landform'; 'predominantly open arable land with little tree cover'; 'fragmented landscape with a complex mix of agricultural, industrial and urban fringe land uses'; and 'heavily influenced by adjacent settlement edges of Tamworth and Dordon and by large-scale modern industry [...] in the vicinity of the M42 motorway junction'. The presence of large-scale industrial buildings is a clear feature at this location, described as having an urbanising influence in this part of the LCA, along with the settlement of Dordon which is located upon the crest of a gentle escarpment.
30. The Council and appellant agree, in the Landscape SoCG, that the appeal site and surrounding area are valued by the local community for recreational use and for residential visual amenity, but do not constitute a 'valued' landscape as detailed in paragraph 180(a) of the NPPF. The parties further agree that whilst the appeal site and the area of off-site mitigation (the blue-edged land) are largely in agricultural use, the character of the area is also influenced by the visibility of the existing large-scale commercial development to the west and south, traffic noise and existing lighting. As such the appeal site is agreed to be an area of transitional

character. I broadly share that view, but saw at my accompanied site visit that because of the extensive size of the appeal site, areas away from the A5 are significantly less influenced by the existing development to the south, and retain a clear rural feel and character.

31. It is with these points in mind that the likely impact of the proposed development needs to be assessed. As this is an outline application with only a Parameters Plan and the overall proposed floorspace defined, any assessment should reasonably be carried out on the basis of a 'worst case' scenario. The Council argued that this could well be a single building on Plot A1/A2 some 580m long and 21m high, along the lines of that shown in the DAS<sup>22</sup>. However, no visualisations on this basis were submitted until just before the Inquiry opened.
32. Indeed the Council had been very critical of the visual material which the appellant had submitted throughout the progress of this proposal. In particular it pointed out that no visualisations or photomontages of the proposed development were submitted with the ES<sup>23</sup> - only baseline photographs - and that only 'wireframe' images were contained within the DAS<sup>24</sup>. Further 'wireline' visualisations were subsequently submitted but as these showed proposed vegetation in a state of maturity they gave no indication of the likely impact of the proposed development at construction or Year 1.
33. Photomontages were submitted in July 2023, but as these showed 3 buildings with curved roofs – an option not depicted in either the DG or the DAS – they again were of only limited assistance as they clearly did not depict what could be the 'worse case' scenario discussed above. Moreover, the appellant acknowledged that these photomontages showed the buildings with an incorrect height of some 121.44m AOD. It was only shortly before the opening of the Inquiry when Mr Smith, the appellant's landscape witness, submitted a Supplementary proof of evidence<sup>25</sup> (PoE), that photomontages showing a single building on Plot A1/A2, to a height of 21m, were made available. Even then, no photomontages were provided from 2 of the closest viewpoints – 3 and 10<sup>26</sup>.
34. Notwithstanding the above points, I am satisfied that sufficient information has now been submitted to enable me to make an assessment of the likely impact of the proposed development in a 'worst case' scenario. I have had regard to the comments and assessments put forward by each of the landscape witnesses, along with the wide variety of photographic and written material submitted in evidence, and have also relied on my own observations of the site and the surrounding area made at my accompanied and unaccompanied site visits.
35. As already noted, the appeal site is influenced by large-scale industrial development located to the south of the A5 and, to a far lesser extent, by similar development to the west of the M42. However, these effects are currently only perceptual, whereas the appeal proposal would physically extend this character onto the appeal site by introducing a very large building or buildings and associated hardstanding areas for vehicle parking and manoeuvring, as well as a separate overnight lorry parking facility, into this currently gently rolling agricultural landscape.

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<sup>22</sup> See page 74 of CD B34

<sup>23</sup> CD A9.6 Appendix 10.3

<sup>24</sup> CD B34

<sup>25</sup> CD D30-D, dated 5 June 2024

<sup>26</sup> See Viewpoint Location Plan LAJ-4 in CD A9.6 Appendix 10.1

36. On this point, I note that whilst the appellant's planning witness accepted that the scheme could proceed with just a single building on Plots A1/A2, he was reluctant to agree that the photomontages depicting this illustrated what would be a 'very large building', referring to it instead as just a 'large building'<sup>27</sup>. However, as a single building of 100,000sqm could have a length of about 580m and a width of about 170m, with a height of 21m, I share the Council's view that this would self-evidently be a very large building. Indeed this should be a non-controversial point as the appellant's own Employment Land Statement defines 'very large buildings' as those of 30,000sqm<sup>28</sup> (300,000sqft).
37. Mr Smith argued that if this scheme was to proceed it is unlikely that the buildings would reach the maximum height of 21m<sup>29</sup>. However, I give little weight to this view as there is no restriction on building heights in the details placed before me for determination, save for the absolute building height limit of no more than 117.8m AOD. An earlier version of the Parameters Plan did indicate that this AOD height would equate to buildings with a maximum height of 21m but the current version no longer makes any reference to the maximum height of buildings themselves, nor does the DG, referenced in one of the suggested conditions. In these circumstances I consider it quite reasonable to assess this proposal as likely resulting in a building or buildings rising to the maximum permitted height.
38. With these points in mind it is clear to me that at construction/Year 1 the proposed development would have a large-scale negative impact by introducing a very large and tall industrial building or buildings onto what is currently an open undeveloped agricultural field. This impact would be added to by the extensive areas of hardstanding, not just to serve any new building or buildings, but also to provide the proposed 150 space overnight lorry parking facility. Unsurprisingly, this view is echoed by the landscape witnesses for the Council and the appellant who agree, in the Landscape SoCG, that 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.
39. I do accept, however, that although the appeal proposal would bring about an appreciable change to the character and appearance of the appeal site itself, the large industrial buildings at the Tamworth Logistics Park on the south side of the A5 already exert an influence in character and visual terms on the appeal site – certainly on its southern part. Moreover, the appeal site's proximity to the A5 and motorway junction means that it is subject to noise from Heavy Goods Vehicles (HGVs) and traffic generally. I also accept that this is a LCA within which new industrial buildings are envisaged, as one element of the landscape/management strategy is that new industrial buildings should be sited, designed and landscaped to mitigate against further landscape impact from built development.
40. With regards to other relevant elements of the landscape/management strategy it is clear that the appeal proposal would not assist in maintaining a broad landscape corridor to both sides of the M42. However, it is plain that the presence of existing development in the north-western, south-western and south-eastern quadrants of the M42 junction already work against the achievement of this particular part of the strategy, and because of this I am not persuaded that a failure to accord with this management requirement should weigh against this proposal. Overall, I accept that many of the measures proposed for the site and the blue-edged area, such as the

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<sup>27</sup> Paragraphs 27, 222 & 394 in Doc 40

<sup>28</sup> Paragraph 5.4 in CD A12

<sup>29</sup> Paragraph 3.7 in CD D30-A



new hedgerow planting and the conversion of arable land back to pasture, would broadly accord with the overall landscape/management strategy for this LCA.

41. The impact of this change in character would lessen over time and the starkness of the new buildings would diminish somewhat, as the planting on the proposed wide landscaped buffers moves towards maturity<sup>30</sup>. That said, whilst the proposed extensive tree planting would no doubt be effective in providing some screening and filtering of views it would rely on additional height being achieved by the introduction of large bunds into the landscape, up to 5m in height, upon which the trees would be planted. These bunds would be formed from material excavated from the site to a depth of up to 8m at the site's northern end, in order to provide level development platforms for the proposed building or buildings.
42. Although I saw at my accompanied and unaccompanied site visits that man-made bunds are present in and around the Tamworth Logistics Park, Centurion Park, Relay Park and the MSA to the west of the M42, they are not a natural feature of this LCA and would therefore appear somewhat out of keeping on this northern side of the A5 – as would the dense tree cover proposed. In view of these points, and accepting the transitional nature of the appeal site, I consider that the proposed development would still result in a moderate impact on the character of the local area as a whole at Year 15, when the trees within the landscaped buffers would likely have grown to a height of some 7.5m-8.0m.
43. Turning to consider likely visual impacts, the appellant produced a computer-generated Zone of Theoretical Visibility (ZTV) which indicates where the proposed development would be seen from, and also indicates what vertical angle the development would subtend from these locations. Early versions of the ZTV drawings contained within the ES were criticised by the Council as they included planting at an unrealistic height of 10m, so the appellant submitted a revised set of ZTV drawings with planting assumed at a more realistic Year 15 height of 8m<sup>31</sup>.
44. These revised ZTV drawings show that the existing large buildings on the Tamworth Logistics Park can be clearly seen from much of the appeal site, the blue-edged land to its east, and the western side of Dordon. In practice, the large industrial buildings at the Birch Coppice Business Park and Core 42 can also be clearly seen from many of these locations, although these have been excluded from the ZTV.
45. Understandably, these drawings show that if the proposed development was to proceed, it would increase the prominence of such buildings in views from the east, including residential properties on the edge of Dordon, one of which I visited as part of my accompanied site visit. However, by Year 15 the proposed tree planting within the landscaped buffers around the appeal site would be expected to have reached a height of around 8m and, as a result, the ZTV drawings indicate that the visual impact of the proposed development, when viewed from the western side of Dordon, would be little different to that which currently exists. Nevertheless, I consider that it would be quite apparent that industrial-style buildings had moved much closer to Dordon, breaching the current strong A5 and M42 boundaries.
46. I accept that some additional screening is likely to be provided by the trees recently planted by the Parish Council at the western side of the Kitwood Avenue Recreation Ground, and by the community orchard proposed along the settlement edge south of this recreation ground as part of the off-site mitigation measures. Because of

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<sup>30</sup> See CDs B15 & B57

<sup>31</sup> CD D30-B

this, the proposal would not significantly increase the prominence of industrial development when viewed from ground floor rooms of dwellings on the western side of Dordon. On balance I consider that whilst the introduction of additional industrial buildings into the view, closer to Dordon, would be a negative feature, the overall impact would not be significant when viewed from the edge of Dordon.

47. In addition to the ZTV, the appellant agreed a total of 21 viewpoints with the Council as part of the Landscape and Visual Impact (LVIA) process. Baseline photography and photomontages showing the likely impact of the proposed development at Years 1 and 15 from a number of these viewpoints were submitted to the Inquiry<sup>32</sup>, although as noted above, the appellant chose not to submit photomontages from the 2 closest Viewpoints, 3 and 10.
48. The viewpoints were chosen to represent a wide range of visual receptors, including residential receptors mainly at Dordon and Birchmoor; walkers, cyclists and riders on the PRow network; users of open space such as the Kitwood Avenue Recreation Area and the proposed area of public open space in the south-east corner of the blue-edged land<sup>33</sup>; and vehicle users. I have already concluded, above, that the proposed development would have a negative impact on residential receptors on the western side of Dordon, but that this impact would not be significant once the intervening planting has reached semi-maturity.
49. Residents of some properties on the south side of Birchmoor currently have views across the appeal site, mainly from first-floor windows, as I saw when I visited one of these dwellings as part of my accompanied site visit. However, I was also able to see that these properties are predominantly single-storey, and that not all therefore have first-floor windows. I also saw that beyond the rear gardens of these properties there is a linear paddock area, some 20m or so in depth, bounded on both northern and southern sides by hedgerows and trees. These features limit the extent to which occupiers of these dwellings are able to see across the appeal site.
50. Under the appeal proposal there would be an extensive treed area at the north of the site, meaning that the closest buildings, on Plot A2, would be a minimum of some 100m away from these residential properties. This landscaped buffer would rise to a height of about 5m and because of the differing ground levels the evidence suggests that the roof height of these closest proposed industrial buildings would be no more than 7m higher than the residential properties. In these circumstances, whilst I acknowledge that the loss of wide-ranging views means that the visual impacts on these receptors would still be negative at Year 15, I do not consider that the effects would be significant. Nor do I consider that the proposed tree planting, which would lie beyond existing trees lining the paddock area, would be oppressive.
51. In my assessment the greatest visual impact would be on users of the PRow network, primarily those using bridleway AE45 and footpath AE46, who would generally be in closest proximity to the proposed industrial buildings and HGV activity. The photomontages make it clear that in the 'worst case' scenario, there would be significant negative visual impacts at construction/Year 1 from several of these viewpoints – notably Viewpoint 1 looking generally southwards across the appeal site from its north-eastern corner, Viewpoint 4, looking westwards towards the appeal site from footpath AE46, and Viewpoint 8 looking north-westwards towards the appeal site from the A5 end of footpath AE46.

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<sup>32</sup> In particular see CDs A7-10, B4, B30-31 & D30-D

<sup>33</sup> This area, referred to as OS1, is identified in the NWLP as an area for the relocation and replacement of allotments and open space, as part of employment allocations covered by Policies E2 and E3

52. However, as noted above, the appellant has chosen not to submit photomontages from the 2 closest Viewpoints, 3 and 10 - on bridleway AE45 at its junction with footpath AE46, and at the southern end of bridleway AE45, by the A5. In my opinion there would be a major adverse effect on receptors at both of these viewpoints at construction and Year 1, and notwithstanding the proposed planting and mitigation, I consider that the visual effect at all of these Viewpoints is likely to remain major or major/moderate and significant at Year 15.
53. To my mind the fact that the appellant has not identified any significant effects from any of the close proximity viewpoints in Year 15 reinforces the Council's view that the appellant has tended to underplay the impact of what would be a very large building or buildings, sited within an agricultural field, albeit of transitional character. I note that the Officer's Report to the Planning and Development Board considered that the proposal would result in moderate landscape and visual harm, but this conclusion was reached without the benefit of the 'worst case' photomontages submitted to the Inquiry. I accept, however, that other viewpoints would generally be further away from the proposed development and would therefore be unlikely to experience significant negative visual effects in Year 15.
54. Finally on the topic of viewpoints, it is relevant to consider the impact of the proposed development on the DNP key views V1, V2 and V3, which broadly accord with LVIA Viewpoints 5, 20 and 13. Key views V1 and V2 look south-westwards and westwards from the western side of Dordon, in the general vicinity of the Kitwood Avenue Recreation Area, and I have already commented, above, that although the proposed development would be seen as a negative feature from such locations, its visual impact would not be significant at Year 15.
55. However, a different situation arises with regard to key view V3, which looks eastwards across the appeal site to Dordon from a pedestrian crossing point of the southbound M42 off-slip. I acknowledge that the continuing availability of this view seems to be somewhat dependent on third-party maintenance of the vegetation and planting on the slip road embankment, and it is difficult to be clear on the likely impact of the proposed development in the absence of a firm site layout. Nonetheless, it is highly likely that the proposed industrial buildings and the overnight lorry parking area would be prominent in views from this location.
56. I note that the supporting text to DNP Policy DNP4 explains that these key views are not intended to be a bar to development<sup>34</sup> and that local people acknowledge that development may take place within these key views, but that the layout of any such development should, where possible, provide glimpses between buildings to countryside views beyond. Nevertheless, having regard to the potential size and positioning of buildings permitted by the Amended Parameters Plan I find it difficult to see how this policy objective could reasonably be achieved in this case.
57. Summarising all the above points, my overall conclusion is that notwithstanding the proposed on-site and off-site mitigation measures, at Year 15 the appeal proposal would still have a moderate adverse impact on landscape character and some significant adverse visual effects on receptors at the closest viewpoints, primarily on bridleway AE45 and footpath AE46. As such, the proposed development would have an adverse impact on the character and appearance of the surrounding area, in landscape and visual terms, and would therefore be at odds with the objectives of NWLP Policies LP1, LP14 and LP30, and with those of DNP Policies DNP1 and DNP4.

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<sup>34</sup> Paragraph 65 of CD F9

## Strategic Gap

58. As already noted, the appeal site lies within a defined Strategic Gap extending to some 450ha at the north-western edge of the Borough, set out diagrammatically in the NWLP<sup>35</sup> and covered by NWLP Policy LP4. The Strategic Gap is the current version of a long-standing planning policy objective to maintain a gap between Polesworth with Dordon and Tamworth. This protected area has been referred to variously as an 'Area of Restraint' and a 'Meaningful Gap' from as far back as the late 1980s, with these areas extending to both the north and south of the A5.
59. Before the adoption of the NWLP the relevant policy was NW19 in the North Warwickshire Core Strategy<sup>36</sup> (NWCS), adopted in 2014. This policy indicated that the broad location of growth for Polesworth and Dordon would be to the south and east of the settlements. It went on to state that *'any development to the west of Polesworth and Dordon must respect the separate identities of Polesworth and Dordon and Tamworth and maintain a meaningful gap between them'*.
60. As the geographical extent of the meaningful gap had not been defined at this time, the Council commissioned an assessment which resulted in the Meaningful Gap Report<sup>37</sup> (MGR) of August 2015. Amongst other things this indicated that some locations within the gap correspond with significant gateways/entrances to the Borough along significant transport corridors. In those cases the MGR stated that the need to protect such areas from significant development is reinforced both by NWCS Policy NW19 and the need to deliver the NWCS Spatial Vision of retaining and reinforcing the rural character of North Warwickshire, to ensure that when entering the Borough it is distinctive from the surrounding urban areas<sup>38</sup>.
61. In the MGR the appeal site and adjacent blue-edged land were both located within Area 8, which was described as having the most obvious potential for maintaining a meaningful gap between the settlements of Tamworth and Dordon, with the clear boundaries provided by the M42 to the west and Dordon's built edge to the east. The MGR commented that although Areas 8 and 9 (to the south of the A5) are considered less sensitive in landscape terms, they operate more significantly as a strategic gap on the major gateway into the Borough from the west and are more sensitive to the impact of development, in view of their open aspect. As such they were considered to constitute the main meaningful gap area between Tamworth, the M42 and the built areas of Dordon and Birch Coppice, along with Areas 2 and 6 further north, which followed the broad, eastern corridor of the M42.
62. Around this time an application for development for some 80,000sqm of floorspace within Use Classes B1(c), B2 and B8 on land in the south-eastern quadrant of the M42 Junction 10 (within MGR Area 9), was under consideration by the Council. The Council refused planning permission with one reason for refusal being that the scheme would harm the separate identity of Dordon and undermine the meaningful gap between Polesworth and Dordon and Tamworth. That refusal was appealed<sup>39</sup>, and the Inspector who determined that appeal granted planning permission for what subsequently became St Modwen Park<sup>40</sup>. In so doing he assessed the proposal against NWCS Policy NW19, and was also aware of the 2015 MGR.

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<sup>35</sup> Page 32 of the Maps section of CD F1

<sup>36</sup> See paragraphs 7.85-7.90 in CD F14

<sup>37</sup> CD G2

<sup>38</sup> See paragraphs 8.1 & 8.2 of CD G2, and paragraph 3.2 of CD F14

<sup>39</sup> See CD K2 - referred to at the Inquiry as the St Modwen appeal

<sup>40</sup> Now renamed the Tamworth Logistics Park

63. Overall he concluded that due to the large area of open farmland to the north of the A5, combined with the location of Dordon on higher ground, its different character and appearance to Birch Coppice and the inclusion of a landscaped buffer along the eastern site boundary, that proposal would respect the separate identity of Dordon, and maintain a meaningful gap between Polesworth and Dordon and Tamworth. As a result, he found no conflict with NWCS Policy NW19. Put simply, the St Modwen appeal was allowed on the basis that any harm would be sufficiently mitigated by the continued existence of the open undulating farmland to the north, which would ensure sufficient separation between the settlements of Tamworth and Dordon and permit them to maintain their distinct characters.
64. Self-evidently that Inspector was dealing with a different proposal to that before me, and had to grapple with different facts and evidence. He did not have to consider the consequences of development of the appeal site upon the effectiveness of the residue of the gap, or its effect on the character of the settlements. Nor was he asked to consider any alternative scheme north of the A5 and whether the amount of agricultural land that the appellant is now proposing would retain the separation. That said, I consider that his comments and views are pertinent and should be given weight. I have had regard to them in reaching my conclusion on this issue.
65. In policy terms things have moved on since the time of the St Modwen appeal. At that time the Council had begun the preparation of what subsequently became the NWLP, and to assist in that process it commissioned another study to look further into the value of the meaningful gap and also to assess potential Green Belt alterations<sup>41</sup>. This was known as the Assessment of Value Report (AVR), issued in January 2018. The AVR used broadly similar land areas for assessment as had the 2015 MGR, but referred to them as 'Parcels' rather than 'Areas'.
66. The AVR assessed how the various land parcels contributed to separation between settlements in terms of both physical and perceived separation. Parcel 8 was again described as performing very strongly as part of the meaningful gap by providing a buffer and sense of separation between the 3 separate settlements (Tamworth, Dordon and Birchmoor), which are very close to each other. The AVR's overall recommendation was that the meaningful gap should be retained, that Policy NW19 should be strengthened, and that the title of the meaningful gap should be changed to 'Strategic Gap' or 'Local Gap', so that its status would be clearer.
67. The Council took this advice forward into the NWLP and promoted a new Strategic Gap policy. Amongst other matters, the Inspector who examined that Plan commented how many local residents accorded significant value to the rural surroundings to Polesworth with Dordon<sup>42</sup>, and noted that a landscape does not have to be formally protected to merit protection within the terms of the NPPF<sup>43</sup>. He further stated that part of the intrinsic character to Polesworth with Dordon derives from its separation from Tamworth. With regard to the land parcels assessed in the 2015 MGR and 2018 AVR studies he took the view that they would inevitably include smaller apportionments where development may be advanced, but considered that that was a matter that legitimately falls to decision-taking.
68. In emphasising this last point he commented that whilst the broad extent of the Strategic Gap is justified, it may well be the case that alternatively defined parcels

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<sup>41</sup> CD G3

<sup>42</sup> See paragraphs 227-241 in CD F15

<sup>43</sup> At that time the relevant paragraph was 109 in the 2012 NPPF - now paragraph 180 in the current 2023 NPPF



of land have differing degrees of sensitivity, noting that the WCC Landscape Guidelines<sup>44</sup> point to a somewhat mixed landscape character between Tamworth and Polesworth with Dordon, including certain 'urbanising features'. As a result he considered it conceivable that certain schemes could be designed so as to be suitably accommodated within the Strategic Gap without undermining its purpose.

69. He was critical of the Council's attempt to limit all new development within the gap to only being small in scale, and because of this he modified the submitted policy to remove this requirement. As adopted, Strategic Gap Policy LP4 states *'In order to maintain the separate identity of Tamworth and Polesworth with Dordon, a Strategic Gap is identified on the Policies Map in order to prevent their coalescence. Development proposals will not be permitted where they significantly adversely affect the distinctive, separate characters of Tamworth and Polesworth with Dordon. In assessing whether or not that would occur, consideration will be given to any effects in terms of the physical and visual separation between those settlements'*.
70. Having regard to the above points, it is clearly the case that the proposed development would not bring about any physical coalescence of Tamworth and Polesworth with Dordon. Nor did any of the parties suggest that the proposal would have an adverse effect on the character of Tamworth. The evidence presented at the Inquiry therefore focussed on what effect, if any, the proposed development would have on the distinctive and separate character of Polesworth with Dordon, as a separate settlement to Tamworth.
71. Looking first at the effect of the proposed development in purely physical terms the Council and appellant agree, in the Landscape SoCG, that in the vicinity of the appeal site the existing distance between Dordon/Polesworth and Tamworth is approximately 1200m at the narrowest point and approximately 1450m at its widest point. If the appeal proposal was to be implemented a physical gap of about 750m between the appeal site and Dordon would remain to the north of the A5, representing a reduction in width of about 430m. Separately, the Local Rule 6 Party maintained that with the exception of the narrow row of paddock fields and the proposed landscaping, the proposed development would essentially connect the employment area south of the A5 up to Birchmoor.
72. When considering the proposed Strategic Gap policy the NWLP Inspector noted that in 2 recent appeals concerning this overall gap area<sup>45</sup> the relevant Inspectors had commented that reliance on a simple 'scale rule' approach to maintaining separation between settlements should be avoided, and that the character of the settlements concerned and the land in between needed to be taken into account. The NWLP Inspector took this point on board in putting forward his wording for Policy LP4, and I, too share this view. With these points in mind all parties agree that one method for assessing the effectiveness of a gap between 2 settlements is to apply what are known as the 'Eastleigh Criteria'.
73. As well as having regard to distance, these criteria also take account of topography, landscape character/type, vegetation, existing uses and density of buildings, nature of the settlement edges, inter-visibility of the settlement edges (the ability to see one edge from another), intra-visibility of the settlement edges (the ability to see both edges from a single point), and the sense of leaving a place and arriving somewhere else. I have had regard to these criteria and the views of the landscape witnesses in coming to my own assessment.

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<sup>44</sup> CD G9

<sup>45</sup> See CDs K1 & K2

74. In simple distance terms I consider that the proposed development would appreciably reduce the existing separation between Dordon and the M42 (which in many ways can be seen as a proxy for the edge of Tamworth), both for drivers and other users of the A5, and for users of the PRow across the current gap area. The appellant refers to the effectiveness of much narrower gaps than would be the case here, stating that gaps of around 200m can still allow settlements to retain their separate identities, but that clearly depends on the nature of the gap itself and the nature of the buildings and settlements either side. In any case, whether or not narrower gaps elsewhere serve effective gap purposes is not material in this case.
75. Dordon sits on higher ground, with open, agricultural land sloping down westwards in a gently rolling and undulating fashion towards the M42. I share the appellant's view that at present this agricultural land between Dordon and Tamworth is a marked contrast to the settlements and commercial developments, and thus helps to provide a clear sense of separation between them<sup>46</sup>. The appellant rightly notes that this is the 'expanse of farmland', notably lower than Dordon, that the St Modwen Inspector concluded would continue to provide an 'unequivocal sense of separation from Tamworth'. However, I take a different view from the appellant with regards to the likely impact the proposed development would have on this sense of separation and the character of the area.
76. The appellant argues that although some of this open farmland would be lost to development, about 750m would remain between the 2 settlements at the closest point, and that the gently sloping ground between the appeal site and Dordon would therefore remain in its current state. In the appellant's view this gap, coupled with the provision of additional native hedgerow and woodland planting within the off-site mitigation area would reinforce the rural characteristics of this space, ensuring that there remains a marked difference in character between settlement edges and the intervening space. As such the appellant maintains that Dordon would continue to be very clearly defined by the steep slope at its western edge and its position on higher ground.
77. However, these are self-evidently not the only defining features which give Dordon its character. Its rural setting is also a very important element of its character as is made plain by the commentary to key views V1, V2 and V3 in the DNP. These highlight the contribution the Strategic Gap makes to the separation of the edge of the Dordon built-up area from development of large industrial units to the south of the A5, and from Tamworth. The appeal proposal seeks to introduce a very large building or buildings into this gently undulating topography, on flat development platforms, and the landform would also be significantly altered by the introduction of large perimeter bunds, up to 5m in height, whose sole purpose would be to assist in shielding the new building(s).
78. Extensive tree planting is proposed for these bunds, and whilst this would clearly serve to filter some views of the proposed building(s), it would take many years to mature and could not disguise the development's size and scale. Moreover, there is currently only limited vegetation on the appeal site and in this part of the Strategic Gap, with a large field pattern, relatively few hedgerows and associated trees, and very little woodland except a fairly small copse to the east. Whilst I acknowledge that some new hedgerow planting has taken place alongside the bridleway, the current lack of significant vegetation means that long and open views are available across this land. In light of these points, extensive woodland planting of the scale

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<sup>46</sup> Paragraph 5.23 in CD D30-A

proposed for the northern and eastern sides of the appeal site would not be a feature of this local area and would therefore be out of character, as already noted.

79. Overall, the effect of the introduction of very large scale development onto the appeal site would be to bring the character of Tamworth much closer to Dordon, foreshortening westward views out of the gap area and significantly changing the area's open feel. In such circumstances, inter-visibility across the gap would remain, but the perceived separation between settlements would be considerably reduced from that which currently exists, as the built form of Tamworth would effectively move to the eastern side of the M42, in a significant and substantial fashion. Similar points arise in terms of intra-visibility. A sense of separation would remain between Dordon and Tamworth, but to my mind it would be much reduced, for reasons already given.
80. The last part of the Eastleigh Criteria relates to the sense of leaving a place and arriving somewhere else, a matter echoed in the supporting text to NWLP Policy LP4 at paragraph 7.28. This states that the Strategic Gap *'seeks to retain and maintain the sense of space, place and separation between these settlements so that when travelling through the Strategic Gap (by all modes of transport), a traveller should have a clear sense of having left the first settlement, having travelled through an undeveloped area and then entering the second settlement'*.
81. At the present time, people travelling eastwards on the A5 experience open fields and countryside on their left-hand side, in significant contrast to the urban nature of Tamworth to the west of the M42. Under the appeal proposal this experience would change significantly as major industrial development in the form of a very large building or buildings would occupy this currently open area, together with the presence of large areas of hardstanding for vehicle parking and manoeuvring, and a substantial lorry parking facility. This would be clearly seen by A5 travellers, as much of the existing roadside hedging and vegetation would need to be removed to allow the necessary highway improvements to take place. This would include the construction of a new all-movements traffic signal controlled junction, which again would serve to make this area appear more urbanised.
82. I acknowledge that eastbound travellers would still experience a length of undeveloped land between the end of the proposed development and the start of the built-up area of Dordon, but at around 750m this would be traversed quite quickly by car, passing through 2 further traffic signal installations. As such I find it difficult to agree that there would be any really meaningful sense of leaving one place and arriving in another. A similar situation would arise for westbound travellers. In this case I accept that vehicle travellers would be on the south side of the A5, but the proposed building or buildings on the appeal site would be visible from some distance away. Coupled with the fact that there is existing large-scale development along much of the southern side of the A5, and the presence of the aforementioned sets of traffic signals, I consider that this whole length of A5 would have a clear urban or suburban feel, with no real sense of a different character between Dordon and Tamworth.
83. A somewhat different situation would exist for users of the PRoW network. Whilst future travellers passing north or south on the bridleway would undoubtedly be aware of the new development to the west, once they turn east onto footpath AE46 they would leave the new development behind them and would experience a rural journey from that point up to Dordon. However, I am not persuaded that travellers making the reverse journey would have a similar experience, as the very large

building or buildings on the appeal site would have a continuing visual presence for much of the westbound journey on footpath AE46, in effect spreading its urbanised and industrial character and influence onto the intervening land.

84. In my assessment the size and scale of the proposed development means that this would be the case despite the shielding and filtering that would be provided by the proposed off-site mitigation planting and the tree planting on the bund at the eastern side of the appeal site. Overall, I do not consider that the area which would remain, if the proposed development were to proceed, would give a clear sense of leaving one area, and travelling to another, as required by the Eastleigh Criteria. Rather, it is my view that the proposed development would fail to maintain a sense of space, place and separation between the settlements of Tamworth and Polesworth with Dordon.
85. In summary, development of the size and scale proposed through this appeal would eat massively into the open expanse of undulating farmland to the north of the A5 which was instrumental in enabling development to the south of the A5 at what is now the Tamworth Logistics Park to be granted planning permission. This would significantly change the character of a very large portion of this clearly identifiable gap and undermine the reasoning used by the St Modwen Inspector to justify allowing that appeal. It would give the clear impression of Tamworth leap-frogging the M42, but not in any minor way.
86. Rather, the appeal proposal seeks a very substantial development with a proposed floorspace appreciably larger than that allowed through the St Modwen appeal, potentially with just a single very large building which would be larger than any other nearby building on the Tamworth Logistics Park or the Birch Coppice or Core 42 Business Parks. In addition, it would be accompanied by a significantly-sized overnight lorry parking area with all its attendant HGV activity and lighting, extending well into the defined Strategic Gap. To my mind, and echoing the words of the NWLP Inspector, this is not a scheme which could be suitably accommodated within the Strategic Gap without undermining its purpose.
87. I therefore have no doubt that if this development was to proceed it would harmfully change the character and appearance of what would be a large portion of a clearly defined and important part of the Strategic Gap, on an important entrance to the Borough. This, in turn, would substantially alter and impinge on the countryside setting of Dordon and would thereby have a clear and significant adverse impact on its distinctive character and identity. The proposed off-site mitigation would reduce this impact, but would not be able to disguise the fact that development of a significant size and scale would be present on the north side of the A5, east of the M42.
88. Drawing all the above points together I conclude that the proposed development would have an adverse impact on the character and appearance of the surrounding area, and would fail to maintain an effective Strategic Gap between Tamworth and Polesworth with Dordon. Accordingly I consider the proposal to be in conflict with NWLP Policies LP1, LP4, LP14 and LP30, and with DNP Policies DNP1 and DNP4.

***Main issue 2 – the effect on the best and most versatile (BMV) agricultural land***

89. The loss of agricultural land had not been a concern to the Council during the planning application process, and did not feature in the Council’s putative reasons for refusal. It was, however, raised by a number of interested persons in their

representations at both application stage and appeal stage, and was also expressed as a concern by the Local Rule 6 Party.

90. Evidence before the Inquiry shows that the appeal site contains about 29ha of very good Grade 2 agricultural land, with about 2ha of moderate Grade 3b land, and about 1ha of non-agricultural land<sup>47</sup>. This BMV land would be lost to agricultural production if the appeal proposal was to proceed. Further agricultural land within the blue-edged area would also be taken out of active arable production and would be converted to pastureland, or be required to provide the necessary areas for biodiversity net gain (BNG). However, with regards to this additional land I see no reason to dispute the appellant's point that using land to take an occasional haylage/silage crop or for grazing livestock is still an agricultural use, and that a reversion to arable would be possible in the future, if the land was so required.
91. Agricultural evidence provided by the appellant explains that the appeal site is part of a larger block of agricultural land currently farmed using large scale agricultural contractors<sup>48</sup>. The land use is arable cropping and its loss would have no detrimental effect on the appellant's business or that of the contractors. Moreover, the evidence is that there would be no significant adverse effects on any farm business, labour or other economic impact for the farm or the rural economy. No contrary evidence has been put before me on these matters.
92. Planning policy does not place a bar on the loss of agricultural land, with the NPPF simply requiring that planning decisions should recognise the economic and other benefits of BMV land, and stating that where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred to those of a higher quality. In this case, the evidence is that poorer quality land is not generally available in this area, such that any development in the area would be expected to involve the use of BMV land. In light of these points I conclude that the loss of agricultural land would only carry limited weight against this proposal, if it were to proceed.

***Main issue 3 – effect on the nearby strategic and local highway network, and on the safety and convenience of users of these highways***

93. As noted above, approval was sought in full for the means of access for this proposal, and because of the location of the appeal site and its proximity to the Warwickshire/Staffordshire boundary, a total of 3 highway authorities have had an involvement. At the time the Council's Planning and Development Board considered this application, after the appeal had been lodged, no agreement had been reached with NH who's interest was not only in the safety, specification and operation of the proposed site access, but also the capacity of the wider Strategic Road Network (SRN), specifically Junction 10 of the M42 and the A5. In addition, WCC as highway authority for the non-strategic highway network within Warwickshire also maintained an objection to the proposal, placing reliance on the views of NH.
94. The Officer's Report explained that as the majority of the strategic housing allocations within the NWLP are dependent upon the delivery of substantial improvements to the A5 itself, development that is not allocated in the NWLP could well take up capacity on the A5 such that the delivery of these allocated sites would be prejudiced. Because of these points the Council was concerned that the proposed development could result in an unacceptable impact on both the strategic

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<sup>47</sup> Paragraph 3.6 of Appendix 6 to CD D28-B

<sup>48</sup> See Appendix 6 in CD D28-B



and local highway networks, and/or could give rise to increased danger and inconvenience to highway users, including those travelling by sustainable modes. As a result the Council maintained that the proposal could result in a severe impact on the road network contrary to NWLP Policies LP23, LP27 and LP29(6), as well as NPPF paragraph 115.

95. In brief, these NWLP policies require proposals for development to submit an appropriate Transport Assessment; consider what improvements can be made to encourage safe and fully accessible walking and cycling; and provide safe and suitable access to the site for all users. Paragraph 115 of the NPPF states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
96. Discussions continued with the highway authorities both in the run-up to the Inquiry and during the Inquiry itself. As part of this process improvements to M42 Junction 10, amounting to a significant proportion of the improvements already agreed to be necessary to allow the delivery of development allocated in the NWLP, were agreed with NH. SoCG were agreed with NH, WCC and SCC before the Inquiry opened, with just a few outstanding matters remaining with NH, relating primarily to a necessary Safety Risk Assessment and a Road Safety Audit (RSA).
97. These additional matters were resolved before the Inquiry closed, such that subject to the imposition of a planning condition requiring completion of the RSA in accordance with Standard GG119 of the Design Manual for Roads and Bridges, NH was satisfied that the proposed site access would function acceptably, and that the development would not result in an unacceptable impact on the SRN. WCC and SCC were also both satisfied that the proposed development would not result in any significant capacity or highway safety concerns on the relevant local roads within their jurisdiction. In view of the above points, the Council did not defend its putative third reason for refusal at the Inquiry.
98. Notwithstanding the agreements detailed above, there were still some general highway concerns raised by both WCC and the Local Rule 6 Party. WCC's concerns related to the appellant's claims that the Junction 10 mitigation works proposed as part of the appeal proposal would provide additional benefits by being able to accommodate a specified amount of traffic from development allocated in the NWLP. These claims were made by the appellant's traffic consultants, as a result of assessments using the traffic modelling program TRANSYT16, agreed with NH as being appropriate to assess the appeal scheme's impact on the A5 and M42 Junction 10<sup>49</sup>. However, whilst WCC was also content with this program insofar as the assessment of the appeal proposal itself is concerned, it has not agreed its use to assess any additional development, such as that allocated within the NWLP.
99. For any such assessments WCC would expect its own Modelling Protocol to be used and adhered to, which in this case would involve the use of WCC's Paramics Microsimulation Model<sup>50</sup>. As this model had not been used to evaluate the likely cumulative impact of the proposed mitigation on the developments included within the NWLP, WCC does not agree with the appellant's assertion that a certain level of the NWLP developments could be delivered in advance of any mitigation previously considered in the NWLP. Nor does it agree that the proposed mitigation would help to deliver any level of the NWLP development.

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<sup>49</sup> Paragraphs 6.25-6.44 in CD D32-A

<sup>50</sup> See CD D38

100. At the round table session to discuss these matters the appellant accepted that the benefit to the NWLP schemes could have been overstated, as the assessment which had been undertaken was described as simple and high-level. Nevertheless, it seems clear to me that by delivering what would amount to around half of the Junction 10 improvement scheme which was promoted as appropriate at the time of the NWLP examination, the appeal proposal is likely to also deliver some wider benefits with regards to the development allocated in the NWLP. In light of these points, but having regard to WCC's concerns, I consider it appropriate to take a somewhat cautious approach to this matter. I therefore accord modest weight to the appeal proposal in this regard.
101. The matters raised by the Local Rule 6 Party related mainly to concerns that workers at the proposed development could choose to park off-site at Birchmoor and use the PRow network to reach their place of work; thereby giving rise to additional parking pressures within Birchmoor; and that an increased number of HGVs could find themselves 'lost' within Birchmoor. The appellant accepted that these scenarios could occur, and indicated a willingness to address these matters by offering a 'Birchmoor Parking Contribution' and a Birchmoor Highway Signage Contribution' through the UU with WCC. The Local Rule 6 Party was content that these offered contributions would mitigate any harm likely to arise in these regards. I deal with these contributions in more detail under main issue six.
102. In terms of public transport I understand that a strategy<sup>51</sup> has been agreed between WCC and a local bus operator, Stagecoach, which proposed diverting the 766/767 Nuneaton – Tamworth bus service into the site. Agreement has been reached on this matter between Stagecoach, WCC and SCC<sup>52</sup>. The appellant indicates that the diversion of this service would require financial support via a S106 obligation and a sum has been identified by WCC and Stagecoach.
103. The 766/767 service is to cease operations in July 2024 as S106 financial support from developments at Birch Coppice comes to an end. Replacement bus services between Tamworth and Birch Coppice are being provided by SCC (the No 66), and between Nuneaton and Birch Coppice by WCC (the No 41), and SCC and WCC have agreed that these services could be extended/diverted to serve the appeal site. The parties agree that the proposed S106 contribution of £216,000 per annum, for 5 years, could fully fund reinstatement of the 766/767 service or provide further support for the 66 or 41 services. In addition, the bus service diversion would include a bus turning area within the appeal site and a bus shelter, and WCC have requested real-time passenger information displays at the bus shelter. The appellant is willing to provide these features as part of the proposed development.
104. The appeal proposal also includes a range of improvements to walking and cycling routes between the site, Tamworth, Birchmoor, Polesworth and Dordon which would benefit employees and users of the proposed development<sup>53</sup>. These improved routes would also benefit the wider community by improving accessibility between the settlements and Tamworth Logistics Park, Birch Coppice and Core 42 Business Parks. As most of the routes are essentially rural in nature, passing through open farm land, it is proposed that the routes remain unlit. On this point the appellant commented that there are reasonable lit alternative foot/cycleway routes for those who do not wish to use the proposed unlit routes.

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<sup>51</sup> CD H22

<sup>52</sup> See CD E55 and Appendices NRB27 & NRB28 in CD D32-B

<sup>53</sup> Paragraphs 9.7-9.12 of CD D32-A, and CD B16

105. I also note that WCC's Local Cycling and Walking Infrastructure Plan<sup>54</sup> (LCWIP) identifies a number of potential routes for upgrading through this area, included AE45 (LCWIP route P03) and a link to Dordon from AE45 (LCWIP route P09). Both of these are shown as passing through 'open space', and it is apparent that the route improvements proposed through the appeal scheme would assist towards the delivery of these proposals. Some concern was expressed by both the Council and the Local Rule 6 Party that surfacing of these retained/redirected PRoW as 2m or 3m wide paths would give them a much more urban or suburban appearance which would be out of keeping in these rural locations.
106. Indeed, the Proposed Connectivity Plan at CD B16 indicates that bridleway AE45 would be part tarmac and part grassland, whilst footpath AE46 and other formal and permissive footpaths in this area are proposed as '*3m wide dual-use tarmac pavement/cycleway along route of existing and proposed public rights of way*'. I, share the views expressed by the Council and the Local Rule 6 Party on this point, and it is questionable why the appellant considered such surface treatment to be appropriate in this rural area. That said, I see no good reason why this matter could not be satisfactorily addressed by the approval of alternative and more appropriate surfacing materials, at reserved matters stage, if this proposal was to be allowed.
107. These matters have all been brought together in a Vision Based Travel Plan<sup>55</sup>, which sets out the predicted multimodal trip generation of the appeal proposal, the range of sustainable transport measures proposed, the likely reductions in vehicular traffic that could reasonably be expected from the sustained implementation of the Travel Plan, and the reduction in HGV movements which could reasonably be expected from being a rail-served development (see later). This Travel Plan could be secured by condition if planning permission was granted for this proposed development.
108. Finally on this issue, although concern was expressed by local residents about general congestion if planning permission were granted for the proposed development, no specific detail on this matter was provided. In these circumstances, and having had regard to the Revised Transport Assessment<sup>56</sup>, I do not consider that the appeal proposal would give rise to any unacceptable congestion or highway safety issues.
109. Drawing together all the above points, I conclude that the appeal proposal would not have an adverse impact on the nearby strategic and local highway network, or on the safety and convenience of users of these highways. In addition it would cater for the needs of non-car users wishing to access the proposed development. Accordingly, I find no conflict with the NWLP policies referred to above, or with paragraph 115 of the NPPF.

***Main issue 4 – whether the proposed development would address an immediate need for employment land, or a certain type of employment land and, if so, whether the appeal site is an appropriate location to meet such a need***

Policy background

110. There has been no clear indication of how to address the need for further large-scale B8 logistics development in North Warwickshire since the revocation of regional planning in 2012. This was an issue in 2013/14, when the NWCS was being examined, with the Inspector having to consider whether provision should be made

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<sup>54</sup> CD H30

<sup>55</sup> CD H25

<sup>56</sup> CD B25

to meet a regional need for large warehouse and distribution sites – referred to as Regional Logistics Sites (RLS). An Employment Land Review produced in 2013 to assist on this matter used 2 different models to predict future needs – one based on trends in economic performance and one based on past completions. The first of these estimated a need of 164ha, with the second estimating the need to be 313ha.

111. The Inspector noted that the Borough has two RLS, at Hams Hall and Birch Coppice, and that the floorspace created at these sites has a significant influence on the past completion model. He considered that it would not be prudent to rely on the past completions model as there are other suitable areas in the region which will compete with North Warwickshire to address this need, and he did not consider he had sufficient evidence to be able to set a RLS requirement for North Warwickshire. In order to make the plan sound he therefore introduced a commitment for the Council to review the NWCS, should currently on-going studies identify a need for more RLS floorspace in the Borough.
112. However, the Council did not undertake such a review but chose, instead, to prepare a full new Local Plan (the NWLP). Employment requirements for the Borough are dealt with in the NWLP from paragraph 7.36 onwards, and are set out in Policy LP5. Amongst other things this indicates that for 2011 to 2033 the Council will make provision for a minimum of 100ha of employment land to meet local needs. This 100ha is, however, subject to Policy LP6, which deals with Additional Employment Land. This policy was introduced to address the need for large-scale employment provision, particularly in respect of storage and distribution.
113. This is made clear in the NWLP Inspector's Report<sup>57</sup> which noted that various studies referenced during the Local Plan Examination pointed to the '*paucity of readily available land for large scale employment provision*'. In particular the Inspector referred to the West Midlands Strategic Employment Sites Study<sup>58</sup> (WMSESS) of September 2015, and its comment that demand for large-scale industrial space in the West Midlands is most intense along an 'M42 belt', which was shown diagrammatically on a map<sup>59</sup> and referred to as 'Area A', within which a significant amount of North Warwickshire falls.
114. The Report further noted that at the time the WMSESS study was prepared, land supply for large-scale development provision stood at around 3.7 years, relative to demand, with there being a high level of demand for large-scale facilities across the West Midlands broadly. The Report acknowledged that for consistency with the NPPF as it stood at that time, the NWLP needed to address this issue. This was achieved by means of Main Modifications to the plan at examination, resulting in the adopted version of NWLP Policy LP6.
115. This states '*Significant weight will be given in decision taking to supporting economic growth and productivity, particularly where evidence demonstrates an immediate need for employment land, or a certain type of employment land, within Area A on Figure 4.10 of the WMSESS of September 2015 (or successor study) which cannot be met via forecast supply or allocations. The relevant scheme will be required to demonstrate: (i) access to the strategic highway network is achievable and appropriate, (ii) the site is reasonably accessible by a choice of modes of transport, and (iii) it is otherwise acceptable, taking account of the living conditions of those nearby*'.

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<sup>57</sup> See paragraphs 176-180 of CD F15

<sup>58</sup> CD I1

<sup>59</sup> Shown as Figure 4.10 in the WMSESS (CD I1)

116. The Council and the appellant both agreed that the wording of the policy is somewhat ambiguous, as it is unclear whether the requirement to demonstrate an 'immediate need' applies to both 'employment land', and also 'a certain type of employment land'. Despite this rather awkward wording both parties considered that 'immediate need' applied to both of these limbs and I share that view.
117. The supporting text to this policy explains that Area A encompasses land covered by the Strategic Gap, designated Green Belt, and land which is not in categories 1, 2, 3 or 4<sup>60</sup> of NWLP Policy LP2. It states that this policy does not automatically override other policies, but recognises that there are particular locational requirements specific to certain employment uses, and economic benefits to addressing needs in those locations. As such it comments that any weight accorded to proposed employment provision by virtue of this policy will be considered in the context of the policies in the plan as a whole in arriving at a balanced assessment.
118. In addition to the above, the 2015 WMSESS is also referenced in NWLP paragraph 7.41 which comprises further supporting text in the 'Employment Requirements' section. This paragraph indicates that since the preparation of the NWCS, the WMSESS and another study have made it clear that there is a wider than local need for large sites, and that this provision does not necessarily have to be provided for within North Warwickshire. It goes on to state that the Council will continue to work with other local planning authorities to see what opportunities there are around the East and West Midlands to deal with this need, and points out that there are large-scale sites coming forward in other areas such as Daventry, Market Harborough, North-West Leicestershire and South Staffordshire.

Need, 'immediacy', and how and where it should be addressed

119. There was agreement between the Council and the appellant that 'Big Box' logistics, namely a specific segment within the overall employment land market which caters for logistics and distribution (Use Class B8), with unit sizes greater than 10,000sqm (100,000sqft), would accord with the Policy LP6 reference to 'a certain type of employment land'. Moreover, both parties accepted that a need has been identified both regionally and nationally for such large strategic employment sites<sup>61</sup>. Where the parties differ is in the quantification of this need; whether it can be shown to be 'immediate'; how it should be addressed; and where it should be met. I summarise each party's case and approach in the following paragraphs.
120. The appellant maintains that there is a clear immediate need which should be addressed by the application of NWLP Policy LP6 and development of the appeal scheme on the appeal site. In support of this position it has prepared a detailed Employment Land Study<sup>62</sup> (ELS) which draws on a significant amount of data, including an update to the WMSESS 2015 in the form of the WMSESS (Phase 2) 2021<sup>63</sup>. This later study has redefined Area A, with the current equivalent area being referred to as Area 2. Both WMSESS reports defined broad locations for areas for search for strategic employment sites, suitable for 'Big Box' development, and both studies were undertaken on a 'policy off' basis, meaning that sites and locations have been identified which meet market requirements, but there may be planning or other limitations or restrictions which would need to be considered and/or overcome before development could proceed on a particular site.

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<sup>60</sup> These categories relate to a hierarchy of settlements of varying sizes, with development boundaries

<sup>61</sup> See paragraph 2 in CD D36

<sup>62</sup> CD I20 – also at Appendix 1 in CD D29-C

<sup>63</sup> CD I2



121. The WMSESS 2021 identified 12 sites in the West Midlands region which were 25ha or greater and had planning permission or were allocated. These sites provide a combined area of 741ha, and based on past take-up rates they were considered to potentially generate 7.41 years' supply as of May 2021, or 4 years as of the date of the appellant's ELS. The appellant maintains that this should be seen as a maximum figure as several of the included sites are longstanding, having been allocated for many years but not delivered by the market due to site constraints or other issues. In addition, 2.5 years' supply is accounted for by only one site, the recently approved West Midlands Interchange in South Staffordshire.
122. Based on its assessment, the WMSESS 2021 concluded *'...that there is a limited supply of available, allocated and/or committed sites across the Study Area that meet the definition of 'strategic employment sites', and an urgent need for additional sites to be brought forward to provide a deliverable pipeline, noting the very substantial lead-in times for promoting and bringing forward such sites.'*
123. This Study also looked at which potential sites could form part of any future deliverable pipeline, primarily resulting from a 'Call for Sites' to developers and land promoters. The 'prime market facing' locations for strategic employment sites were concluded to be in an area from M42 Junction 2 in the south, north to M42 Junction 10, south-west to M40 Junction 14, and east to M6 Junction 1. The Study identified 5 key clusters or 'areas' of sites and concluded that the focus for identifying strategic employment sites should be in 4 of those 'Key Locations', including Area 2, which covers the M42 Corridor up to and including Junction 10, and broadly equates to Area A in the 2015 WMSESS<sup>64</sup>, as noted above.
124. The WMSESS 2021 found that at just 0.71 years the M42 corridor had the lowest supply of existing sites of the various Key Locations, with the appellant pointing out that this supply consists of just one site at Peddimore, Birmingham, where Amazon has now taken a 2.3 million sqft building, meaning that this location now only has land capable of accommodating about 550,000sqft of large B8 logistics floorspace. In contrast, at 905ha and 9.05 years', the supply of potential industry-promoted sites in the M42 corridor is the largest of the Key Clusters/locations<sup>65</sup>.
125. This Study also undertook a high level assessment of 30 developer-promoted sites and additional sites at motorway junctions considered capable of accommodating strategic employment sites of 25ha or more<sup>66</sup>. The appeal site had a joint top score of 11, shared by only 2 other sites, both of which are located in the Green Belt. On this point the appellant highlights the fact that the M42 Corridor is heavily constrained by the Green Belt, with Junctions 3 to 9 falling within the Green Belt, with only Junction 10 being not so constrained. This has meant that Junction 10 of the M42, and North Warwickshire, has been a long standing supplier of strategic employment land of scale, with the developments of Birch Coppice, Core 42, Centurion Park and Tamworth Logistics Park.
126. In summary the appellant maintains that its ELS provides clear evidence that NWLP Policy LP6 is triggered, and argues that there is no better site within the Borough or the wider sub-region than the appeal site to meet the immediate need and immediate demand for strategic employment land. It further argues that this unmet need is leading to lost investment which would benefit the local economy, as well as preventing businesses from expanding and modernising. Overall the appellant

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<sup>64</sup> Paragraph 6.52 of CD I2

<sup>65</sup> Table 6.8 in CD I2

<sup>66</sup> See paragraphs 6.14-6.31 of CD I2

maintains that the appeal site satisfies all the necessary established criteria for Big Box development and is available and deliverable to meet the immediate need that has been demonstrated in the ELS.

127. Taking a contrary view, the Council considers that the most appropriate way to assess and bring forward any strategic employment sites would be through a planned approach. To this end it is preparing an Employment Development Plan Document<sup>67</sup> (EDPD), for which it has just completed a 'Scope, Issues and Options' consultation. This was accompanied by a 'Call for Sites', a revised Statement of Community Involvement, Draft Scoping Sustainable Appraisal and a Draft Economic Development Strategy.
128. Although some slippage has occurred, the Council maintains that it is on track to progress the EDPD through to formal submission by no later than 30 June 2025, and at the Inquiry the Council indicated that it will be looking to allocate at least one large-scale logistics site through this process. However, as this EDPD is only at an early stage of preparation it can carry no weight in this appeal. Similarly, although the Council has also indicated that it intends to undertake a full Local Plan review once guidance is produced on the new plan making system, this again does not assist with the current matter.
129. The evidence for employment need at the time of the preparation of the NWLP comprised various Employment Land Reviews, as well as the 2015 WMSESS. Insofar as preparation of the EDPD is concerned, the Council has indicated it will use the most recent available evidence, namely the Coventry and Warwickshire Housing and Employment Needs Assessment<sup>68</sup> (HEDNA) together with the WMSESS (Phase 3) document, which is awaited, but not yet available. The Council worked with the other local authorities within the Coventry and Warwickshire area to prepare the HEDNA, which was published in November 2022.
130. The HEDNA indicates that a specific tried and tested forecasting approach has been used to determine the need for large-scale B8 warehousing units, and considers that it would be appropriate to plan for future development to be in line with recent completions trends over the initial 10 year period (2021-31), with the subsequent decade seeing potentially slower growth in line with traffic growth and replacement demand modelling. On this basis the HEDNA recommends that the authorities plan for a need for Strategic B8 uses of 551ha up to 2041, and 735ha up to 2050<sup>69</sup>. These figures cover the HEDNA area as a whole – no figures for individual authorities are given.
131. But whilst accepting that a need for large, strategic employment sites has been demonstrated, the Council maintained that this need has not been shown to be 'immediate', basing this view primarily on the fact that the appeal proposal is a speculative development with no clearly identified end-user, and very little detail provided of the proposed development itself, save the Amended Parameters Plan. In this regard the Council drew attention to how detailed information regarding a specific end-user had been used in neighbouring North West Leicestershire to satisfy a similar policy to LP6, by a logistics operator seeking planning permission<sup>70</sup>. However, whilst this clearly demonstrates one way of showing an immediate need, there is nothing within Policy LP6 to indicate that such information is essential.

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<sup>67</sup> CD F7

<sup>68</sup> CD I4

<sup>69</sup> Table 10.19 in CD I4

<sup>70</sup> See paragraphs 274-277 in Doc 40, and CD I99

132. The Council also argued that both land and buildings suitable for Big Box development are available within Area 2<sup>71</sup>, and that in the absence of any thresholds or targets within Policy LP6 this should be sufficient to demonstrate that there is no immediate need for employment land. The Council took this matter further by arguing that although Policy LP6 clearly refers specifically to Area A (now Area 2), it would still plainly be material to cast the net a little wider to meet the identified need for strategic Big Box development. In this regard the Council submitted details of a large number of sites and buildings in the wider Midlands area which it maintained would be perfectly appropriate for a strategic logistics development of the type being proposed here.
133. Whilst looking further afield than Area 2 would not accord with the requirements of Policy LP6, the Council was clearly of the view that the regional need for strategic employment land does not necessarily need to be met within North Warwickshire. In this regard it made reference to paragraph 7.41 of the NWLP, detailed above, and also to the findings of the HEDNA. Amongst other things these include the comment that *'whilst North Warwickshire remains an attractive location for warehousing and logistics development in particular, there is a case for seeking a broader spread of industrial land provision between the authorities within the sub-region and seeking positive growth in industrial land supply in all parts of the Coventry and Warwickshire sub-region'*<sup>72</sup>.

### Summary

134. I have carefully considered all the arguments and extensive evidence put forward by both the appellant and the Council on this issue, and on balance I favour the case put forward by the appellant. Whilst the Council was at pains to point out that much of the appellant's evidence related to demand rather than need, Mrs Barratt for the Council accepted that that 'need' means an excess of demand when compared to the extent of supply. With this in mind I have found the appellant's information on need/demand and immediacy in the ELS to be both comprehensive and persuasive, and consider that an immediate need for Big Box logistics land has been demonstrated. The way to deal with that immediate need, at this point in time, is through NWLP Policy LP6. In the fullness of time, when the Council's EDPD has progressed further along the path to adoption, that would be an appropriate vehicle to address any such need – but that option is not currently available.
135. Turning then to Policy LP6, its first part is clearly met, insofar as an immediate need for a certain type of employment land has been established, which I consider cannot be met by forecast supply or allocations as there appears to be no availability within Area 2 of a site or buildings capable of accommodating development of the size of the appeal proposal. However, the policy also makes it plain that full compliance is also dependent on the scheme in question satisfying 3 listed criteria. In this case, and drawing on matters discussed under the third main issue, I am satisfied that access to the strategic highway network would be achievable and appropriate, and that the site would be reasonably accessible by a choice of modes of transport.
136. However, because of my findings on the first main issue, the third criterion would not be satisfied, as the harm to the character and appearance of the surrounding area and on the integrity of the Strategic Gap would count against the proposal and prevent it being in compliance with this policy.

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<sup>71</sup> See paragraph 269, Table following paragraph 309, and paragraph 317 in Doc 40

<sup>72</sup> Paragraph 9.40 of CD I4

137. Clearly there would be some benefits if the proposed development was to proceed, and I take these into account when undertaking the planning balance later in this decision. But on this main issue I have to conclude that whilst the proposed development would address an immediate need for a certain type of employment land, the appeal site would not be an appropriate location to meet such a need in the specific terms of this proposal. Accordingly, I find that the appeal proposal would not accord with NWLP Policy LP6, and the significant weight which compliance with this policy would attract cannot be claimed.

***Main issue 5 – whether the appeal site represents an appropriate location for the provision of an overnight lorry parking area and associated facilities***

138. Although the Council maintained that the proposed overnight lorry parking facility could be disaggregated from the industrial building element of the proposal, the appellant indicated that it would not wish to have the lorry parking facility considered in isolation. I have therefore assessed this part of the proposal in conjunction with the proposed industrial building element. No firm details of what is proposed for the lorry parking facility have been provided, with the Amended Parameters Plan simply identifying Plots B1 and B2, towards the eastern side of the appeal site, with development on Plot B1 indicated to be restricted to a maximum height of 111m AOD and with development on Plot B2 limited to 102m AOD.

139. Some additional information is, however, provided within the DG, which indicates that Plot B1 would contain the up to 400sqm amenity building for the overnight lorry parking facility which is indicated as containing the likes of a shop, restaurant/takeaway, laundry, gym, changing facilities, showers and toilets. Plot B2 is indicated as containing the proposed Hub Office, incorporating site office; security, management and marketing facilities; meeting/presentation rooms and computer suite; and communal cycle parking, showers and changing facilities.

140. NWLP Policy LP34 deals with various aspects of Parking. With regards to lorry parking it states that proposals which reduce lorry parking (either informal or formal parking areas) should be accompanied by evidence to support its loss and explore opportunities for alternative provision. It goes on to state that in recognition of the Borough's strategic location and demand for lorry parking, the Council will give weight to lorry parking provision and facilities, and opportunities for alternative provision and for improved management in decision-taking.

141. Although the appeal proposal would result in the loss of a lay-by on the A5, popular for overnight lorry parking, this would be more than compensated for by the proposed 150 space overnight lorry parking facility. From the submitted evidence I can see that there is much support for such a facility, with common themes being the need to provide high quality secure parking/amenity facilities in order to attract and retain qualified HGV drivers in a sector where there is a recognised shortage of personnel, and for secure parking to deter lorry crime<sup>73</sup>.

142. The supporting representation from the National Vehicle Crime Intelligence Service<sup>74</sup> highlights that there is a difference between 'safe' lorry parking, which would be akin to parking provision found in a typical MSA, and 'secured' lorry parking, which has active security measures. The facility proposed through this appeal would be 'secured' lorry parking. On this point I have also been mindful of the Professional Opinion Note provided by Christine Rampley<sup>75</sup>, which presents

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<sup>73</sup> See Appendix 9 in CD D33-B

<sup>74</sup> See Appendix 9 in CD D33-B. Also at CD B50

<sup>75</sup> Appendix 8 in CD D33-B

evidence to show that there is a clear preference for dedicated truck stops over MSAs, which suffer from issues such as poor management and security.

143. The appellant submitted an 'HGV Parking Facility Need Assessment'<sup>76</sup> (PFNA) in support of this application. Amongst other things this PFNA included the results of a 'parking beat' survey undertaken on a number of evenings in October 2021 to identify excess and unmet HGV parking demand at known and potential inappropriate non truck-stop locations in the vicinity of the appeal site, covering the A5 corridor from the western side of Tamworth to Atherstone. The survey was repeated in December 2023 to ascertain whether there had been any significant changes to the level of inappropriate parking observed 2 years earlier.
144. In summary, the December 2023 surveys indicated that around 117 HGVs were parking at inappropriate non-truck stop locations each night, a slightly higher figure than that recorded in October 2021. On this point I have noted the Council's comment that even when HGV parking is provided there is no means of compelling drivers to use it, and surveys which count lorries parking in laybys overnight may simply be indicative of those drivers who do not wish to pay to park in a designated area, rather than of an inability to find such a space. Whilst there is no firm evidence to resolve this matter either way, I nevertheless consider it reasonable to take the survey results as demonstrating a need for further lorry parking facilities.
145. The PFNA also refers to the NH publication 'Lorry Parking Demand Assessment'<sup>77</sup> dated September 2023 which indicates on its Map 4.1 that the existing Truck Stop facilities at the Moto MSA at Tamworth are shown as having a utilisation of 85%-100%. On this point the appellant commented that a utilisation rate greater than 85% is defined as 'critical', being the rate where it is considered very difficult for additional drivers to find parking spaces.
146. That said, I understand that in addition to the 56 HGV and 18 coach spaces currently available at this MSA, there is also an extant planning permission for an additional 38 HGV spaces, granted in 2020. Although this permission has not yet resulted in the provision of any new HGV parking spaces, a letter submitted to the Inquiry on behalf of Moto<sup>78</sup> indicates that these additional spaces are due to be completed by early 2025. The letter also indicates that Moto has potential plans to future-proof these HGV parking spaces by providing eHGV charging infrastructure at the site. In the absence of any firm evidence to the contrary, I see no reason to assume that these additional HGV parking spaces will not be provided.
147. The same letter also states that Moto has aspirations to bring forward an additional 150 HGV parking spaces through an expansion to the MSA. The appellant maintains that, taken at face value, this does indicate that there is an acute need for additional spaces in the area. However, both the appellant and the Council have categorised this letter as an attempt by one commercial operator to seek to prevent the establishment of a rival commercial operator in close proximity. Regardless of the intent of this letter, as there are no further details of this proposal, and as no planning application has been made, I give this latter point very little weight.
148. An appeal decision from February 2024, relating to a proposed 200 space overnight truck stop with associated facilities in the vicinity of M42 Junction 9 has been drawn to my attention. The Inspector who determined that appeal considered that there

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<sup>76</sup> CD A15

<sup>77</sup> CD I3

<sup>78</sup> Doc 16



was compelling evidence of need for additional HGV parking and driver facilities, the provision of which would help to address a national shortage of HGV parking, improve driver welfare, would support the distribution sector generally and would have wider public benefits in reducing the levels of roadside parking. But although that Inspector gave significant weight to the various benefits that she considered would arise, she dismissed the appeal as very special circumstances, necessary to justify that development in the Green Belt, were not considered to exist.

149. The Council also made reference to the 'Lorry parking issues' map shown at Figure 6.1 of the NH publication 'Lorry Parking Demand Assessment', detailed above, and commented that it shows North Warwickshire as 'amber', denoting no pressing need for HGV parking facilities. However, I understand that this map is not showing lorry parking demand but is a ranking system evaluating local authorities based on the severity of their lorry parking issues in relation to one another. It takes account of both off-site parking areas (lay-bys etc) and on-site (lorry parks) parking areas.
150. The appellant also points out that as this study locates the Tamworth MSA in Tamworth Borough rather than in North Warwickshire, it should be treated with some caution. But notwithstanding this point I see from Appendix B to this document that North Warwickshire does not appear in the top 40 Local Authorities for lorry parking issues, and that Tamworth sits at number 19 in this ranking. It is therefore difficult to argue, on this basis, that there is a pressing or severe need for additional lorry parking facilities in North Warwickshire.
151. Nonetheless, on the basis of the evidence before me, and in particular the specific parking beat surveys which have been undertaken, there does seem to be an identified demand for additional secure overnight lorry parking, as proposed through this appeal, even though this need might not be severe. As such, this element of the appeal proposal would clearly be in accord with NWLP Policy LP34 and, as a matter of principle, attracts weight.
152. However, the lorry parking itself would be accompanied by the proposed amenity building, and although no specific details have been provided, I consider it reasonable to also expect the whole area to be lit, possibly on a 24-hour basis. More importantly, the lorry parking facility would be provided alongside the very large industrial buildings which I have already concluded would be harmful in this Strategic Gap location. For this reason I have to conclude, in the context of this main issue, that although a demand for such facilities has been demonstrated, the appeal site would not be an appropriate location for the provision of an overnight lorry parking area and associated facilities.

### ***Main issue 6 – suggested conditions and planning obligations***

153. A total of 51 suggested planning conditions were put forward jointly by the parties, to be imposed if planning permission was to be granted<sup>79</sup>. There was agreement on most of these conditions, with just 2 exceptions. Firstly, the appellant submitted 2 conditions, numbers 30 and 31, aimed at controlling the amount of development floorspace which could be occupied before the M42 Junction 10 roundabout improvements shown on either of 2 stated drawings have been constructed, completed and are fully operational. The control would be by means of a 'Trigger Assessment' which would need to be submitted to and approved in writing by the Council. These agreed roundabout improvements would then need to be implemented in accordance with the approved Trigger Assessment.

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<sup>79</sup> Doc 35

154. Instead of these 2 conditions the Council put forward a single condition which would require the agreed M42 roundabout improvements to be completed in full before any phase of the development was occupied. It argued that the condition was necessary in this form to ensure that the works to the M42 roundabout, which would improve facilities for cyclists and pedestrians, were available at the first occupation of the development, thereby encouraging the use of non-car modes of transport from the outset. This seems to me to be a sensible and reasonable objective, and if I had been minded to allow this appeal I would have imposed the Council's condition.
155. The second area where there was a difference of opinion related to suggested condition 47, dealing with the submission for approval of an Employment Scheme – Occupational Phase (ESOP) setting out details of the programmes, commitments and measures to be implemented during occupation of the development, in accordance with the submitted Employment, Skills and Training Statement<sup>80</sup>. The appellant's version sought submission and approval of the ESOP prior to the first occupation of each unit in each phase of development, whereas the Council's version simply sought submission and approval prior to first occupation. It seems to me that the appellant's version would provide more flexibility and also provide the opportunity for prospective end-user(s) to input into each submission, thereby producing a more bespoke submission. If I had been minded to allow this appeal I would therefore have imposed the appellant's condition.
156. Neither the Local Rule 6 Party nor NH raised any objections to these conditions, and I therefore conclude that the 50 agreed conditions<sup>81</sup> would accord with the relevant NPPF guidance and would satisfactorily address the impacts of the proposed development, if it had been acceptable in all other respects.
157. The appellant had been expecting to conclude S106 Agreements with both the Council and WCC. However, fairly late in the day it became apparent that there were areas of disagreement which could not be resolved, meaning that the appellant chose instead to submit these planning obligations in the form of UUs<sup>82</sup>.
158. In summary, the UU to the Council makes provision for the following specific obligations:
- a. A Landscape Strategy to be submitted to the Council for approval, prior to commencement of the development; and the Mitigation Land to be maintained and managed in accordance with the approved Landscape Strategy in perpetuity;
  - b. Unfettered access for the public at all times (save in cases of emergency, or as otherwise agreed from time to time in writing between the Owner and the Council) to each of the areas hatched green on Plan 1;
  - c. Details of the land to be converted to pasture to be submitted to the Council for approval, prior to commencement of the development; and the Pasture Land to be delivered, maintained, retained, used and managed in agricultural use in perpetuity;
  - d. A Biodiversity Gain Plan (BGP) and a Habitat Management and Monitoring Plan (HMMP) to be submitted to the Council for approval, prior to commencement of the development; and the provisions of the BGP and HMMP to be carried out and complied with;

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<sup>80</sup> CD B45

<sup>81</sup> With the appellant's suggested conditions 30 and 31 replaced by the Council's condition 30

<sup>82</sup> Doc 37

- e. If any of the Mitigation Land is to be managed and maintained by a Management Entity, pursuant to the Landscape Strategy, then details of the identity and proposed structure of the Management Entity to be submitted to the Council for approval, prior to commencement of the development; and
- f. Active promotion of the rail freight facilities and services available at BIFT, from the date of first occupation of the development, and the provision of details of these facilities and services to any and all occupiers of the development, and each successive occupier, together with changes to the services and changes to relevant timetables; such details to be provided on at least an annual basis.

159. The Council was critical of a number of aspects of this UU<sup>83</sup>. In particular it maintained that, as drafted, the UU was lacking in detail and did not provide the certainty that the proposed mitigation would be delivered, and further maintained that the appellant could seek to remove these benefits through an application of S106A. It argued that the only way to avoid this would be to pass the blue-edged land into public ownership with covenants – a course of action with which the appellant did not agree. To a large extent the Council’s concerns seemed to be prompted by the fact that as part of the ‘Call for Sites’ process for the emerging EDPD the appellant’s whole landholding in this area, of some 74ha (ie the appeal site and the blue-edged land combined) has been put forward as a development area<sup>84</sup>. However, as this same documentation indicates that the site has been put forward on the basis that it could accommodate a total of some 100,000sqm of employment floorspace – as in the current appeal proposal – I do not consider this submission to be untoward.
160. On balance, I consider the Council’s concerns to be largely unfounded, but would fall to be addressed by a future decision maker in any event. With the above points in mind, and having had regard to the Community Infrastructure Levy (CIL) Compliance Statement<sup>85</sup> submitted by the Council, I am satisfied that all of these obligations would be necessary to make the development acceptable in planning terms, and that all meet the requirements of Regulation 122 of the CIL Regulations 2010 and paragraph 57 of the NPPF.
161. Turning to the UU to WCC, in summary this makes provision for the following specific contributions and obligations:
- a. A scheme of pedestrian and cycleway improvements for the land identified in khaki on Plan 2 to be submitted to WCC for approval, prior to commencement of the development; and the PRoW and permissive paths identified in khaki on Plan 2 to be provided in accordance with the approved scheme before occupation of any part of the development;
  - b. A Birchmoor Parking Scheme of proposed controls and management measures for parking in Birchmoor, together with a proposed timetable for their delivery, to be submitted to WCC for approval, prior to occupation of any part of the development;
  - c. A Birchmoor Parking Contribution of £125,000 to be spent on measures to control or manage parking in Birchmoor, as described in the Birchmoor Parking Scheme;

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<sup>83</sup> See paragraphs 373-387 of Doc 40

<sup>84</sup> Doc 31

<sup>85</sup> CD D44

- d. A Birchmoor Highway Signage Contribution of £27,500, to be spent of the provision and improvement of signage and road markings for HGVs and associated improvements in the locality of Birchmoor, and paid to WCC prior to occupation of the first phase of the development;
- e. A Bus Improvement Contribution of £1,080,000 to be spent on the provision and maintenance of a bus service between the development, Tamworth, Atherstone and Nuneaton; the contribution to be made in 5 equal instalments with the first instalment of 20% being made prior to the occupation of the first phase of the development, with subsequent 20% contributions made yearly thereafter;
- f. A Bus Shelter Real Time Information (RTI) Replacement Screen Commuted Sum of £2,500 to pay for a replacement real time information screen on the new bus shelter;
- g. A Bus Shelter RTI Maintenance Contribution of £4,000 to be spent on the maintenance of the real time information equipment installed on the new bus shelter for 5 years; and
- h. A Bus Shelter Maintenance Contribution of £5,000 to be spent on the maintenance of the new bus shelter for 5 years.

162. Having considered these matters, along with the CIL Compliance Statement<sup>86</sup> submitted by the Local Rule 6 Party and that from the Council, I am satisfied that these obligations would be necessary to make the development acceptable in planning terms, and that all meet the requirements of Regulation 122 of the CIL Regulations 2010 and paragraph 57 of the NPPF.

### **Other Matters**

163. Rail connectivity. A significant element of the appellant's case was that as the appeal site is less than 1kilometre (km) from BIFT, the proposed development would be genuinely rail-served, and would therefore be able to take advantage of a substantially more sustainable mode of transport. The appellant maintains that this would be a clear benefit, especially as firms move to improve their sustainability credentials based on decarbonisation goals. Moreover, because of the close proximity of the appeal site to BIFT, Mr Hatfield for the appellant is firmly of the view that the proposed development would be able to benefit from the use of yard tractors and semi-trailers to move freight, resulting in lower operating costs when compared with road-legal HGVs. This is because although yard tractors are designed to haul semi-trailers on private land they are also permitted, under limited circumstances, to be operated on the adopted public highway.
164. Maritime Transport, the operator of BIFT, is supportive of the proposed development and back in September 2022 it indicated that it operated 5 trains a day to the major ports of Felixtowe, Tilbury, London Gateway and Southampton, noting also that BIFT has plenty of spare capacity and could operate up to 8 trains a day on the existing infrastructure<sup>87</sup>. In a more recent letter, Maritime confirmed that it has recently agreed to undertake a 5-year Government-backed trial for the adoption of electric battery powered HGV tractor units, which will include up to 50 electric HGV tractor units, of which up to 20 units will be operating out of BIFT<sup>88</sup>.

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<sup>86</sup> Doc 34

<sup>87</sup> See Appendix 7 in CD D33-B

<sup>88</sup> *ibid*

165. It is clear that the potential for using BIFT has to be seen as a benefit of the appeal proposal, although it is questionable how much weight should be attributed to this matter, not least because Mr Hatfield also states that the appellant's scheme has been planned from the outset to operate successfully as a standalone road-based logistics warehousing facility<sup>89</sup>. Moreover, whilst the Maritime letters indicate that some firms at Birch Coppice, such as Euro Car Parts and AP Moller Maersk, do make use of BIFT, no firm information has been provided to indicate how much of BIFT's business comes from nearby Business Parks. Indeed the available evidence is that 50% of the freight which passes through the terminal is delivered or collected within a 10-mile radius, with another 30% within a 20-mile radius. Whilst these more distant businesses cannot make use of yard tractors, they still use BIFT, indicating that proximity to a rail terminal, whilst advantageous, is not essential.
166. The appellant maintains that the appeal site's proximity to BIFT could reduce HGV movements by 10%<sup>90</sup>, and as noted earlier the submitted UU to the Council contains measures to promote the use of BIFT. There is, however, nothing to compel any future occupiers of the appeal site to use BIFT, despite potential commercial advantages. Taking all of these points into account, I consider that the proximity of the appeal site to BIFT should be given moderate weight in the appeal proposal's favour.
167. Small and Medium Enterprise (SME) units. The appellant's Employment Skills and Training Statement states that the proposed development would provide a range of employment uses and unit sizes to facilitate a mix of employment providers and types, including a range of smaller 'starter'/'incubator' units targeted at local SMEs for general industry/light industrial uses<sup>91</sup>. On this matter, the suggested conditions indicate that if the proposal was to proceed, a minimum of 5 SME units would be provided, with no individual SME unit exceeding 2,000sqm of floorspace, and with the SME units occupying, in total, a minimum of 5,000sqm and no more than 10,000sqm of floorspace.
168. The appellant maintains that such units would be particularly beneficial as there is an evidenced shortage of SME spaces in the sub-region. As no contrary evidence has been put forward on this point, I see no reason to doubt the appellant's view that the provision of such units would be a benefit of the scheme. But as no firm details are available at this stage, and as the amount of SME floorspace could be as little as 5%, this matter attracts only modest weight in the scheme's favour.
169. Noise and Air Quality. These matters were not referred to in the Council's putative reasons for refusal, but they were raised in fairly general terms by a number of interested persons<sup>92</sup>. Put simply, local residents maintained that the appeal proposal would give rise to noise from lorries reversing and manoeuvring; noise from refrigerated lorries; general noise that is inevitable on an industrial estate; and a worsening of air quality, including as a result of fumes from diesel lorries.
170. However, such matters were considered as part of the EIA process, with the ES<sup>93</sup> and ES Addendum<sup>94</sup> assessing likely noise and air quality impacts on the nearest residential receptors based on a 'worst case' scenario of the maximum development parameters being implemented. The assessments considered both construction and

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<sup>89</sup> Paragraph 4.3 of CD D33-A

<sup>90</sup> Paragraph 9.15 in CD D32-A

<sup>91</sup> See paragraph 2.5.2 in CD B45

<sup>92</sup> See, for example, CD D27-B

<sup>93</sup> CDs B1, A9.3, A9.4, A10.3 & A10.4

<sup>94</sup> CD D14



operational phases and concluded that the proposed development, with the adoption of appropriate mitigation measures, would not result in any significant adverse environmental effects, including on living conditions. This proposal was not objected to by the NWBC Environmental Health Officer<sup>95</sup>, and subject to the imposition of appropriate planning conditions I am satisfied that the scheme would not result in any undue adverse noise or air quality impacts for nearby residents.

171. Biodiversity Net Gain (BNG). Amongst other things, NWLP Policy LP16, dealing with the Natural Environment, seeks to minimise impacts on, and provide net gains for biodiversity where possible. As has already been indicated, a variety of landscape mitigation measure are proposed not only on the appeal site itself, but also on the blue-edged land to the east. In this regard the ES and ES Addendum included an assessment of BNG, concluding that 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. This is clearly a benefit of the proposal, and accords with Policy LP16 and also with paragraph 180 of the NPPF. But as such net gains are a policy requirement, this matter only adds a modest amount of weight in the proposal's favour.
172. The Richborough application. Whilst the Inquiry was sitting, an outline planning application with all matters reserved was submitted on behalf of Richborough Commercial for '*employment development (Use Class B2/B8 with ancillary E(g)), together with habitat creation, landscaping, parking, service yards, HGV waiting area, footpaths/cycleways, and other associated infrastructure*', on land at Lichfield Road, Junction 9 of the M42. This site lies within the Green Belt and although full details have not been submitted, I understand that the applicant is maintaining that very special circumstances exist which would outweigh the harm to the Green Belt<sup>96</sup>.
173. The appellant in the current case has considered a number of documents submitted to support the Richborough application, namely the 'Economic Needs & Benefits Report'; the 'Outline Skills & Employment Plan'; the 'Employment Land Assessment'; and the 'Market Report and Occupier Overview'. The appellant maintains that the Richborough application relies on a very similar 'need' case to that being pursued in the current appeal, and is therefore very supportive of the appellant's case. As I have accepted the appellant's position on need/demand and the immediacy of such need, there is nothing further to say on this matter. The Richborough application will clearly be assessed and considered by the Council in due course. It has no direct effect on the proposal before me.

### **Benefits and disbenefits**

174. The appellant, through the evidence of Mr Hann, has set out an extensive list of benefits which it considers would arise if this appeal was allowed<sup>97</sup>. In general terms they have been ordered to correspond with the 3 overarching objectives for achieving sustainable development set out in paragraph 8 of the NPPF, namely economic, social and environmental.
175. It is clear that some significant economic benefits would arise from this proposal. The undisputed evidence is that it would generate around 255 to 283 person years of construction employment, and whilst this would only be a temporary benefit, it would nevertheless generate gross value added (GVA) to the regional economy of

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<sup>95</sup> CD E31

<sup>96</sup> See bundle of documents at Doc 25

<sup>97</sup> Pages 34-45 of CD D28-A

around £17.9 million to £19.9 million. It would also result in an appreciable number of jobs during the operational phase, but this is not particularly easy to quantify as the predicted number of full-time equivalent (FTE) jobs has changed quite dramatically during the lifetime of this project.

176. Back in December 2021 the Socio-Economic Chapter of the ES indicated that the gross FTE on-site jobs could range from around 1,230 to 2,050<sup>98</sup>. However, Prof Coleman's evidence to the Inquiry was that because of increasing automation of activity within warehouses, and the increased size and therefore efficiency of warehouses, employment densities have changed significantly, such that the likely range of FTE jobs is now considered to be 1,000 to 1,400. Prof Coleman maintains that although the proposed development is likely to produce fewer jobs than had previously been assumed, these jobs are likely, overall to be more highly skilled, such that the GVA figures set out in the ES, of £62.5 million to £104.2 million annually would still apply.
177. However, the speculative nature of this proposal and the lack of information regarding size and configuration of building(s) and future occupier(s) means that these figures have to be treated with some caution. Nonetheless, it is clear that there would be a positive impact on the local and sub-regional economy.
178. Whilst Mr Hann proceeds to list a total of 10 items under the 'Economic Benefits' heading, I do not consider it reasonable to accord weight separately to each of these benefits as Mr Hann appears to have done, as there is the clear potential for double-counting. That said, I see nothing untoward in Mr Hann itemising the different economic aspects of the proposed development – which he described as being akin to 'showing his workings' – but not all items warrant being given weight in their own right, especially as some are clearly disputed by the Council. For example, whilst accepting that providing people with a place to work is important, the Council argues that the proposal would not align with other aspects of its Sustainable Community Strategy as by failing to protect the landscape and Strategic Gap it would not accord with the environmental and amenity considerations of this strategy. I share that view.
179. Similarly, although the appellant argues that economic benefits would arise as the appeal proposal would help to facilitate the delivery of the NWLP, by providing increased capacity at M42 Junction 10 and an improvement to the A5, Mr Espino for WCC clearly disputed the extent to which these improvements would assist in the delivery of NWLP development proposals. Moreover, there is no clear evidence before me to indicate that the NWLP housing proposals around Polesworth and Dordon would be prejudiced if the appellant was not to proceed<sup>99</sup>, so again I treat these claimed benefits with caution, and consider that on their own they would only warrant modest weight.
180. I do, however, consider that economic benefits would arise from the training and employability support that the scheme would deliver, as detailed in the Employment, Skills and Training Statement<sup>100</sup>, and that further potential benefits would arise from the support which would be given to local businesses and SMEs, along with modest weight for the provision for SMEs.

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<sup>98</sup> Paragraph 13.5.16 of CD A8

<sup>99</sup> See paragraph 366 in Doc 40

<sup>100</sup> CD B45

181. Overall, and being mindful that paragraph 85 of the NPPF states that 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, I consider that the package of economic benefits likely to arise from this proposal should carry significant weight.
182. It is clear that a number of social benefits would also be realised if this proposal was to proceed. Amongst other things, paragraph 8 of the NPPF explains that well-designed and safe places, with accessible services fall into this category, and certain aspects of the appeal proposal would satisfy these objectives. The proposed overnight lorry parking area would be a safe and secure facility for HGV drivers, and would assist in combating anti-social behaviour and crime. In addition, the various proposals for active travel would make it easier for people to travel to and from the proposed development by foot or on cycle, and these benefits would also be available to other workers and travellers in this general area. Taken together with the proposed fitness trail located around the appeal site, these measures would also assist in encouraging healthy and active lifestyles.
183. Further benefits would arise to those using public transport, as bus facilities would be improved and some services would be routed into the development site. In addition, contributions offered through the S106 UU with WCC would see the 766/767 bus services sustained for a further 5 years. The proposed ancillary Hub Office would also provide social benefits as it would be available as a communal training facility for use by local training and education programmes associated with the site, as well as site occupiers. It is also intended to contain other features, such as showers and changing facilities which would be available for use by the general public, as well as by staff from neighbouring business parks. Once again, it seems to me that this package of social benefits should attract significant weight.
184. In terms of environmental benefits, the appeal proposal chimes with many of the points set out in the NPPF's paragraph 8. The proposals would provide significant amounts of both on-site and off-site green infrastructure, to include native woodland and hedgerow planting, species-rich grassland, a community orchard and habitat creation. In turn, these would assist in improving biodiversity by delivering significant net gains across the site. However, as the need for net gain is a policy requirement, this matter only adds a modest amount of weight in the proposal's favour, in its own right.
185. As set out in the Zero Emission Goods Statement<sup>101</sup>, the proposed development would include a significant number of charging and fast-charging points for electric vehicles (EV) and would have the ability to retro-fit additional points at a later date. The site would also have the ability to store alternative fuels, such as hydrogen, if this should emerge as an alternative to petrol/diesel, whilst the proximity to BIFT would give future site occupiers easy access to rail-freight facilities. Flexible building design is also proposed, including connected battery technology, which would facilitate up to 100% of EV charging from on-site renewable energy sources, and in this regard I note the appellant's aspiration to create the 'Greenest Business Park in the West Midlands' through sustainable design measures although, again, this is difficult to quantify.
186. Overall, these measures would help towards minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy. Many of these points are not seriously disputed by the Council, and whilst

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<sup>101</sup> CD B44

I acknowledge the Council's scepticism regarding the amount of use which would actually be made of BIFT, and therefore consider that this element only warrants modest weight, I nevertheless consider that taken overall, the environmental benefits detailed above should, again, attract significant weight.

187. The proposal would, however, also result in a number of significant disbenefits. Primarily, the size and scale of the very large building or buildings which would be permitted if this proposal was allowed, coupled with the atypical land form changes and dense tree planting, would have an adverse impact on the character and appearance of the surrounding area. This would harmfully impinge on the current rural character of this important entrance into the Borough, bringing the urban, developed character of Tamworth much closer to Dordon.
188. As such it would substantially alter and adversely impinge upon the countryside setting of Dordon, thereby being at odds with the Community Vision for the village set out in the DNP, and with NWBC's Spatial Vision. This means that the proposal would not accord with those elements of the NPPF's social objective of sustainable development which seek to support strong, vibrant and healthy communities and support communities' health, social and cultural well-being.
189. Furthermore, the size, scale, positioning and composition of the proposed development would mean that it would result in the loss of an appreciable amount of this clearly defined and important part of the Strategic Gap between Tamworth and Polesworth with Dordon. Allied with the change to the character of the area detailed above, this would result in a clear and significant adverse impact on the distinctive character and identity of Polesworth with Dordon. As a result, the proposed development would be at odds with that part of the NPPF's environmental objective of sustainable development which seeks to protect and enhance the natural environment. Overall I consider that these matters weigh significantly against the proposal.
- 190.** In light of these points there is also a clear tension with that aspect of the NPPF's economic objective which requires that the land available to help build a strong, responsive and competitive economy should be in the right place. It is self-evident that there are aspects of the appeal site's location adjacent to the SRN which are favourable for this proposed development, as evidenced by the array of similar development located around M42 Junction 10 and the A5. But as clearly set out above, this particular site is part of a longstanding meaningful gap, and is now protected by a Strategic Gap policy. This weighs significantly against the proposal, and for this reason I do not consider that the appeal scheme could be said to fully accord with the economic objective of sustainable development.

### ***Summary, planning balance and overall conclusion***

191. Summarising the various matters detailed above, under the first main issue I have concluded that the proposed development would have an adverse impact on the character and appearance of the surrounding area, would fail to maintain an effective Strategic Gap between Tamworth and Polesworth with Dordon, and as a result would have a clear and significant adverse impact on the distinctive character and identity of Polesworth with Dordon. It would therefore be at odds with NWLP Policies LP1, LP4, LP14 and LP30, and with DNP Policies DNP1 and DNP4.
192. On the second main issue, development on the appeal site itself would result in the permanent loss of some 29ha of BMV agricultural land, and further agricultural land within the blue-edged area would also be taken out of active arable production.

However, the loss of this second element would not be permanent and the evidence is that poorer quality land is not generally available in this area. With these points in mind, I have concluded that the loss of agricultural land should only carry limited weight against this proposal.

193. On the third main issue, following agreement being reached between the appellant and NH, I have concluded that the appeal proposal would not have an adverse impact on the nearby strategic and local highway network, or on the safety and convenience of users of these highways. Moreover, as well as resulting in a safe site access and safe conditions for cars and other vehicles, it would also give rise to significant benefits for bus travellers as a result of specific bus improvements and a substantial bus service subsidy, as well as benefits for cyclists and pedestrians through measures to promote Active Travel set out in the Vision Based Travel Plan.
194. Any adverse impacts on residents of Birchmoor, as a result of increased parking or HGVs becoming 'lost' in the settlement could be adequately addressed through specific financial contributions offered through the UU towards a parking scheme and/or highway signage improvements. Accordingly, I find no conflict with any relevant NWLP policies, or with paragraph 115 of the NPPF.
195. Consideration of the fourth main issue resulted in the submission of a significant amount of information by both the Council and the appellant, and highlighted the different approach each side took to the interpretation of NWLP Policy LP6. Much discussion centred on determining whether there can be said to be an identified need for a certain type of employment land and, if so, whether that need could be said to be immediate. For reasons set out earlier, my assessment of the submitted evidence is that there is a need for land for strategic Big Box logistics development, and that on balance the evidence demonstrates that this is an urgent need. As such I am satisfied that this need should be considered to be 'immediate'.
196. I also acknowledge that there are many factors which point to the appeal site as being in a suitable location to accommodate this need, and I recognise that it is one of the top 3 identified sites for such development in the 'policy off' world of WMSESS 2021. However, in the real, 'policy on' world, it is necessary to read Policy LP6 in full, and take proper account of the last part which sets out criteria which any proposal for such development must be able to satisfy. That the proposal would be able to satisfy the first 2 of these criteria has already been established, above.
197. However, the proposal would not satisfy the third criterion. The harm which would be caused to the character and appearance of the surrounding area, to the integrity of the Strategic Gap, and the resulting significant adverse impact on the distinctive character and identity of Polesworth with Dordon means that the proposal is not 'otherwise acceptable'. The identified conflict with a number of adopted development plan policies, set out above, reinforces this point. This means that the appeal proposal would not satisfy the requirements of Policy LP6 and therefore does not attract the significant weight that accordance with this policy would have carried. This clearly weighs heavily against the proposed development.
198. On the fifth main issue I have concluded that a demand for secure, overnight lorry parking facilities has been demonstrated and so this part of the proposal would attract positive weight from NWLP Policy LP34. However, when taken in combination with the main industrial building element of the proposal – the only way in which I was requested to consider this matter – I have concluded that the appeal site would not be an appropriate location for the provision of an overnight



lorry parking area and associated facilities. Overall this part of the appeal proposal cannot therefore attract weight.

199. Insofar as the sixth main issue is concerned, I am satisfied that the suggested conditions and the submitted S106 UUs would accord with all relevant guidance and requirements and would have been necessary to make the appeal proposal acceptable in planning terms, if all other matters had been in its favour.
200. Turning to the NPPF's 3 overarching objectives for achieving sustainable development I have already concluded that significant benefits would arise from the proposed development in economic, social and environmental terms, but that there would also be significant disbenefits under each of these headings. This means that taken in the round, the proposal would fail to fully accord with these objectives, such that it could not be considered to represent sustainable development.
201. In terms of the overall planning balance, whilst I have acknowledged that the appeal proposal would give rise to a number of economic, social and environmental benefits, I have found against this proposal on key aspects of the first main issue, and this carries significant weight against the appeal proposal. Moreover, and importantly, this means that the proposed development would be in conflict with a number of up-to-date policies in both the NWLP and the DNP. The proposal does not represent sustainable development and in my assessment the policy conflicts I have identified means that the appeal proposal would not accord with the development plan when taken as a whole. Taking all of these points together, my overall conclusion is that the benefits do not outweigh the disbenefits, and that this appeal should therefore not succeed.
202. Whilst I have given some consideration to whether or not a split-decision could be issued, the fact that the principal harms arise from the main industrial building element of the proposal means that a split decision to only allow this element would not be appropriate.
203. I have had regard to all other matters raised, but find nothing sufficient to outweigh the considerations which have led me to conclude that this appeal should be dismissed.

*David Wildsmith*

**INSPECTOR**

## **APPEARANCES**

### **FOR THE COUNCIL**

Mr Christopher Young KC - counsel for the Local Planning Authority

**He called:**

Miss Sam Oxley

*BSc MSc CMLI*

Mrs Dorothy Barratt

*BA(Hons) DUPI MRTPI*

Mr Moises Muguera Espino

*BSc PGDip MSc MRTPI MCIHT*

*MICE MTPS*

Mr Andrew Collinson

*BTP BA(Hons) MRTPI*

instructed by Steve Maxey, solicitor and Chief Executive, NWBC

Director, LUC

Forward Planning & Economic Development Manager, NWBC

Principal Transport Planner, WCC

Principal Development Control Officer, NWBC

### **FOR THE APPELLANT**

Mr Paul Tucker KC – counsel for the appellant

**He called:**

Mr Jeremy Smith

*BSc(Hons) DipLA CMLI*

Mr David Binks

*MRICS*

Mr Jon Turner

*MRICS*

Mr Mike Hatfield

*BSc(Hons) MSc*

Prof Jim Coleman

*PhD MA MSc*

Dr Nick Bunn

*BSc(Hons) MSc PhD MCIHT*

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Mr Doug Hann

*BA(Hons) MTPL MSc MRTPI*

instructed by Hodgetts Estates

Director, SLR Consulting Limited

Head of Industrial and Logistics, Cushman & Wakefield

Chartered Surveyor, Cushman & Wakefield

Director, MDS Transmodal Ltd

Head of Economic Advisory, WSP

Director, Tetra Tech Ltd

Director, WSP

### **FOR NATIONAL HIGHWAYS (NH) (RULE 6(6) PARTY)**

Ms Constanze Bell – counsel for NH

**She called:**

Mr Patrick Thomas

*MSc*

instructed by NH Legal Services

Spatial Planner, NH

### **FOR DORDON PARISH COUNCIL, POLESWORTH PARISH COUNCIL AND BIRCHMOOR COMMUNITY ACTION TEAM ('THE LOCAL RULE 6 PARTY')**

Mr Howard Leithead – counsel for the Local Rule 6 Party

**He called:**

Mr Jonathan Weekes

*BSc(Hons) MA MRTPI*

Instructed by Odette Ghent, Parish Clerk, Polesworth Parish Council

Technical Director, Aitchison Raffety, Chartered Town Planning Consultants

## INTERESTED PERSONS OPPOSING THE APPEAL PROPOSAL

Mr Steve Ridley	Local resident
Mrs Angela Mann	Local resident
Mr John Winter	Dordon Parish Councillor and local resident

## PROOFS OF EVIDENCE (PoE - contained in Section D of the Core Documents)

<b>Appellant's Documents</b>	
CD D28-A	Mr Hann's PoE
CD D28-B	Appendices to Mr Hann's PoE
CD D28-C	Mr Hann's Summary PoE
CD D29-A	Mr Turner's PoE
CD D29-B	Mr Binks's PoE
CD D29-C	Joint Appendices to Mr Turner's and Mr Binks's PoE
CD D29-D	Mr Turner's Summary PoE
CD D29-E	Mr Binks's Summary PoE
CD D30-A	Mr Smith's PoE
CD D30-B	Appendices to Mr Smith's PoE
CD D30-C	Mr Smith's Summary PoE
CD D30-D	Mr Smith's Supplementary PoE
CD D31-A	Prof Coleman's PoE
CD D31-B	Prof Coleman's Summary PoE
CD D32-A	Dr Bunn's PoE
CD D32-B	Appendices to Dr Bunn's PoE
CD D32-C	Dr Bunn's Summary PoE
CD D33-A	Mr Hatfield's PoE
CD D33-B	Appendices to Mr Hatfield's PoE
CD D33-C	Mr Hatfield's Summary PoE
CD D39	Mr Hann's Rebuttal PoE
CD D40	Mr Turner's Rebuttal PoE
CD D41	Mr Binks's Rebuttal PoE
CD D42	Mr Hatfield's Rebuttal PoE
<b>Council's Documents</b>	
CD D23-A	Mr Collinson's PoE
CD D23-B	Appendices to Mr Collinson's PoE
CD D35	Mr Collinson's Rebuttal PoE
CD D24-A	Mrs Barratt's PoE
CD D24-B	Appendices to Mrs Barratt's PoE
CD D36	Mrs Barratt's Rebuttal PoE
CD D25	Miss Oxley's PoE
CD D37	Miss Oxley's Rebuttal PoE
CD D38	Mr Espino's Rebuttal PoE
<b>National Highways' Documents</b>	
CD D26	Mr Thomas's PoE
CD D43	Addendum to Mr Thomas's PoE
<b>Local Rule 6 Party's Documents</b>	
CD D27-A	Mr Weekes's PoE
CD D27-B	Appendices to Mr Weekes's PoE
CD D27-C	Mr Weekes's Summary PoE
CD D34	Mr Weekes's Rebuttal PoE

**OTHER CORE DOCUMENTS REFERRED TO IN THIS DECISION**

<b>Appellant's Application Submission</b>	
CD A3	Red and Blue Line (Site Location) Plan
CD A7	ES Vol 1: Non-Technical Summary
CD A8	ES Vol 2: Main Statement
CD A9	ES Vol 3: Technical Appendices
CD A9.3	ES Chapter 7 (Noise) Appendices
CD A9.4	ES Chapter 8 (Air Quality) Appendices
CD A9.6	ES Chapter 10 (Landscape and Visual Impact) Appendices
CD A10	ES Vol 4: Figures and Illustrations
CD A10.3	Chapter 7 (Noise) Figures
CD A10.4	Chapter 8 (Air Quality) Figures
CD A12	Employment Land Statement
CD A15	HGV Parking Facility Need Assessment
<b>Submissions made during Application Determination Period</b>	
CD B1	ES Volume 2 - Main Statement
CD B4	ES Vol 3 - Appendix 10.1 - LVIA Appraisal Plans ES Vol 3 - Appendix 10.2 - LVIA Methodology ES Vol 4 - Figure 3.1 - Parameters Plan
CD B15	Illustrative Landscape Sections
CD B16	Proposed Connectivity Plan - Route Type and Surface
CD B25	Revised Transport Assessment
CD B30	Landscape and Visual Impact Assessment Drawings: REV D Section A Drawing REV D Sections B+C+D Drawings
CD B31	Landscape and Visual Appraisal Drawings: Wirelines DB REV E Type 3 Photomontages Viewpoint Photography
CD B34	Design and Access Statement
CD B35	Revised Design Guide
CD B37	Amended Parameters Plan
CD B44	Zero Emission Goods Vehicles Statement
CD B45	Employment, Skills and Training Statement
CD B50	NaVCIS – Letter of Support dated 10.06.22
CD B57	SLR response to LUC Indicative Bund Location Plan Photosheets Walking Routes Plan Wirelines ZTV Plan
<b>Appeal Submission Documents</b>	
CD D13	SoCG - Appellant and NWBC
CD D14	ES Addendum
CD D15	Landscape SoCG – Appellant and NWBC
CD D18	Highways SoCG – Appellant and NH
CD D19	Highways SoCG – Appellant and WCC Highways
CD D20	Highways SoCG – Appellant and SCC Highways
<b>Committee Reports including Statutory Consultations</b>	
CD E31	Consultations Response - NWBC Environmental Health

CD E55	Consultations Responses - Stagecoach
CD E59	NWBC - Report – Planning and Development Board
CD E60	NWBC - Report – Planning and Development Board - Supplementary Report
<b>Planning Policy including Development Plan Documents</b>	
CD F1	North Warwickshire Local Plan Adopted September 2021
CD F2	Air Quality SPD
CD F3	A Guide for the Design of Lighting Schemes SPD
CD F7	Draft Employment DPD - Scope, Issues and Options 2024
CD F9	Dordon Neighbourhood Plan Adopted December 2023
CD F11	National Planning Policy Framework
CD F14	Adopted North Warwickshire Core Strategy 2014
CD F15	North Warwickshire Local Plan 2021 Inspector’s Report
<b>Strategic Gap and Landscape Evidence Base</b>	
CD G1	North Warwickshire Landscape Character Assessment and Capacity Study - August 2010
CD G2	NWBC Meaningful Gap Assessment – 10 August 2015
CD G3	Assessment of the Value of the Meaningful Gap and Potential Green Belt Alterations - January 2018
CD G9	Warwickshire Landscape Guidelines (1993): Arden Landscape Character Area
<b>Highways Evidence Base</b>	
CD H22	Public Transport Strategy - October 2022
CD H25	Vision Based Travel Plan v2 - December 2023
CD H30	Warwickshire Local Walking and Cycling Infrastructure Plan – February 2024
<b>Employment Land including Lorry Parking Evidence Base</b>	
CD I1	West Midlands Strategic Employment Sites Study (Phase One) – WMSESS 2015
CD I2	WMSESS (Phase Two) – May 2021
CD I3	National Highways Lorry Park Demand Assessment - September 2023
CD I4	Coventry and Warwickshire Housing & Economic Development Needs Assessment (HEDNA) – November 2022
CD I20	Cushman & Wakefield Employment Land Study
CD I99	North West Leicestershire District Council - Committee Report
<b>Relevant Appeal Decisions</b>	
CD K1	Appeal Reference - APP/R3705/W/18/3196890 - Land south of Tamworth Road and to west of the M42
CD K2	Appeal Reference - APP/R3705/W/15/3136495 - Land south-east of the M42 Junction 10, Tamworth, Warwickshire

**DOCUMENTS SUBMITTED AT THE INQUIRY AND SHORTLY BEFORE** (Inquiry Document numbers given in brackets, where applicable)

Document	1	Opening submissions on behalf of the Appellant (ID1)
Document	2	Opening submissions on behalf of the Council (ID2)
Document	3	Opening submissions on behalf of NH (ID3)
Document	4	Opening submissions on behalf of the Local Rule 6 Party (ID4)
Document	5	Statement and speaking note submitted by Mr Steve Ridley (ID5)
Document	6	Statement submitted by Mr Adam Archer – dated 31 Jan '22
Document	7	Statement submitted by Anne & Malcolm Jones - dated 24 Jan '22
Document	8	Statement submitted by Mr Daniel Hancocks – received by the Planning Inspectorate on 12 Feb '24



Document	9	Errata Sheet submitted by Ms Oxley
Document	10	A0 versions of proposed cross-sections, taken from the SLR LVIA, from CD B30
Document	11	A0 versions of photomontages, taken from Mr Smith's Supplementary PoE
Document	12	A3 version of Figure 13 'Landscape Sensitivity, Polesworth/ Dordon', from CD G1
Document	13	Agenda for Round Table Session dealing mainly with NH matters
Document	14	Agenda for Round Table Session dealing mainly with WCC matters
Document	15	Parameters Plan, with dimensions (ID8)
Document	16	Representation from Rapleys on behalf of Moto Hospitality Limited, dated 18 June 2024 (ID9)
Document	17	Bundle of 3 Committee Reports relating to land south of the A5, Padge Farm, Hinckley (ID10A-C)
Document	18	Table of sites from Appendix G in CD D24-B, with NWBC and Appellant's comments (ID11)
Document	19	Draft Policy Ec4 from the Draft North West Leicestershire Local Plan 2020-2040 (ID12)
Document	20	Bundle of 3 documents relating to a proposal for development on land south of Junction 1 of the A50, Castle Donington, Leicestershire (ID13A-C)
Document	21	Bundle of 2 documents relating to a proposal for development on land at Netherfields Lane, Sawley, Leicestershire (ID14A-B)
Document	22	Certificate of Lawfulness of Existing Use or Development relating to development at land off, Netherfields Lane, Hemington, North West Leicestershire (ID15)
Document	23	Update of Figure 44 from Appendix 1 in CD D29-C, submitted by Prof Coleman (ID16)
Document	24	North Warwickshire Economic Development Strategy and Action Plan (2023-2030) Final Draft (ID17)
Document	25	Bundle of 18 documents relating to a planning application submitted on behalf of Richborough Commercial for proposed development on land at Lichfield Road, Junction 9 of the M42, including written comments from the Appellant and NWBC on some of the submitted reports (ID18)
Document	26	Tables giving details of determined applications and sites where decisions are still pending (ID19)
Document	27	Tables giving details of Pre and post 2017 decisions on named sites (ID20)
Document	28	Emailed comments from Mr John Webb on behalf of the Local Rule 6 Party, dated 8 July 2024 (ID22)
Document	29	Plan showing 10 mile and 20 mile radii distances centred on BIFT (ID23)
Document	30	Plans showing details of Existing Industrial Estates at Dordon and Hams Hall (ID24)
Document	31	Bundle of 3 documents relating to the 'Call for Sites' as part of the preparation of the emerging EDPD (ID25)
Document	32	Phides Estates (Overseas) Limited v SoS for Communities and Local Government, Shepway District Council, David Plumstead – [2015] EWHC 827 (Admin), 2015 WL 1310647 (ID26)

Document	33	Bundle of documents detailing the accompanied site visit itinerary and various locations which the parties invited the Inspector to view on an unaccompanied basis (ID27)
Document	34	CIL Compliance Statement relating to the proposed Birchmoor Parking Scheme and the proposed Birchmoor Highway Signage Scheme, submitted by the Local Rule 6 Party (ID28)
Document	35	Schedule of suggested conditions and associated plans (ID6)
Document	36	Schedule of suggested conditions and associated plans – Split Decision (ID21)
Document	37	Bundle of 2 completed Section 106 Unilateral Undertakings, between the First and Second Owners to NWBC; and between the First and Second Owners to WCC
Document	38	Closing Submissions on behalf of NH (ID29)
Document	39	Closing Submissions on behalf of the Local Rule 6 Party (ID30)
Document	40	Closing Submissions on behalf of the Council (ID31)
Document	41	Closing Submissions on behalf of the Appellant (ID32)