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# **Report to the Secretary of State for Housing, Communities and Local Government**

**by David Wildsmith BSc(Hons) MSc CEng MICE FCIHT MRTPI**  
an Inspector appointed by the Secretary of State

**Date: 11 December 2019**

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**TOWN AND COUNTRY PLANNING ACT 1990**

**WARRINGTON BOROUGH COUNCIL**

**APPEAL BY**

**LIBERTY PROPERTIES DEVELOPMENTS LTD & EDDIE STOBART LTD**

Inquiry Opened on 15 October 2019

Land to the north of Barleycastle Lane, Appleton Thorn, Warrington

File Ref: APP/M0655/W/19/3222603

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**File Ref: APP/M0655/W/19/3222603**

**Land north of Barleycastle Lane, Appleton Thorn, Warrington**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Liberty Properties Developments Ltd & Eddie Stobart Ltd against the decision of Warrington Borough Council.
- The application Ref 2017/31757, dated 3 July 2018, was refused by notice dated 14 November 2018.
- The development proposed is demolition of all existing on-site buildings and structures and construction of a National Distribution Centre building (Use Class B8) with ancillary office accommodation (Class B1(a)), vehicle maintenance unit, vehicle washing area, internal roads, gatehouse, parking areas, perimeter fencing, waste management area, sustainable urban drainage system, landscaping, highways improvements and other associated works.
- The inquiry sat for 3 days on 15 to 17 October 2019.

**Summary of Recommendation: That the appeal be dismissed.**

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**Procedural Matters**

1. The inquiry concerned an appeal made by Liberty Properties Developments Ltd & Eddie Stobart Ltd ("the Appellants"), relating to an application for full planning permission. Against Officers' recommendations, this was refused by Warrington Borough Council (WBC or "the Council") in November 2018 for 2 reasons, which are set out in full in the Statement of Common Ground<sup>1</sup> (SoCG). In summary, the reasons were that the proposal would be inappropriate development in the Green Belt for which no very special circumstances had been identified; and that the proposed development would be premature in light of the Council's emerging Local Plan. The Appellants subsequently lodged an appeal on 13 February 2019.
2. Alongside this appeal the Appellants submitted a revised planning application in April 2019. The description of development and extent of the site were the same as for the original application, and it included the same package of off-site highway improvements as had been proposed for the original application. Some minor amendments were, however, made to the detailed design of the proposal<sup>2</sup>, including a reduction in the height of the main building from 18.5 metres (m) to 18.0m. The revised application also included a further financial contribution, towards securing local employment, and a commitment to implement a signage scheme to further control the routing of heavy goods vehicles (HGVs).
3. The revised application was reported to the Council's Development Management Committee on 24 July 2019, where it was recommended for approval subject to conditions, the completion of a planning obligation<sup>3</sup> and referral to the Secretary of State (SoS). A copy of the Committee Report (and Update Report) can be found at Appendix 2 of the SoCG. At this meeting Council Members resolved to approve the revised planning application subject to it not being called-in by the SoS, and completion of the S106 agreement. The application was subsequently referred to the SoS on 25 July 2019, but by the opening of the inquiry no decision had been made as to whether or not the SoS wished to call this application in for his own determination.

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<sup>1</sup> See section 3.4 of Document (Doc) OD/1

<sup>2</sup> See paragraph 3.22 of the SoCG for further details of the proposed design changes

<sup>3</sup> Made under Section 106 (S106) of the Town and Country Planning Act 1990, as amended

4. Following refusal of the original application, and prior to the opening of the inquiry, the Council withdrew both of its reasons for refusal and indicated that it would not be presenting any evidence against the proposed development at the inquiry. Indeed the formal position of the Council, as set out in its opening submissions to the inquiry<sup>4</sup>, is that the appeal should be allowed and that planning permission should be granted for the proposed development. As such, the Council was content to agree a comprehensive SoCG with the Appellants, to which reference has already been made.
5. In these circumstances the main opposition to the appeal proposal was offered by the South Warrington Parish Council's Local Plan Working Group (SWP), who appeared at the inquiry as a Rule 6(6) Party, together with a number of interested persons. Council Officers did, however, attend the inquiry sessions to discuss the submitted planning obligation and the suggested planning conditions.
6. The Appellants requested that the appeal scheme should proceed on the basis of the scheme plans and drawings submitted with the revised application, as set out in Appendix 4 of the SoCG, together with the S106 agreement and the additional contributions agreed during the determination of the revised application. Neither the Council nor SWP objected to this approach. As the revisions to the application plans are of a relatively minor nature, with the drawings and documents having been subject to the relevant statutory consultation, I am satisfied that no-one with an interest in this case would be unacceptably prejudiced if I were to consider the proposal on the basis of these revised plans and documents. I therefore held the inquiry on this basis.
7. It should be noted, however, that by a direction dated 16 September 2019 the SoS recovered the appeal for his own determination, explaining that the reason for the direction was because the appeal relates to proposals for significant development within the Green Belt.
8. Drawing on the evidence put to the inquiry by SWP and other objectors I indicated, when opening the inquiry, that it was likely that the main considerations upon which the SoS would base his decision would be:
  - The effect of the proposed development on the openness of the Green Belt;
  - The visual impact of the proposed development and its effect on the character and appearance of the surrounding area;
  - The effect of the proposal on the significance of nearby heritage assets;
  - Its effect in traffic and transport terms, on the safety and convenience of users of the nearby highway network;
  - Its effect on air quality;
  - Its effect on the availability of the best and most versatile (BMV) agricultural land;
  - Whether there would be any drainage or flood risk problems associated with developing this site;
  - The extent to which the proposed development would be consistent with the development plan for the area;
  - Whether the proposal would be premature, in view of the Council's emerging development plan;
  - Whether the proposal would represent sustainable development, in the

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<sup>4</sup> Doc 2

- terms of the National Planning Policy Framework ("the Framework");
- Whether the submitted S106 agreement would satisfactorily address the impact of the proposed development;
  - How the planning balance, involving the benefits and disbenefits of the proposed development, should be assessed; and
  - Whether there are very special circumstances, which would clearly outweigh the potential harm to the Green Belt by reason of inappropriateness and any other harm resulting from the proposal.
9. The submitted S106 agreement can be found at Doc 20, and is discussed in more detail later in this Report. A written statement from the Council, explaining how the proposed planning obligations would accord with Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 (as amended) can be found at Doc 4.
10. 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 Appellants have submitted an Environmental Statement<sup>5</sup> (ES) which has assessed the likely effects of the proposed development on a wide range of environmental receptors. Following discussions between the Appellants and the Council, and with statutory consultees and other stakeholders, an Addendum to the ES was issued in September 2018<sup>6</sup>, providing updates to a number of ES Chapters. The Council considers that the ES and its Addendum are compliant with the requirements of the EIA<sup>7</sup> Regulations and form an appropriate and robust assessment of the environmental implications of the appeal proposal. I share that view.
11. The ES, along with its Addendum and other relevant documentation submitted with the planning application, consultee responses and representations made by other interested persons constitutes the "environmental information", which I have taken into account in coming to my recommendation.
12. I visited the appeal site and the surrounding area on the morning of 17 October 2019, in the company of representatives of the Appellants, the Council and SWP. In addition, I undertook further unaccompanied visits to the site and surrounding area on 17 and 18 October 2019 to visit and observe locations highlighted by the main parties, SWP and other interested persons.

### **The appeal site and the surrounding area**

13. A full description of the appeal site and the surrounding area is given in the Supporting Planning Statement<sup>8</sup>, the Design and Access Statement<sup>9</sup> (DAS) and the ES and its Non-Technical Summary<sup>10</sup>, as well as in the SoCG. In summary, the site is an irregularly-shaped area of land, extending to about 15.7 hectares (ha) and comprising 2 undeveloped, arable fields divided by a low hedgerow running from north to south. Whilst appearing relatively flat, there is a fall of

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<sup>5</sup> See Core Documents ("CD") 52-55

<sup>6</sup> CD55

<sup>7</sup> Environmental Impact Assessment

<sup>8</sup> CD 25

<sup>9</sup> CD 35

<sup>10</sup> CD 52

about 7m from south to north, across the site. It is bounded to the north and west by Bradley Brook, which is bordered along its banks by various trees and scrubs. Appleton Thorn Trading Estate lies beyond Bradley Brook to the north-west, with further agricultural land lying to the north-east and east.

14. To the south, the site is bounded by hedgerows and trees along Barleycastle Lane and beyond this by agricultural land to the south-east and Stretton Green Trading Estate to the south-west. This latter Trading Estate includes the existing Eddie Stobart headquarters facility, which is accessed from Barleycastle Lane. Appleton Thorn and Stretton Green Trading Estates are often collectively referred to as Barleycastle Trading Estate.
15. There are a number of farmsteads in the immediate vicinity of the site. The closest is Booths Farm, which is located immediately adjacent to the site's south-western boundary. The farm buildings are unoccupied and have been derelict for some considerable time, with some showing signs of fire damage. Beehive Farm is located to the west of the site and Barleycastle Farm is located a short distance beyond the site's eastern boundary. Beehive Farmhouse, Booths Farm Farmhouse, the associated Booths Farm Shippon and Barleycastle Farmhouse are all Grade II listed buildings, dating back to the 17th Century. Aside from these farmsteads, the nearest residential properties are those within the village of Appleton Thorn, some 900m to the west of the site.
16. The site falls within a wider area of Green Belt land (as defined by the Adopted Warrington Local Plan Core Strategy (CS)) lying between the Warrington urban area to the west and Lymm to the east<sup>11</sup>.
17. As noted above, agricultural land lies to the north and north-east of the appeal site, and it is helpful at this point to mention that the Council has received a separate planning application from Langtree PP and Panattoni, for a major development of essentially Class B8 and B1(a) development on this land. This is known as the "Six 56" proposal (application reference 2019/34799), and was referred to extensively by SWP and other interested persons.

## **Planning Policy and Guidance**

18. Section 38(6) of the Planning and Compulsory Purchase Act 2004 ("the 2004 Act") requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise. One such material consideration is the Framework, which can override development plan policy if it is not consistent with the Framework's provisions. I therefore summarise the national planning policy context first, before turning to look at relevant development plan policies.

### *The Framework and other National Guidance*

19. The latest version of the Framework, issued in February 2019, emphasises that the purpose of the planning system is to contribute to the achievement of sustainable development through 3 over-arching and interdependent objectives – economic, social and environmental. Planning policies and decisions should play an active role in guiding development towards sustainable solutions, but should take account of local circumstances, to reflect the character, needs and

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<sup>11</sup> See Doc 25

opportunities of each area. To ensure that sustainable development is pursued in a positive way there is a presumption in favour of sustainable development at the heart of the Framework.

20. Paragraph 11 of the Framework explains that for decision-taking this means, firstly, approving development proposals that accord with an up-to-date development plan without delay. If there are no relevant development plan policies, or if the policies which are most important for determining the application are out-of-date, then planning permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
21. Of particular relevance in this case is Section 13 of the Framework, which is entitled "Protecting the Green Belt". Paragraph 133 makes it clear that the Government attaches great importance to Green Belts, with the fundamental aim of Green Belt policy being to prevent urban sprawl by keeping land permanently open; and that the essential characteristics of Green Belts are their openness and their permanence. Paragraph 143 reaffirms that inappropriate development is, by definition, harmful to the Green Belt, and should not be approved, except in very special circumstances.
22. Paragraph 144 goes on to explain that when considering any planning application, substantial weight should be given to any harm to the Green Belt, and that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations. Other relevant paragraphs in the Framework are referenced, as appropriate, later in this Report.
23. The Planning Practice Guidance (PPG), initially published in 2014, is also a material consideration in the determination of this appeal.

#### The Development Plan

24. As confirmed in paragraph 4.2 of the SoCG, the statutory development plan for the area consists of the Warrington Local Plan CS, adopted in July 2014, and the Appleton Thorn Ward Neighbourhood Development Plan ("the NDP"), which was made in June 2017.
25. A full list of the relevant development plan policies is given at paragraphs 4.4 to 4.6 of the SoCG, with copies of the policies themselves set out in CDs PPC1 and PPC2. That said, the main policy in dispute between the Appellants and SWP is CS Policy CS5 "Overall Spatial Strategy – Green Belt". This states that the Council will maintain the general extent of the Green Belt for as far as can be seen ahead and at least until 2032, in recognition of its purposes: (a) to check the unrestricted sprawl of large built-up areas; (b) to prevent neighbouring towns from merging into one another; (c) to assist in safeguarding the countryside from encroachment; and (d) to assist in urban regeneration by encouraging the recycling of derelict and other urban land. The policy goes on to explain that development proposals within the Green Belt will be approved where they accord with relevant national policy.



### Supplementary Planning Guidance/Documents

26. The SoCG also notes, at paragraph 4.7, that there are a number of Supplementary Planning Documents (SPDs) which are not part of the development plan, but which comprise material considerations in the determination of this appeal. These are the Standards for Parking in New Development SPD (2015); the Environmental Protection SPD (2013); the Design and Construction SPD (amended in 2016); and the Planning Obligations SPD (2017) – all of which can be found in CD PPC3.

### Emerging Development Plan Policy

27. The Council is in the process of reviewing its Local Plan, and published a Proposed Submission Version of the Local Plan (PSVLP) in April 2019, the consultation period for which closed in June 2019. The representations received are still being reviewed by the Council. The SoCG explains that one of the main employment sites proposed for allocation by the draft PSVLP is the Garden Suburb Employment Area, which is located at the junction of the M6 and M56 and covers the appeal site. This employment allocation forms part of the wider proposal to develop the Warrington Garden Suburb as a sustainable urban extension in the south-eastern part of the Borough, which will also deliver substantial new residential development, a neighbourhood centre and a network of open spaces and parkland. The draft PSVLP Proposals Map showing these allocations is at Appendix 5 of the SoCG.
28. As part of the evidence base required to inform this emerging Local Plan an update to the Warrington Economic Development Needs Assessment<sup>12</sup> (EDNA) has recently been carried out, on behalf of the Council. This has informed the employment land requirement and locations of employment sites in the PSVLP, and provides up-to-date evidence on the amount, type and general location of employment land required to meet Warrington's future needs. The EDNA contains a review of 52 sites within the Borough that were promoted for employment uses in an earlier Local Plan consultation exercise. Based on how well the sites performed against a number of criteria, they were graded A-E. The appeal site was included within this review and was one of 9 sites in the Borough graded A (all of which are located within the Green Belt).
29. However, the timetable for progressing the PSVLP has slipped, and as a result the Council is of the opinion that only minimal weight should attach to this emerging Local Plan. Both the Appellants and SWP agree that the PSVLP should only be given limited weight in this appeal. Whilst the parties have used slightly different words to describe the weight to be given to this emerging plan, there is no real difference of opinion, and I have therefore used "limited weight" for the rest of this Report.

### **The Appeal Proposal**

30. As set out in Section 3 of the SoCG, the Appellants seek full planning permission for the development of the site for the construction of a National Distribution Centre (NDC) for Eddie Stobart Ltd (ESL). The NDC would be some 18.0m high and would have a gross internal floorspace of 56,197 square metres (sqm),

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<sup>12</sup> See CD PPC5



together with 1,858sqm of ancillary office space provided over 2 floors. The main building would be located within the central portion of the site and its finished floor level would be some 4.25m below Barleycastle Lane, such that the apparent height of the building, relative to the road, would be about 14.0m. This building would allow for the storage of both ambient and chilled/frozen goods.

31. Loading bays would be located along the north and south elevations of the building, with a total of some 93 dock levellers and 6 level access bays, whilst the eastern part of the site would provide parking facilities for 465 cars, along with motorcycle and cycle parking spaces. 23 of the car parking bays would be fitted with electric charging points. The eastern part of the site would also accommodate 122 trailer parking bays. 36 trailer parking/operational bays are proposed in the southern part of the site, together with a waste management area, whilst the western part of the site would contain 106 tractor parking bays and a Vehicle Washing Area and Vehicle Maintenance Unit of some 929sqm. New landscaping would be provided on all boundaries, and there would be an 8m easement area around Bradley Brook to allow for the maintenance of this watercourse.
32. There would be separate HGV and car access points from Barleycastle Lane for operational traffic and other users, and the internal road layout would allow complete circulation around the site for HGVs, to avoid the risk of site-bound traffic queuing back onto the public highway in the event of a blockage on any of the internal roads within the site.
33. Following discussions with Highways England (HE) and the Council as local highway authority during the determination of the planning application, the Appellants agreed to make the following off-site highways improvements, to be secured via S106 and Section 278<sup>13</sup> (S278) agreements:
  - Provision of a staff bus service for the wider Barleycastle Trading Estate (including the proposed NDC);
  - Off-site highway improvements on Barleycastle Lane, including road widening within the limits of the adopted highway and land controlled by the Appellants to improve safety and visibility, and the creation of a new 3m wide shared cycle/footway to improve non-car access to the site<sup>14</sup>;
  - Improvements to Junction 20 (J20) of the M6, based on a scheme which was drawn up and agreed with HE, which will deliver additional capacity to the junction and the strategic road network<sup>15</sup> (SRN);
  - Improvements to the A50 Grappenhall Lane Roundabout and its approaches, based on a scheme which was drawn up and agreed with the local highway authority<sup>16</sup>; and
  - A contribution towards the improvement of public footpaths/cycleways between Barleycastle Lane and Grappenhall Lane.

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<sup>13</sup> Of the Highways Act 1980

<sup>14</sup> See paragraph 3.15 of Doc OD/1. But note also that paragraph 5.35 of the SoCG refers to this cycle/footway being 3.5m wide, as does the Council Officers' Report to Committee. This matter was not discussed at the inquiry, but as the proposed improvements to Barleycastle Lane are covered by Condition 4, which requires details to be agreed with the Council, I consider that this matter could be resolved at that stage, if planning permission is granted

<sup>15</sup> See paragraph 3.15 of Doc OD/1

<sup>16</sup> See paragraph 3.15 of Doc OD/1

34. The Appellants propose to operate the NDC 24 hours a day, 7 days a week, with regular truck movements and staff working shift patterns. It is intended to employ a total of some 480 staff during the operational phase of the development, split across a 3-shift pattern covering each 24-hour period.

### **Agreed Facts**

35. The comprehensive SoCG details the significant amount of common ground between the Council and the Appellants. In summary, this sets out agreement on such matters as the appeal site; the proposed development; planning policy compliance; planning policy summary and very special circumstances; the reasons for refusal; and planning conditions and the S106 agreement.

### **Cases of the Parties**

36. As the Council is fully supportive of this proposed development, and as the Appellants' case addresses matters raised in objections from interested persons, I consider it appropriate and sensible to summarise the objectors' cases first, before setting out the cases of the Appellants and the Council.

### **The Case for the Rule 6(6) Party – SWP**

The material points were:

37. It is important not to lose sight of the sheer scale of the appeal proposal, which is for an 18.0m high, 600,000 square feet<sup>17</sup> (sqft) warehouse with a further 20,000sqft<sup>18</sup> of ancillary office buildings, and 10,000sqft<sup>19</sup> vehicle maintenance unit, all surrounded by around 460 car parking spaces and 250 trailer parking bays. This would take place on some 15.7ha of open agricultural fields in the Green Belt. The NDC would operate 24/7, 365 days a year<sup>20</sup>, and involve about 760 HGV arrivals and departures a day<sup>21</sup>. There is a helpful visualisation of the scheme in the DAS, and it is respectfully requested that the Inspector and the SoS refer to this visualisation when considering this proposal, as it reinforces the fact that this would be a significant amount of development in the Green Belt.
38. SWP's presence at this inquiry reflects the level of public interest and concern that this proposal has elicited, and this has been amplified by the number of members of the public who took the time to prepare and deliver detailed, thought out and passionate statements to the inquiry. However, it is not the intention or role of SWP to co-opt or rely on those statements as its own. Instead, SWP has sought to scrutinise the Appellants' case; where appropriate raise concerns; and crucially, to provide an alternative professional expert's evidence as to the overall planning balance.
39. SWP originally envisaged that it would have supplemented the rigorous and technical opposition by the Council, in support of its Members' original decision to refuse this application on Green Belt and prematurity grounds. However the

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<sup>17</sup> About 56,200sqm

<sup>18</sup> About 1,850sqm

<sup>19</sup> About 930sqm

<sup>20</sup> Paragraph 4.2 of Doc APP/GH/1 & cross-examination of Mr Halman

<sup>21</sup> Paragraph 5.9.4 of the Ramboll Transport Assessment – June 2018 (Appendix 10.1 in CD54)

Council's last-minute decision to not defend these reasons for refusal has forced SWP, with its limited resources, to be the main voice of opposition.

40. The first overarching question has to be whether there are very special circumstances to justify development in the Green Belt. The second overarching question is whether this proposal would be premature either warranting a stand-alone ground for refusal or being a relevant material consideration and "harm" in the very special circumstances balance.

### *Green Belt*

41. It is accepted by all parties that this proposal is inappropriate development in the Green Belt and therefore a definitional harm arises that should be given substantial weight. It is also accepted that other relevant Green Belt harm arises to the purposes of the Green Belt, and to the openness of the Green Belt<sup>22</sup>. If a site in the Green Belt is developed upon, this must affect its continued ability to contribute to the national policy purposes of Green Belt<sup>23</sup>. The higher the proposal's impact on the site's contribution to Green Belt purposes, the higher the weight to be attributed to the harm<sup>24</sup>.
42. The Green Belt Assessment carried out by the Council in July 2017<sup>25</sup> is helpful in this regard. In relation to this site (Site R18/061) the findings were that it made a weak contribution to purpose "b"<sup>26</sup>, a moderate contribution to purpose "e"<sup>27</sup>, and a strong contribution to purpose "c" – to assist in safeguarding the countryside from encroachment. The Council's conclusion was that overall this site made a "Strong Contribution" to the purposes of the Green Belt. The justification for this overall conclusion was the strong contribution this site made to purpose "c" "due to its strong openness and predominantly non-durable boundaries"<sup>28</sup>. It is purpose "c" which is most under threat from this proposal.
43. SWP, through Mr Groves, considers that the appeal proposal would remove any scope for securing this objective<sup>29</sup>, whilst Mr Halman, for the Appellants, accepted that the proposal would have a "significant effect" on the continued ability of the site to contribute to the purposes of the Green Belt. In relation to the harm to the purposes of the Green Belt it therefore seems that the parties are not far apart in their view that this proposal would significantly effect (Mr Halman), if not entirely undermine (Mr Groves) the ability of the site to contribute to those national policy purposes, post-development. This harm should be given significant weight.
44. It is again common ground that the fundamental aim of Green Belt policy is to keep land permanently open, and that the essential characteristics of Green Belts are their openness and permanence. The 22 July 2019 update to the PPG<sup>30</sup> is a useful guide to the relevant factors in considering the impact a proposal will have

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<sup>22</sup> Paragraph 2 of Doc 1 & cross-examination of Mr Halman

<sup>23</sup> Paragraph 134 of the Framework

<sup>24</sup> Cross-examination of Mr Halman

<sup>25</sup> Doc 14

<sup>26</sup> to prevent neighbouring towns merging into one another

<sup>27</sup> to assist in urban regeneration, by encouraging the recycling of derelict and other urban land

<sup>28</sup> See Doc 14

<sup>29</sup> Paragraph 8.7 of Doc SWP/JG/1

<sup>30</sup> Paragraph: 001 Reference ID: 64-001-20190722 of PPG; Green Belt

on the openness of the Green Belt, and reflects case law on the point<sup>31</sup>. In short, it sets out that openness has a spatial and a visual aspect; that the duration of a proposal is relevant; as is the degree of activity, such as traffic generation.

45. SWP believes that this proposal would have a severe and adverse impact on the openness of the Green Belt<sup>32</sup>, whereas the Appellants maintain that there would only be moderate harm to openness<sup>33</sup>. It is a difference of planning judgment between the 2 experts, but SWP's conclusions should be preferred, for 2 reasons. The first is the reliance that Mr Halman, for the Appellants, places on the Landscape and Visual Impact Assessment (LVIA)<sup>34</sup> to reach his conclusions. The rationale behind the "moderate" finding of harm was that while it was initially undeniable that there would be a significant impact from a spatial and visual perspective, a more nuanced approach to the visual perspective reduced this harm to moderate. The "nuanced" approach was, in effect, Mr Halman using the findings of the LVIA as a tool to inform his professional judgment.
46. While it is accepted in theory that LVIAs can be a relevant tool for assessing Green Belt openness, it is maintained that in this instance it is not. The LVIA, and its methodology<sup>35</sup>, does not take account of the intrinsic value this site has as Green Belt, and therefore downplays the importance of views. Overall, its findings are for assessing the separate "other harm" of landscape and visual impact, and not Green Belt openness.
47. The second reason is that, unlike Mr Groves, Mr Halman did not expressly consider the impact that traffic would have on this site in his written evidence. This is especially relevant for a proposal which would surround the buildings with 250 trailer parking bays for HGVs. This would have a further impact on openness, and while in oral evidence Mr Halman said that this impact would be only to a very limited degree, Mr Groves' conclusions that the proposal would have a severe and adverse impact on openness should be preferred.
48. The assessment of harm to the Green Belt is not simply a mathematical exercise, but it is clear that as well as the substantial definitional harm to the Green Belt, there is further harm both to the purposes of the Green Belt and to the openness of the Green Belt. These are all important and relevant considerations for the overall planning balance and the identification of very special circumstances.

#### *Other Harm*

49. It is accepted by all parties that there are a number of other non-Green Belt harms which need to be taken into account, including the visual impact of the proposal on the landscape, the effect of the proposal on nearby heritage assets, and the loss of agricultural land. These are reflected in paragraph 5.9 of the SoCG. It should be noted that the SoCG treats the landscape and visual impact harm (as evidenced by the LVIA) as separate from the harm to openness.

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<sup>31</sup> *Turner v Secretary of State for Communities and Local Government* [2017] 2 P. & C.R. 1

<sup>32</sup> Paragraph 8.18 of Doc SWP/JG/1

<sup>33</sup> Paragraph 5.35 of Doc APP/GH/1

<sup>34</sup> Chapter 7 of the ES

<sup>35</sup> As set out in Appendix 7.1 of the ES

### *Economic Benefit*

50. The Appellants are mainly seeking to rely upon 3 “types” of economic benefit to clearly outweigh the harm. On a broad basis it seems that these are firstly, the wider economic benefits of ESL; secondly, the specific economic benefits of the proposal “on site”; and finally, the wider economic benefits of the proposal.
51. The Appellants’ claims for the extent of ESL’s impact on and contribution to the Warrington economy are set out in paragraph 6.8 of Mr Halman’s proof. With the exception of the last bullet point, which deals with the multiplier effect supporting jobs in the local economy, it was accepted that these benefits relate to the wider economic context rather than specific site benefits.
52. However, rather than considering the benefits of this type of economic gain if the proposal was granted planning permission, the Council looked at it the other way round, and considered the harm of the economic loss if the proposal was refused<sup>36</sup>. This is an approach that needs to be treated with caution. The question of ESL’s continued presence in Warrington being dependent on this application was raised and clearly answered. It is not the Appellants’ case that if this application were refused ESL would pack up and go, albeit it would constitute a major blow to them and there would be “some” risk. This accords with the position as set out by ESL itself<sup>37</sup>.
53. There are 2 different elements to the question of what the “loss” would be. Firstly, there is the undeniable loss that would arise from this application being refused – the loss of an investment in the region, and job opportunity. That can carry weight, albeit it seems to just be the negative wording of the proposed economic benefits, and it would not be right to double-count both the economic benefit of creating 480 jobs, and the economic benefit of not losing the opportunity to create 480 jobs.
54. However the second element needs to be treated more cautiously – what the Council referred to as the “potential loss of the headquarters”. The existing economic benefits of ESL’s presence in Warrington exist independently to this application, and there has been no evidence or firm submission that they would disappear, if refused. They are not “benefits which arise from this proposal”, and therefore should receive little to no weight.
55. Turning to specific “on-site” economic benefits, it is claimed that the proposal would have an economic benefit through the creation of construction jobs. However, caution should be exercised about attributing too much weight to a “generic” benefit that would arise from any development. This proposal would create 480 jobs on site, but whilst this would be a clear economic benefit, it is appropriate to ask where this benefit would be felt.
56. There was much discussion about the relevance of whether the economic benefits are local or not. Whilst a case can be made that “a job is a job whether in Widnes or Warrington”, it is right to examine whether the benefits of a proposal would be felt where the harm is felt. It does seem to be accepted by the Appellants that this is important, through the emphasis they place on the

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<sup>36</sup> See page 50 of the 2019 Officers’ Report at Appendix 2 of the SoCG

<sup>37</sup> Appendix 1 to Doc APP/GH/1, paragraphs 27-31

benefits to the local economy (such as through the partnership agreements) in support of their case.

57. With that in mind it is useful to look at where the current ESL employees live. The evidence shows that around 50% of the employees who work at ESL at the Barleycastle Trading Estate are from Warrington Borough<sup>38</sup>. If applied to the current proposal that would equate to 240 of the created jobs going to Warrington residents. Mr Groves accepted that just because a job is outside Warrington does not mean it is not a benefit. But it is not a binary question – benefit or no benefit. It is a question of weight, and a relevant consideration to that weight is not only the quantum of jobs created, but also their location.
58. In terms of the wider site-specific economic benefits, the Appellants claim that this proposal would create £18 million net in gross value added<sup>39</sup> (GVA), and the creation of 250 jobs in the wider regional economy. Again these are economic benefits but ones which are regional rather than local.
59. SWP accepts that in some cases, economic benefits can warrant very special circumstances (like the St Helen's<sup>40</sup> and Rochdale<sup>41</sup> examples, although SWP contends that these are not suitable comparators). In the current appeal proposal it is not accepted that these economic benefits would carry enough weight to constitute very special circumstances.

### *Highways*

60. The Appellants seek to rely on highway benefits that the proposal would provide, but it is important to consider what weight should be applied to these benefits. The works to improve the carriageway of Barleycastle Lane are primarily in response to the Council's concern over the uplift in HGV traffic from this proposal<sup>42</sup>, and at most should be viewed as a very local benefit<sup>43</sup>.
61. The cycle benefits relate to physical improvements to Barleycastle Lane, and £20,000 via the S106 agreement to improve the link between Barleycastle and Grappenhall Lane. These physical improvements would be to a cycling route already graded as "green" for cyclists, according to the Warrington Cycle Map<sup>44</sup>. However any cyclist coming from Warrington Town Centre would have to traverse routes meant for experienced cyclists, used to heavier and faster traffic (shaded blue and pink), before reaching those improvements.
62. One area of "pink" that prospective cyclists would have to traverse would be the route to be improved by the £20,000 in the S106 agreement. However, the implementation of this is not certain, as it is reliant on third-party land, and so this "missing link" would only occur if this land became available<sup>45</sup>.

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<sup>38</sup> See Doc 22

<sup>39</sup> See Doc 23

<sup>40</sup> Doc 16

<sup>41</sup> Doc 17

<sup>42</sup> Page 8 of Appendix 3 to Doc APP/GH/1

<sup>43</sup> Re-Examination of Mr Groves

<sup>44</sup> Appendix 9 of Appendix 10.1 in CD55

<sup>45</sup> Page 10 of Appendix 3 to Doc APP/GH/1



63. A concern has also been raised over the uncertainty surrounding the implementation of the required mitigation works to the A50/Grappenhall Lane roundabout<sup>46</sup>. The current wording of the S106 agreement requires only that the money be paid, with no obligation to have the mitigation scheme operational prior to occupation of the proposal. The Appellants' own transport expert accepts that due to the Council being in control of the timing, the scheme could well open without mitigation works being in place.
64. It is accepted that the Appellants and Council took a "nil-detriment" approach, and that even without the mitigation works the proposal would not have a severe impact. But, without a Grampian condition – which SWP proposes<sup>47</sup> – there would be a detrimental impact on the A50 roundabout if this proposed development was occupied while residents waited (for an unspecified time) on the Council to implement the scheme. This would be a relevant "other harm".

#### *Prematurity*

65. The original second reason for refusal was that this proposal would be premature, as it would substantially prejudice the preparation of the emerging Local Plan. The only paragraphs in the Framework that deal with prematurity are 49 and 50, and the language they use is not absolute. The terms used are not "never", but "unlikely" and "seldom". This means that the criteria for prematurity in those paragraphs is not a "bar" preventing the argument being run if they are not met, but is instead setting a "high bar" for any argument that does not meet the criteria, to be accepted.
66. The language of both of these paragraphs sets out that they apply to where prematurity is used "to justify a refusal of planning permission" and refusal of planning permission "on grounds of prematurity". Paragraphs 49 and 50 are therefore guidance for when prematurity is a ground for a reason for refusal. They are silent as to how to deal with it as a wider material consideration.
67. It is also important to remember the Framework guidance on the release of Green Belt in paragraphs 136 and 137 – that Green Belt boundaries should only be altered where exceptional circumstances are fully evidenced and justified, through the preparation or updating of plans. The Court has provided guidance to prematurity arguments in *Truro City Council v Cornwall City Council* [2013] EWHC 2525 (Admin) where Pattinson J set out that:

*"It is quite impossible to divorce the issue of prematurity from the local plan process: after all, the impugned decision is premature to what? The essence of a successful claim of prematurity is that the development proposed predetermines and pre-empts a decision which ought to be taken in the Development Plan process by reason of its scale, location and/or nature or that there is a real risk that it might do so."*

68. The High Court also recognised in *R (on the application of Luton BC) v Central Bedfordshire Council* [2014] EWHC 4325 (Admin) that the issue of Green Belt release can be relevant to a refusal on grounds of prematurity:

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<sup>46</sup> See page 7 Appendix 3 to Doc APP/GH/1 as corrected by Errata Sheet provided 16 October 2019 (Doc 19)

<sup>47</sup> See Doc 26



*"In the circumstances of a particular case, a planning authority might judge that the release of a site from the Green Belt by the grant of planning permission would be premature because it would pre-empt decisions which ought to be taken through a review of Green Belt boundaries, in order to prevent the plan-making process from being undermined."*

69. The position of SWP is therefore two-fold. As a primary position it maintains that this appeal should be refused on a prematurity ground. However, as a secondary position, even if the Inspector (and SoS) were of the view that this application did not reach that high bar, prematurity is still a material consideration to be taken account of in the very special circumstances balance.
70. Starting with the primary position, SWP accepts that the PSVLP is not at an advanced stage, with the consultation period having just finished. However on the above reading of paragraphs 49 and 50 of the Framework that is not fatal to the argument if it can be shown that the development proposal would be so exceptional in its effect on the emerging Local Plan that it would undermine the Local Plan process, even at this early stage. The clear direction of travel in the emerging Local Plan is that it will release significant amounts of Green Belt to meet its employment needs. A substantial portion of the 277ha of employment land would come from the Garden Suburb proposal which would provide 116ha in the Green Belt. This is set out at Policy MD2<sup>48</sup> of the PSVLP and supported by the Garden Suburb Development Framework<sup>49</sup>.
71. The clear vision that is set out in these documents is that the Garden Suburb would come forward through a linked-up delivery strategy and phasing plan, to ensure comprehensive and co-ordinated development. Crucially this would allow for the funding and delivery of required infrastructure improvements to be agreed before any employment development was permitted.
72. It is also important to note that the employment allocation of the Garden Suburb is predominantly made up of this proposal and the "Six 56" proposal on the neighbouring land. They are both proposals for B8 (storage and distribution) with (B1(a)) office space in the Green Belt, albeit with differences in scale.
73. If this appeal was granted it would be a material consideration for any future determination of "Six 56". Whilst a precedence argument is not being run, this does not prevent this point being relevant to prematurity. If this appeal was granted it would develop around 14% of the proposed employment land of the Garden Suburb. This would be out of step with the comprehensive and co-ordinated development envisaged by the emerging Local Plan.
74. This would provide support to "Six 56" which could then lead to a further 98ha of land earmarked for Green Belt release to be developed upon. The end result would be that by the time the controversial issue of Green Belt release was being discussed at a Local Plan examination, a significant proportion of that Green Belt would already have been developed. This would, in effect, be a pre-empting of proper process for Green Belt release, and would undermine the plan-making

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<sup>48</sup> See CD PPC4

<sup>49</sup> See CD PPC5

process by limiting the objections that the public could make at any examination. This is why this appeal warrants a refusal on prematurity grounds.

75. Even if that were not the case, it does not mean these prematurity points are irrelevant. They remain a material consideration and a matter on which the Inspector, and the SoS, are entitled to place weight. Furthermore, if there was an identified harm that arose from the prematurity then this could be an "other harm" to be weighed in the very special circumstances balance. The "harm" associated with prematurity here would be the pre-judging and undermining of the emerging Local Plan and its process, especially in light of the fact that it involves the loss of Green Belt land to substantial development.

#### *Other matters*

76. Mr Groves considers the fact that drainage issues were scoped out of the EIA and the ES to be curious. He maintains that the scale of the development, the massive expanses of roof space and hard standing, and the location on a green field site in agricultural use must result in significant consequences which need to be fully appraised by the developer and understood by the decision maker.

#### *Conclusion*

77. On the above analysis the benefits of the proposed scheme would not clearly outweigh the significant harm caused to the Green Belt and any other harm. In short, very special circumstances do not exist to justify this development. Furthermore the application is premature in relation to the emerging Local Plan. In these circumstances, SWP respectfully asks the SoS to dismiss this appeal.

### **The Cases for Interested Persons Opposing the Proposals**

78. A number of interested persons also spoke in opposition to the appeal proposal, but there was a certain amount of repetition of some matters – for example highway concerns – raised by different speakers. I have therefore not detailed every topic spoken on by every person, in the following sections, but have given an overall summary of the matters raised.

#### *Cllr Sharon Harris<sup>50</sup>*

79. Cllr Harris addressed the inquiry as Borough Councillor for Appleton, Hatton, Stretton and Higher Walton, and as Chair of Appleton Parish Council, as well as supporting the major concerns of Walton Parish Council and Appleton and Appleton Thorn residents.
80. The appeal proposal would profoundly impact on the wellbeing of every South Warrington resident. Appleton Thorn's NDP is part of the current development plan and, as such, has legal status. The PSVLP is currently going through its own process and is delayed due to the number of objections the Council has received. The Green Belt boundaries were confirmed 5 years ago and were intended to last for 20 years. They should not be prematurely changed to accommodate a premature application when the criteria for exceptional circumstances have not been achieved. National planning policy and guidance clearly states that the permanence of Green Belt is of imperative importance, as its legacy will last

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<sup>50</sup> Doc 7

beyond any plan period. With these points in mind it cannot be right for a premature planning application of this size and nature to take huge swathes of Green Belt land, taking no cognisance of these fundamental facts.

81. Appleton Parish Council has grave concerns about the significant reduction of the Green Belt which would arise if this appeal is allowed, and considers that in such circumstances any remaining Green Belt would lose its function in terms of all 5 purposes set out in paragraph 134 of the Framework. Since the submission of the original planning application it has been announced that Fiddler's Ferry Power Station will now be closing. This opens up an alternative large, brownfield site, which would be a more suitable site for the Appellants' aspirations to build a logistics hub, as it is also close to motorways and has rail links.
82. The appeal proposal would clearly undermine the NDP and the results for Appleton Thorn residents, in terms of increased traffic and HGVs travelling through the village, would be catastrophic. Despite, ESL's protestations that they are good neighbours, they have demonstrated to the Parish Council and residents that they are not. Actions arising from a meeting called by Appleton Parish Council in May 2019, to attempt to resolve issues such as ESL HGVs ignoring local weight limits and restrictions, have not been implemented<sup>51</sup>. Nor has a promised working group to tackle the issue of litter around the Trading Estate been set up. In these circumstances the Parish Council has no confidence that promises to review signage at junctions and key points in the local infrastructure would actually happen, and it is concerned that promised S106 money would not be used to the benefit of the local area.
83. In addition to the traffic problems Warrington experiences it should be noted that accidents on the motorways (which happen 2 or 3 times a week) subject residents to daily delays and traffic jams. Moreover, the swing bridges are often open during peak times and get stuck on a regular basis, meaning that the town is often gridlocked on a weekly basis. However, the link roads to alleviate highways problems will not be built for some time. There are genuine concerns that this proposal is heavily dependent on the building of the Garden Suburb which is part of the emerging Local Plan.
84. But there are many uncertainties as to the detail and delivery of this Plan. For example, the PSVLP shows an indicative 40m wide dual-carriageway/mass transit route cutting straight through the proposed Garden Suburb, but the Council has not been able to confirm that this route would not be accessible to HGVs heading to or from the employment zone, which is almost exclusively a logistics/transportation hub. The idea that a 40-metre wide road would be necessary for light commuter traffic coming to and from a Garden Suburb is questionable.
85. If it is intended to be an alternative route for HGVs accessing the logistics site, this would make life for residents untenable in terms of air quality. Air quality is fundamental to the health and wellbeing of our residents. We cannot see the air we breathe and so we are unable to see the effects that current poor quality air is having on the population. However, we do know that NO<sub>2</sub> levels in Warrington have been above DEFRA<sup>52</sup> limits since 2013.

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<sup>51</sup> See attachment to Doc 7

<sup>52</sup> Department for Environment, Food and Rural Affairs

86. A 2019 report by the Air Quality Expert Group<sup>53</sup> entitled "Non-Exhaust Emissions (NEE) from Road Traffic", refers to particles released into the air from brake wear, tyre wear, road surface wear and re-suspension of road dust during on-road vehicle usage. Its Executive Summary states that these emissions arise regardless of the type of vehicle and its mode of power, and contribute to the total ambient particulate matter burden associated with human ill-health and premature mortality. Emissions may also be high in areas such as motorway slip-roads. The Air Quality Expert Group recommends, as an immediate priority, that NEE are recognised as a source of ambient concentrations of airborne particulate matter, even for vehicles with zero exhaust emissions of particles.
87. With a marked increase in the numbers of HGVs that this proposal would bring on to our motorways and local roads, pollution in Warrington stands to be greatly worsened, regardless of any highway mitigation improvements. SMART motorways will increase queues on slip roads and emissions from idling HGVs will occur. The Consultation Draft of the Council's Fourth Local Transport Plan (LTP4) acknowledges that national standards for Nitrogen Dioxide (NO<sub>2</sub>) emissions are already being exceeded. The Air Quality Action Plan highlights that a 43% reduction is required on motorways and 41% in the town's Air Quality Management Area (AQMA).
88. Finally, if the Appellants were unable to develop the site as a result of ESL's current financial difficulties, the site could then be taken by another firm with the risk that the currently proposed S106 obligations would not be fulfilled. In view of all the above points, this appeal should be dismissed.

*Cllr Ryan Bate*<sup>54</sup>

89. Cllr Bate addressed the inquiry as Borough Councillor for the Grappenhall Ward, and also represented Grappenhall & Thelwall Parish Council, who express serious concerns about this proposal both in their own right, and as part of the South Warrington Parishes group. He is also Chair of the Rethinking South Warrington's Future group - a collective of residents and community groups who, like the South Warrington Parishes group, strongly oppose this proposal.
90. He, and the communities he represents, have lost faith in a democratically accountable local planning system, for a number of reasons. These include the fact that membership of the Development Management Committee was radically altered between the first and second applications being heard, and that Members of the Planning Committee did not know where the appeal site is located. Members also commented on the amount of Council Tax which the site would generate, and how this could contribute to the Council's revenue budget.
91. There is also concern that the Council decided not to submit evidence to this inquiry, shortly before the second planning application was to be heard, thus steering Members' attitudes towards the application. Sadly, these points seem to indicate that the main agenda behind decision-making is a drive for economic growth and revenue-raising, rather than sound and balanced planning.

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<sup>53</sup> See attachment to Doc 7

<sup>54</sup> Doc 12

92. Almost all of the reasons claimed for the appeal proposal meeting very special circumstances for the release of Green Belt are economic. These do not seem to properly balance with the social and environmental concerns. Moreover, so many of the commitments made are specific to it being ESL delivering the site. But these cannot be grounds for supporting a planning application, not least because of the well-publicised current issues with ESL which make it questionable as to whether it would be ESL delivering the site and meeting the highly ESL-centric commitments made in the application.
93. Even aside from the current ESL situation, there can be no guarantee that ESL would always run the site, or run it on the model suggested in the application. This cannot fulfil very special circumstances, where the environmental and infrastructure impacts are much clearer and more quantifiable in terms of harm, whereas the suggested economic benefits have many questions around deliverability in the short and long term.
94. It is unclear whether there are other examples where the economic benefit of a site, with similar characteristics to the location in Appleton Thorn, is essentially the only factor used to justify the release of Green Belt land. Most case law implies that economic benefits should only be given moderate weight at most - not enough on their own to outweigh the substantial harm to the Green Belt.
95. It is also unclear what is unique about this site, in allowing very special circumstances to be met, and how this site is different from other sites elsewhere in the Borough, or elsewhere in the country. There is a concern that this site is not unique, and that it would therefore be too easy to meet the very special circumstances test on any part of Warrington's Green Belt, such that any reputable company matching the proposals presented by the Appellants would be able to develop anywhere within the Green Belt.
96. The Council has produced an EDNA, albeit this is still being disputed as part of the ongoing Local Plan process. These same needs for employment land would be justification for development in any other part of Green Belt. They do not specifically require this site. Furthermore, now that the future of Fiddlers Ferry Power Station is clearer than when the first application was submitted, or when the PSVLP was published, it is wrong to ignore the availability of brownfield land and the need for regeneration of that site. It could be argued that releasing Green Belt land is no longer necessary, if indeed it ever was.
97. The employment and training offer which the Appellants propose is a requirement of any major development and therefore is not fulfilling very special circumstances. This matter should therefore not have been given so much weight in the Officers' Report.
98. This proposal would undermine the plan-making process. The Council Officers' Report suggests that the proposed development is neither substantial nor likely to contribute to cumulative impact, with, for example, the "Six 56" proposals on the neighbouring land. But this is somewhat contradictory, as for the economic benefit to be significant enough to justify very special circumstances, surely the development is substantial. The SoS appears to consider that this site is significant, as he has asked this inquiry to provide a recommendation rather than a final decision.

99. Importantly, it is unclear why economic benefits are being given such a significant weighting by Council Officers in the planning balance. There is no clarity on how the development would support a local supply chain, if at all, and it is uncertain how much of the GVA would actually remain in the Borough as whole, let alone the immediate vicinity. This is especially relevant given that so little of that economic benefit would impact on the immediate locality, which would bear all of the environmental and social costs. It is also unclear whether there is any risk that consolidation to this new site could have a detrimental impact elsewhere in the Borough, if ESL reduced its operations at other sites.
100. Most importantly, with regards to the planning balance at the end of the Officers' Report, it is questionable how it can be justified that the harm to the Green Belt which would arise from this inappropriate development would be clearly outweighed by other considerations. Having regard to all the above points, this appeal should be dismissed.

*Cllr Gerry Palmer*<sup>55</sup>

101. Cllr Palmer is a local resident and a Parish Councillor for Appleton Thorn. She argues that this proposal would generate high volumes of traffic on the outskirts of Appleton Thorn and Grappenhall, and further add to the high volumes of HGVs on Warrington's motorway network. Despite the Appellants' assertions to the contrary, this development would have an adverse impact on air quality. The appeal site is located within 1 kilometre (km) of 2 AQMAs, both declared for the exceedance of NO<sub>2</sub>, and is also just 640m from the local nursery and primary school at Appleton Thorn.
102. Air quality is an important issue in Warrington as the M6, M62 and M56 motorways surround the town. Within those motorway boundaries, traffic is often unable to disperse because of the bottlenecks created by narrow Victorian crossings over the 2 canals<sup>56</sup> and the River Mersey, all of which bisect the town. When any of these motorways are shut, as happens almost daily, traffic diverts through Warrington, creating gridlock and increasing pollution. The Council's Joint Strategic Needs Assessment estimates that at least 145 people die early in Warrington every year because of air pollution, not to mention chronic illness.
103. The greatest concerns relate to NO<sub>2</sub>, and small particulates (PM<sub>2.5</sub>). NO<sub>2</sub> inflames the lining of the lungs, reduces immunity to lung infections and exacerbates asthma, especially in children. It is already recognised as a risk, and monitored levels have regularly exceeded safe limits in Warrington since 2013. PM<sub>2.5</sub> are a major component of HGV emissions. These tiny particulates get deep into the lungs and enter the blood stream, causing cardio-vascular disease, respiratory disease, dementia and reduced life expectancy. The Selby Street monitor (which feeds into the World Health Organisation (WHO) database), shows that in 2018, Warrington had the highest levels of PM<sub>2.5</sub> in the entire UK.
104. The Appellants' air quality assessment significantly underplays the environmental impact of the proposed distribution centre and subsequent health outcomes for the town, especially South Warrington, and did not consider the measurement of PM<sub>2.5</sub>. Although not experts, residents question the robustness of the data and

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<sup>55</sup> Doc 6

<sup>56</sup> The Bridgewater Canal and the Manchester Ship Canal



the soundness of the air quality assessment's conclusions. It comprised a 10-day traffic survey, DEFRA background maps and local monitoring stations, the impact of whose data was largely dismissed, as it was "too urban" and subject to local road congestion, making the high readings unreliable. However, residents consider that this is typical of the local traffic situation.

105. The receptors used were in rural locations, where pollution levels are currently quite low and, as such, offer a perfect baseline for the extrapolation of data. The Appellants' final conclusions on air quality for the completed development are, unsurprisingly "negligible" for NO<sub>2</sub> and PM<sub>10</sub>, but residents do not consider that 600 additional HGV movements and 2,000 vehicular movements could be seen as negligible. In addition, PM<sub>2.5</sub> should have been relevant to the EIA. As there are unanswered questions of assessment, methodology and omission, and as air quality in Warrington is already so poor, this appeal should be dismissed.

*Mr John Appleton*<sup>57</sup>

106. Mr Appleton is the chairman of the Stretton Neighbourhood Development Steering group and states that he represents the majority of the residents of Stretton. The decision of the Council to refuse the original planning application was well accepted by the community and accorded with the views of the majority of South Warrington residents. It also appeared to be bringing some control over the potential overdevelopment which is proposed by the emerging PSVLP.
107. If this proposal is approved it would lead to a stark reduction in the health and wellbeing of the community of Stretton. This is important, as the health and wellbeing of the population is purported to be a prime consideration of the Council's Local Plan objectives, including its environmental objectives, which probably could not be supported if there were to be a massive increase in HGV and commuter traffic through Stretton village and the general area. Any such increases would only add to an already critical situation.
108. Stretton encompasses a major arterial route into Warrington from the south by Junction 10 (J10) of the M56, the A559 and the A49. These heavily used roads lead daily to standing traffic, especially at commuter times. However, the greater and more frequent effect upon these junctions is the increasing number of accidents on the M56, and any knock-on additional traffic resulting from M6 problems. These all lead to severe and prolonged gridlock within Stretton.
109. The appeal proposal would introduce the high potential for detrimental effects upon the environment by reducing air quality and increasing noise in and around the village of Stretton. In particular, Stretton St Matthews Primary School would undoubtedly suffer from an increase in traffic-borne pollution.
110. The proposed ESL new headquarters is in the area shown as being allocated for commercial development in the PSVLP. This emerging plan states, however, that no development should take place before a suitable highway infrastructure is in place. It is currently understood that the appeal proposal, if approved, would commence sometime in 2020, but it is highly likely that the new Local Plan would not be approved and in place by that date. The required upgrade in the traffic infrastructure would therefore not be present, and on these grounds alone the

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<sup>57</sup> Doc 5



appeal should be refused, due to the likely high impact on the existing Stretton highway infrastructure and the fact that there are no exceptional circumstances for Green Belt release in accordance with the Framework.

111. It is of further great concern that the PSVLP includes a proposed dual-carriageway to connect with the A49 and run across current Green Belt land. This would undoubtedly become a rat-run for existing and any new ESL HGVs, amongst others, and would have a severe detrimental impact on the peace and tranquillity of Stretton village. Submitted photographs show that current HGV operations by ESL have breached the weight restrictions placed upon the B5356 (Grappenhall Road), and photographs also show HGVs make use of minor B class roads to access the existing depot<sup>58</sup>. As ESL's existing traffic movements are not being successfully managed, Stretton residents fear that increased operations from the proposed NDC would further exasperate this current issue.
112. The Appellants maintain that the proposal would result in a financial benefit to the local community, but this is an unsubstantiated and aspirational claim, especially in reference to Stretton village, which has no retail shopping facilities nor any parking areas for HGVs. Moreover, as the majority of new employees are likely to live outside the local area, this would give rise to no financial benefit, but would simply result in more traffic movements and disruption.
113. Approval of this proposal would also be likely to result in harm to and destruction of the local flora and fauna; harm to the local wildlife; increased severe wear and tear on the structure of existing roadways; increased light pollution; increased litter at the roadside, which is already an ongoing concern; increased health risk; and increased road safety issues and a potential increase in vehicle accidents.
114. This proposal must also be viewed, not just as an individual planning application, but as a wider initiative closely linked with the PSVLP, which has recently been issued for consultation, and in which the Council seeks to allocate a vast swathe of Green Belt land to be used for logistics and distribution services. This part of the PSVLP is vehemently objected to by the wider populous of South Warrington.
115. Powerful political and coercive influences of large businesses can play a strong part in seeking changes to previous rulings which would undoubtedly result in a severe detrimental impact on the existing community of Stretton and the wider South Warrington area. This should be resisted and the original ruling to reject this inappropriate proposal should be upheld.

*Mr Kevin McAloon*<sup>59</sup>

116. Mr McAloon spoke on behalf of the Thorn Ward NDP team, villagers, and residents from Appleton Thorn. Appleton Thorn village and its surroundings are rural in character, and whilst the village has grown somewhat over the past 50 years it now has limited capacity to accommodate significant large scale commercial development. ESL's existing HGV facility within the Barleycastle Trading Estate would be dwarfed in scale by this massive new NDC proposal.
117. The existing road network struggles to cope with traffic coming and going to the trading estate, the growing Appleton Thorn village, and the nearby motorway

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<sup>58</sup> See Doc 5

<sup>59</sup> Doc 8

network. High peaks, early and late in the day, exacerbate this traffic problem giving rise to extensive periods of local heavy congestion on essentially country roads. When there is congestion on the motorways, traffic uses these local country lanes as rat runs through the village, causing even more congestion.

118. The Localism Act of 2011 provided local communities with the opportunity to have a strong say in their future by preparing NDPs which would contain policies relating to the development and use of land in their area. Over a period of some 4 years the Appleton Thorn Ward NDP was produced by a joint Appleton Parish Council and Appleton Thorn residents' committee. It was submitted to an independent examiner and approved by the Council in mid-2017. Many of its policies are concerned with preserving the local character, heritage, and landscape of our valued rural area, and special mention was made of the importance of its green spaces, including precious Green Belt land.
119. Circumstances have changed, however, in a period of just 2 years. If this proposal for a large NDC was to be allowed, it would be an unacceptable contravention of the NDP policies, as it would encroach on the Green Belt land on the eastern side of our rural village. Worryingly, there are also proposals by developers Langtree and Panattoni to develop further massive commercial warehouse premises on Green Belt land adjoining the appeal site<sup>60</sup>. If the appeal proposal is granted planning permission the floodgates would be open to further development proposals from other commercial developers, resulting in further overwhelming commercial sprawl in and around Appleton Thorn village. These massive proposals would fundamentally undermine residents' stated preferred open rural environment as set out and highlighted in the existing NDP.
120. The appeal proposal would conflict with NDP Policy AT-D1, "Design of Development of Appleton Parish Thorn Ward", as it would destroy, rather than maintain or enhance the unique local character, distinctiveness, local identity, sense of place, and overall village character as highlighted in this policy. It would also be in conflict with Policy AT-D2: "Protecting and enhancing local landscape character and views", as this proposed large commercial development would destroy village landscape, village character, local Green Belt habitats, and undoubtedly would be highly intrusive, spoiling local rural views.
121. There would also be conflict with Policy AT-E1: "Employment Opportunities", as the proposed development would result in a large loss of local green space and Green Belt when very special circumstances for Green Belt loss do not appear to have been economically justified. In any case, land at Fiddlers Ferry Power Station at the west of Warrington could be made available as an alternative viable large brownfield site for several massive commercial developments, which would not impact our local housing developments nor hurt Green Belt.
122. Furthermore, Policies AT-TH1 and AT-TH2 refer to the implementation of good traffic management, transport improvements and sustainable transport measures, but whilst this is welcome it is the impact of constant heavy traffic around our village on overall communal safety that is by far our biggest concern. HGVs every 2 minutes, 24/7, with associated noise, light, and air pollution. There would also be serious ramifications for Warrington as a whole, as it already has the worst pollution record in the country. There would also be a significant

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<sup>60</sup> The "Six 56" proposal

increase in heavy commercial traffic on local country roads which are ill-suited to handle extensive heavy HGV traffic.

123. In summary, the appeal proposal, previously refused planning permission by the Council, goes against the spirit of our NDP, in particular contravening these important policies. But despite the infringements of existing NDP policies, our NDP team is now being urged to engage with Council Planners again, to consider revising our NDP by developing a new set of policies to dovetail with the slowly emerging new Local Plan. The NDP team does not see why it should spend many more hours attempting to redraft another updated NDP, only for the new policies to be ignored, as with the first NDP.
124. The NDP team feels that trust has been ebbing away for us to commit further meaningful effort to another NDP exercise in which any new policies would stand the risk of failing to be honoured by the Council in the future. The Appellants and the Council should adhere to existing NDP policies before new policies are considered as part of any new Local Plan. Granting ESL and other developers permission to build extensive commercial premises on Green Belt land must be avoided as it would wipe out our NDP as a robust meaningful policy document and would undermine trust in the whole neighbourhood plan system. As the Framework states, "the adverse impact of allowing development that conflicts with the neighbourhood plan is likely to significantly and demonstrably outweigh the benefits"<sup>61</sup>. Plans should be the key to delivering sustainable development that reflects the vision and aspirations of local communities.
125. Indeed the NDP team has welcomed the 2018 Parliamentary Bill proposed by the MP for Henley, which seeks to increase the legislative stature of NDPs. There is a passionate call for Central Government to recognize the value, process and spirit on which NDPs should be judged. NDPs should be coveted as important legal documents and fully supported, rather than being subsequently ignored or infringed by Borough Councils. If circumstances change, the interactive dialogue should continue in order to reach acceptable compromises. As Appleton Thorn residents believe that the ESL proposal is overwhelmingly out of character to be part of our local rural area, and especially with Green Belt, we urge the SoS to refuse planning permission for this most unacceptable development proposal.

*Mr David Thrower*<sup>62</sup>

126. Mr Thrower addressed the inquiry as a local resident. He commented on the proposal in relation to Local Government and Central Government policies for freight terminals.
127. The Evidence Base Review (EBR) of the Council's draft LTP4 states that national standards for NOx are being exceeded on the motorway surrounding Warrington, the town centre, and roads leading into the centre. The Air Quality Action Plan highlights that a 43% reduction is required in the motorway AQMA. Transport is a major contributor of CO<sub>2</sub> emissions in Warrington, and lorries have poor transport energy efficiency. These modes are likely to be the main sources of the large CO<sub>2</sub> emissions arising from transport. The EBR also refers to a need to review and update Sustainable Transport Strategies and Programmes to further

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<sup>61</sup> Paragraph 14 of the Framework

<sup>62</sup> Doc 10

support low carbon travel. Having regard to these points, the appeal proposal is wholly out of line with the spirit of the Council's own LTP4 of 2019.

128. The National Policy Statement for National Networks issued by the Department for Transport (DfT) in December 2014, states that the users and buyers of warehousing and distribution services are increasingly looking to integrate rail freight. This requires the logistics industry to develop new facilities that need to be located alongside the major rail routes. It goes on to explain that a network of strategic rail freight interchanges (SFRIs) is a key element in aiding the transfer of freight from road to rail, supporting sustainable distribution and rail freight growth, and meeting the changing needs of the logistics industry. SRFIs also play an important role in reducing trip mileage of freight movements on the national and local road networks.
129. The same document states that the Government's vision for transport is for a low carbon sustainable transport system that is an engine for economic growth. The transfer of freight from road to rail has an important part to play in a low carbon economy, and in helping to address climate change. Even with significant future improvements and enhancements to the SRN, the forecast growth in freight demand would lead to increased congestion, both on the road network and at our ports, together with a continued increase in transport carbon emissions.
130. The Logistics Growth Review - Connecting People With Goods, issued by DfT in November 2011, states that it is extremely important that more modern, high specification logistics buildings and intermodal terminals in the form of Rail Freight Interchanges are now approved and built in order to give occupiers the opportunity to actively move more goods by rail.
131. A further DfT publication, the Rail Freight Strategy - Moving Britain Ahead, issued in September 2016, states that each tonne of freight transported by rail reduces UK emissions, as well as building a stronger economy and improving safety by reducing lorry miles. The Government is committed to ensuring transport plays a full part in delivering the economy-wide emissions reductions needed to meet this target, pointing out that in 2014 HGVs were responsible for 17% of total UK transport emissions. Shifting more freight from road to rail therefore has the potential to make a real contribution to meeting the UK's emission reduction targets, with the key constraint to unlocking potential in this sector being the availability/construction of suitable rail-connected terminal facilities, including SRFIs. These points show that the ESL proposal and the Council's support for it are completely out of line with DfT thinking, expressed as recently as 2016.
132. Transport for the North Enhanced Freight and Logistics Analysis Report, 2018 indicates that there are a wealth of freight assets located in the north of England which underpin a strong multimodal freight capability. These include 3 SFRIs at Ditton, Wakefield and Selby; 5 further intermodal terminals at Trafford Park, Leeds, Garston, Doncaster and Wilton. This list does not include any reference to Warrington, which is all the more extraordinary given Warrington's major role as a logistics base. It suggests a sustained failure on the Council's part to embrace the potential of rail freight, in the face of Government policy.
133. The document goes on to state that reliance on the use of HGVs to transport goods to the north of England contributes to a reduction in its competitiveness, and calls for better-informed planning and policy practices that will remove barriers to investment and development. Key interventions are stated to include

delivering growth in strategically-located rail and water-connected freight interchanges/distribution parks; and creating a long-term consistent business environment to stimulate private-sector investment in sustainable low-emission technology and distribution practices across the north of England. Neither ESL nor the Council have grasped Transport for the North's thinking, despite WBC supposedly being a part of this group.

134. In Transport for the North Strategic Transport Plan Evidence Base, January 2018, there is strong encouragement towards the decarbonisation of freight transport and a move towards low/zero emissions, which is seen as opening up many opportunities around modal shift and how it can be achieved. This document also points to improving the establishment of increased intermodal terminals across the north of England, and their connection to the rail network – which may be through working in partnership with local authorities. The ESL proposal and the Council's support for it are completely discordant with these views.
135. The DfT has also made it clear that it agrees with the Campaign for Better Transport that rail freight offers real benefits for the environment and helps to keep bulky loads off the road network, helping to ease congestion. Further support for such views can be found in the 2017 Labour Manifesto which, amongst other things, explains that Labour's energy policy will ensure we meet our climate change targets and transition to a low-carbon economy; that Labour will invest in a modern, integrated, accessible and sustainable transport system; and will encourage expansion of public freight services that will leave our roads freer of traffic and our air cleaner.
136. The overall conclusion seems inescapable - the appeal proposal is in direct contradiction with the thrust of Local and Central Government policies, and also does not appear to be consistent with national Labour Party policy. It is a 1970s solution to a 21st century problem.

*Mr William Mack*<sup>63</sup>

137. Mr Mack is a resident of Appleton, having lived there for some 26 years. He considers that the transport network in the town struggles to operate effectively, due mainly to its strategic position in the motorway network.
138. To address these matters, the Council has developed a Transport Plan which includes a number of new sections of road, some of which are proposed as 40m-wide dual-carriageways. One of these is planned to be a relief road for the east of the town, from a point very close to the proposed ESL site, to the M56 at J10. But this road would be an ideal rat run for traffic wishing to bypass the tolls on the new Mersey Gateway Bridge. The operational hours for the ESL proposal would be 24/7 all year round, with hundreds of staff working a shift rota. If vehicles from the proposed ESL site were to use this new road, the effect on people living next to it would be terrible. They would have to endure noise, pollution and vibration day and night, and pedestrians and cyclists would be put in danger, especially as there are 3 schools close by.
139. Without this road the proposal to build a transport hub in Appleton Thorn is fundamentally flawed, because at present there is only one suitable route to the

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<sup>63</sup> Doc 11



site. That road joins the A50 and leads to the M6 at the Lymm Junction. This stretch of road is often congested, and the impact of the ESL proposal and other plans in the pipeline is a recipe for chaos. Added to this, if there was a blockage on the motorway, which is often the case, ESL's operations would simply grind to a halt, unless their HGV drivers ignore the weight restriction on Grappenhall Lane which goes through Appleton Thorn to J10 of the M56 at Stretton.

140. HGV drivers ignoring road signs around Appleton Thorn are a regular occurrence as detailed in a message from Viscount Ashbrooke, the trustee of nearby Arley Hall, which describes how HGV drivers fail to comply with road signs. Although the Viscount's staff have been in touch with ESL regarding this matter, the problem has not yet been resolved.
141. The emerging Local Plan has proposals for an additional 4,500 to 7,000 new homes in this area, with a neighbourhood centre having a supermarket and shops. In addition, a planning application has been submitted to build another industrial development, 8 times bigger than the appeal proposal, right next to the proposed ESL site<sup>64</sup>. On top of this, another 1,000 homes have already been given planning permission and their construction is underway. Most of the traffic from these developments, together with the existing residents, would head to either the A49 or A50 and the neighbourhood centre would attract traffic into the area, resulting in greatly increased congestion and a worsening of air quality. But as the emerging Local Plan and the draft LTP4 have not yet been approved, the new roads described above may not go ahead. In these circumstances the appeal proposal is surely presumptuous.
142. The Council should consider brownfield sites first for development, and as the Fiddlers Ferry Power Station is due to close soon, that massive site could be re-used as an industrial area as the emerging Local Plan is to cover the next 20 years so. Whilst ESL wants to build its new facility as soon as possible, it is unclear where the people they would employ would travel from. There are no suitable houses currently in the local area and the "affordable" homes the Council wants to build in the Local Plan would not be ready in time. As a large number of people employed on the Appleton Thorn Industrial Estate travel from north Warrington, Widnes and St Helens, it would make sense to use the Fiddlers Ferry site as it is a lot closer to these areas.
143. In summary, this application lacks soundness and deliverability. The determination of the infrastructure is poor and its funding is lacking in detail and the existing community has not received the proper consideration it deserves. The appeal should therefore be dismissed.

*Mr Steve Fensom*<sup>65</sup>

144. Mr Fensom is a resident of Appleton Thorn, having lived there for some 28 years. He gave a personal statement to the inquiry, expressing his concerns about the proposal to build a transport hub to the east of the village. As this statement is presented as a summary of Mr Fensom's experiences of the planning application process, rather than specific objections to the appeal proposal, I do not set out his comments in detail here. Rather, the statement can be seen in full at Doc 9.

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<sup>64</sup> The "Six 56" proposal

<sup>65</sup> Doc 9

145. Mr Fensom does, however, express his surprise at the Appellants' proposal to build a transport hub on local Green Belt land, in view of national Green Belt policy and the fact that the Appleton Thorn NDP aims to safeguard the village by gaining agreement on local guidelines for both new house build and possible commercial developments.
146. He highlights that at the time of the Appellants' second planning application there was much more public awareness of the proposals, as well as another much bigger scale proposal by Langtree/Panattoni (the "Six 56" proposal) to build on Green Belt land adjacent to the current appeal site. In addition to recording their concerns in respect of the ESL proposal on the Council's planning website, over 2,200 people signed a petition objecting to both the Appellants' and the Langtree/Panattoni proposals.
147. In summary Mr Fensom requests that the national policy on Green Belt should continue to be respected, and that developers should use valid arguments to justify very special circumstances for giving up Green Belt, rather than simply trying to transfer economic benefit for themselves into an assumed economic benefit to the local community. He also requests that the efforts of those who prepared the Appleton Thorn NDP should be respected – as should the concerns of over 2,200 people who signed a petition objecting to this development.

*Mr Bill Roberts*<sup>66</sup>

148. Mr Roberts addressed the inquiry as a local resident, with the thrust of his submission being that ESL is in both a financial and management crisis at this time and, as such, is in no position to deliver the economic benefits that it puts forward as the primary reason - the exceptional reason - to break accepted Green Belt rules. Full details of his submission can be seen in Doc 13, with the main points summarised below.
149. ESL shares were floated on the Alternative Investment Market (AIM) around 2 years ago and were then trading at 160p. However, 2 years later, in 2019, the ESL shares are suspended from AIM and "frozen" at 70p because annual accounts were not submitted by the end of August deadline. The worth of ESL has more than halved as a result of this poor share performance, and it is a matter of public record that ESL are carrying £155 million of debt currently.
150. The accounts were not submitted as the new Finance Director had found a "profits blackhole" - initially estimated at £2 million but later described by the Times as a "multi-million pound hole". The accounts remain un-posted and the shares remain frozen until the accounts are audited and posted. No timeframe exists for this as yet. As a direct result the then Chief Executive Officer (CEO) was immediately removed from post. This was the same CEO that appeared at the Council's Development Management Committee and promised the economic benefits from the appeal proposal. He is no longer with the company and is unable to deliver those promises.
151. The new CEO then announced that his main focus was on "restructuring" the business. With my 40 years of working in big business it is my supposition that "restructuring" is code for redundancy and cost-cutting. This would then fly full

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<sup>66</sup> Doc 13



in the face of this appeal proposal to build a new hub and generate 460 direct jobs and over 600+, after the multiplier effect. ESL is now under due diligence from 2 potential suitors, who have until 1700 hours on Wednesday 16 October 2019 to make a bid for ESL or step away, as AIM rules demand. The final dividend of ESL has been suspended and will not be paid to shareholders.

152. In summary, the falling share price; the non-payment of final dividend; the share suspension; the continued non-publication of accounts; the profits black hole; the massive company debt; the sacking of the CEO; and the fact that ESL is now a takeover target, all conspire to indicate that ESL cannot deliver on its economic arguments and, as such, this appeal should not be allowed. Valuable Green Belt land should not be given to a company that is clearly in financial crisis and will struggle to stay afloat if it is not taken over. ESL is in no position to afford or deliver the economic benefits it puts forward. Its current financial state and balance sheet tells us this, and this appeal should fail on these grounds alone.

### **The Case for the Appellants**

153. The following paragraphs summarise the Appellants' case, which is presented in full in their written and oral evidence, including the Proof of Evidence (PoE) from their expert witness, Mr Halman<sup>67</sup> and the comprehensive SoCG between the Appellants and the Council<sup>68</sup>.

The material points were:

#### *Introductory matters*

154. The determination of this appeal is the straightforward application of a classic balance of very special circumstances. There has never been any argument that the development is anything other than inappropriate development in the Green Belt and that it would significantly impact upon the openness of the Green Belt.
155. In accordance with national guidance in paragraph 145 of the Framework, the decision maker, when weighing that balance, needs to determine whether the benefits of the proposals clearly outweigh all of the harm, including the definitional harm. At no stage have either the Appellants or the Council shied away from that very high hurdle which would need to be surmounted before this appeal could be allowed. Neither have the Appellants been reticent about the substantial benefits which would arise from the proposal.
156. There would be substantial economic, and therefore social benefits from this proposal to significantly expand and consolidate ESL's operations so as to create a NDC, as well remedying the serious gap in ESL's distribution network for the north-west. That would be a powerful factor at any time, but at a time of national uncertainty, especially for the haulage industry, such a proposal should attract yet further support.
157. This proposal has been in gestation since 2017 and has involved extensive work to formulate a scheme to meet ESL's need to expand its distributional network and to expand its national and north of England support operations. By the time the application was submitted in late 2017, detailed and robust research had been undertaken as to how and where those needs could and should be met, and

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<sup>67</sup> Doc APP/GH/1

<sup>68</sup> Doc OD/1

ESL had alighted on the appeal site as the best location for such an expansion. It had also ensured that funding was in place to construct its proposed expansion and had partnered with Liberty Properties to deliver it.

158. The application was eventually recommended for approval by Council Officers on 7 November 2018, with that recommendation reflecting the culmination of many months of careful consideration of this proposal, by Officers as well as by internal and external consultees. Recommendations to approve inappropriate development on 15.7ha of Green Belt land are not lightly made, and it is important to note that the recommendation was a considered one, based upon a substantial evidence base and after almost 2 years of joint working and scrutiny. Nonetheless Members chose to refuse that application.
159. Following this refusal, the Appellants appealed to the SoS and also submitted a parallel application. That proposal, too, was subject to considerable scrutiny, and was ultimately recommended for approval earlier in 2019. This time Members concluded that permission ought to be granted. Had it not been for the referral to the SoS, and the subsequent very long delay on the part of the National Planning Casework Unit, ESL would by now be in the process of discharging conditions with a view to making a rapid start on site as part of the proposed £75 million investment to generate £25 million GVA to the local economy, together with 730 full-time equivalent (FTE) jobs in early 2020.
160. That is not to say that the endorsement of the Officers of the Council, as well as internal and external consultees and latterly Members of the Council, should be determinative, but rather that the SoS should afford considerable weight to the outcome of that process and the views of those professionally and politically charged with scrutinising such proposals at a local level<sup>69</sup>.
161. There is no technical issue identified by consultees to justify withholding planning permission; it is not considered that the proposal would prejudice the outcome of the emerging Local Plan; and most importantly, it is concluded that the benefits of the appeal proposal would clearly outweigh the harm which would arise, together with the harm by reason of inappropriateness. Similarly the benefits of the proposal would clearly and demonstrably outweigh the conflict with CS policy CS5, which duplicates the presumption against inappropriate development in the Green Belt.
162. Before turning to the main issues, it is worth recalling where the concerns of the main parties actually sit. The Council no longer opposes the appeal, and now agrees with the consistent views of its Officers that very special circumstances have been demonstrated. Whilst Cllr Palmer may not like it – the democratically elected body charged with making local planning decisions is WBC as local planning authority and it has now agreed that planning permission should be granted. The Rule 6 Party, SWP, has been professionally represented throughout the inquiry, and through Mr Groves it made clear that it was only presenting a case that the original 2 reasons for refusal were the basis upon which it invited dismissal of the appeal, and it only called evidence in respect of those 2 issues.
163. Thus, whilst others have raised issues as varied as ecology through to technical highway concerns, driver transgressions and even deliverability of the scheme, none of those points are being promoted by SWP. These other issues are raised

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<sup>69</sup> See Appendix 2 of the SoCG

as concerns by third parties only, and where they relate to technical issues (such as highways or ecology), they are raised in the teeth of the conclusions of the careful consideration by the professional Officers of the Council and/or their professional advisors.

164. It is perhaps only deliverability which warrants comment. Mr Roberts sought to paint a picture that ESL was somehow a failing business which is on the verge of retrenchment and that because of events in late August 2019, involving the departure of ESL's former CEO and a lawful delay in filing mid-year accounts, that one should doubt ESL's commitment to this project. It is perhaps unfortunate that the inquiry has been held at a time when public comments by the company are constrained by the City Code on Takeovers and Mergers.
165. However there are 3 important points to make. Firstly, the events that Mr Roberts described pre-date the statement by ESL at Appendix 1 to Mr Halman's PoE, dated 14 September 2019 which strongly reiterates ESL's commitment to the project; and in particular re-stresses its urgent need to bring the site forward in the fourth quarter (Q4) of 2020, and that its delivery package is in place for the proposal by that date. Secondly, that the statement by Mr Roberts contains multiple inaccuracies and flawed inferences, and that it is emphatically not agreed by ESL. And, thirdly, that this appeal is not being promulgated on the basis of seeking a personal permission for ESL. Rather it is promoted as a significant proposal for a large-scale B8 distribution centre with ancillary office development for which there is an identified end-user which has, over the last 2.5 years, demonstrated and repeatedly re-stated its commitment to this project.
166. In view of these latter points, the appeal proposal can be distinguished from the 2 other recent examples referred to at the inquiry where, in the north-west, large-scale employment development has been promoted successfully in the Green Belt. These are at Heywood<sup>70</sup>, in Rochdale Metropolitan Borough; and at Haydock<sup>71</sup> in St Helens. In each of these cases the relevant local planning authority accepted that very special circumstances were demonstrated, in large part, because of the substantial job creation and economic benefits that would arise. It is accepted that the Heywood site was part of a larger mixed-use development; and that the proposal for the Haydock site involved an even larger B8 distribution centre in the Green Belt, but very special circumstances were proven notwithstanding that the proposals were in outline and were on a speculative basis.
167. SWP pointed out that the Haydock scheme was promoted by an experienced distribution centre developer who would have known of the intense market interest that would exist. With this in mind, the Appellants contend that the appeal scheme has even more force, since it involves a development for an identified operator and a proposal for full planning permission, which the likely operator has been committed to for many years.
168. If there is one fact in this case the decision maker can be confident of, based on the evidence before this inquiry, it is that ESL remain firmly committed to delivery of this proposal.
169. In the following paragraphs, each of the Inspector's issues are dealt with in turn.

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<sup>70</sup> See Doc 17

<sup>71</sup> See Doc 16

*The effect on the openness of the Green Belt*

170. The Appellants and SWP both consider that the appeal proposal would have a significant adverse impact upon the openness of the Green Belt, and both agreed that in accordance with paragraph 144 of the Framework, substantial weight should be afforded to any harm to the Green Belt. Given the scale of the proposed operations, at 56,197sqm gross internal area, it would be optimistic to contend otherwise. Nonetheless it is important to note that in character terms the proposed development would comprise an adjunct to the existing industrial estate, rather than isolated development in the open countryside. Mr Halman's Appendix 2 readily shows how the development would be perceived in the context of existing development, and even Mr Groves accepts that the appeal site has built development of a similar character on 2 of its 4 sides.
171. Similarly, the Appellants accept that the appeal proposal would impact upon the Green Belt purposes of encroachment into the countryside (to a "strong" degree) and assist urban regeneration to a moderate degree. Again there is amity since both Mr Halman and Mr Groves associate themselves with the 2017 Green Belt assessment<sup>72</sup>, which arrives at that conclusion. Indeed the level of agreement goes further, since both consider that the principal concern in relation to the purposes of the Green Belt is encroachment into the countryside.
172. Thus, there is no real dispute between the Appellants and SWP that in addition to definitional harm by virtue of inappropriateness, there is also substantive actual harm to the Green Belt which weighs in to balance against the proposal. What is also agreed by Mr Halman and Mr Groves is that where there is harm to more than one aspect of Green Belt then the weight to be afforded to that harm remains "substantial" since the approach is not that of adding unit blocks of weight in a quasi-mathematical sense. The hurdle to surmount remains that of substantial weight, even if the harm transcends merely definitional harm, as in this case.
173. Mr Groves alleges that Mr Halman seeks to "chip away" at the weight to be applied to Green Belt harm, but this is not accepted. Mr Halman agrees that any harm attracts substantial weight. But Mr Halman assesses the actual nature of that harm, so as to identify where, within the spectrum of harm, it lies. In this case he accepts definitional harm (by reason of inappropriateness), harm to the purposes (particularly that of encroachment) and harm to openness. In respect of the latter he accepts obvious harm to the spatial component of openness, it would therefore appear to be that the only very narrow difference of view between Mr Groves and Mr Halman is the approach to the impact upon the visual amenity of the Green Belt, which is addressed below.
174. In terms of any impact that traffic associated with the proposed development would have on openness, it has to be acknowledged that the site is adjacent to an existing trading estate that puts traffic onto the road network, and any impact on openness needs to be assessed in that context.

*Visual impact, and the effect of the proposed development on the character and appearance of the surrounding area*

175. This issue overlaps with the previous issue in the sense that visual impacts of the proposal are a free-standing issue as well as being a component of Green Belt

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<sup>72</sup> Doc 14

assessment. On the straight landscape and visual issues, the only evidence is that of the LVIA which is to be found at chapter 7 of the ES (which addresses a marginally higher building, but it is agreed that this makes no real difference to the assessment). On the visual amenity of the Green Belt, the evidence of both Mr Groves and Mr Halman is that the visual part of the LVIA is a relevant tool to use, and Mr Groves accepts that it is correctly undertaken and does not challenge its conclusions. The difference between these 2 professionals is therefore one of judgment, not of approach.

176. SWP sought to criticise the methodology of the LVIA on the basis that the table of "value"<sup>73</sup> did not include Green Belt as one of its sensitivities, but instead includes Areas of Outstanding Natural Beauty and National Parks in its highest tier of "value". However, Green Belt is not a landscape designation and being in the Green Belt is not an additional tier of consideration when considering landscape value. It is a freestanding policy consideration which overlaps with a visual assessment, but it is a distinct exercise when compared to an LVIA.
177. Mr Halman's assessment that the visual impact would not be significant, once the planned landscaping has matured, is therefore more plausible since it is firmly grounded in a sound methodology and is consistent with it. By contrast Mr Groves' assessment that the proposed building would have a massive visual impact is largely based upon an asserted and non-transparent judgment which does not appear to be grounded in the LVIA.
178. It is accepted that the proposed NDC would be prominent in views from Barleycastle Lane. Nonetheless, over time the proposed landscaping, together with the setting-down of the building below road level, would substantially screen the development from public vantage points, primarily along Barleycastle Lane. In public visual terms the effects would self-evidently be limited.
179. Whilst it is also accepted that the visual amenity of the Green Belt would be affected from within the site itself, from other public viewpoints the NDC would be effectively screened upon maturity of the vegetation on its boundaries, and views from footpaths would see the building against the backdrop of existing buildings, which therefore form a logical context to the development. This is all well described in Chapter 7 of the ES - "Landscape and visual impact" - whose conclusions have not been seriously challenged by any party.
180. In terms of impacts upon landscape character, the proposal would alter the nature of 15.7ha of open land to a developed site. Nonetheless, that would be land which is very closely associated with the existing industrial estate and would not comprise an isolated parcel of development in the open countryside. The moderate impact described in the LVIA is unchallenged and palpably right.
181. The appeal proposal would not alter Green Belt boundaries. In landscape terms, planting trees along the edge of the building would, of course, mitigate the impact of the building, despite not creating a "hard edge". A hard edge to the site is, in any event, already provided by the watercourse which runs along the northern boundary. This boundary would be strengthened, not diminished, by the proposed tree planting.
182. In reality, there would be an impact on the character of the area (ie where the receptor is the landscape), and some visual impact (where the receptor is

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<sup>73</sup> Table 7 in Appendix 7.1 to CD54



humanity) which would over time be substantially mitigated. Both elements weigh into the “harm” side of the equation, but neither fall into the realm of significance in EIA terms.

*The effect on the significance of nearby heritage assets*

183. It is a struggle to see the collection of dilapidated listed buildings at Booth’s Farm from public vantage points. They sit within extensive vegetation and are visually separate and separated from their surroundings. Nonetheless, the Heritage Assessment in Chapter 9 of the ES recognises that the context of those buildings has been open land since they were constructed. Thus the appeal site forms part of the setting of the listed buildings to that very limited extent. The change which would arise from the appeal proposal would substitute built-form for what is presently open land, which contributes to a limited extent to the significance of the grouping of dilapidated buildings.
184. There is no evidence to gainsay the assessment that the effect on the significance of the assets would be minor, and at the bottom end of “less than substantial harm”, as detailed in the Framework. Moreover it is indisputable that the balance set out in paragraph 196 of the Framework, which is then engaged, is plainly passed by the substantial public benefits which would arise from the appeal proposal. In these circumstances, the very limited effect upon heritage assets weighs only marginally on the “harm” side of the planning balance.

*The effect in traffic and transport terms, on the safety and convenience of users of the nearby highway network*

185. A full Transport Assessment<sup>74</sup> (TA) and Travel Plan<sup>75</sup> were submitted with the planning application, as part of the ES<sup>76</sup>, and a subsequent Transport Assessment Addendum<sup>77</sup> (TAA) was also submitted in the ES Addendum. All matters relating to highways and transportation have been agreed with the local highway authority and HE. It should be noted that the original reasons for refusal raised no highways objections. The SoCG records the agreement reached, and the Highways and Transport Statement in Mr Halman’s Appendix 3 provides a summary of all relevant transport matters.
186. The only expert highway evidence before the inquiry was that contained in the aforementioned documents, which detail the extensive discussions which led to the agreed position of the local highway authority and HE. This is that the appeal proposal would not have a net adverse impact upon the local road network, or the SRN. The TA and TAA class the likely impacts as “Negligible Adverse”, which is considered “Not Significant” in EIA terms. In conducting their assessments, the local highway authority and HE did not apply the yardstick of avoiding a “severe impact” on the road network, as detailed in paragraph 109 of the Framework, but instead worked to the higher threshold of “nil detriment”. Thus, the appeal proposal would not worsen existing traffic conditions, as a result of extensive infrastructure improvements.
187. Indeed, together with the funding of non-car modes of transport through the proposed Public Transport Contribution in the S106 agreement, the total bill for

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<sup>74</sup> Appendix 10.1 of CD54

<sup>75</sup> Appendix 10.2 of CD54

<sup>76</sup> See Chapter 10 of CD53

<sup>77</sup> See Chapter 10 and Appendix 10.3 of CD55

the investment in local infrastructure would be a huge £6 million. In the context of the “prematurity” case argued by SWP and other interested persons this is of considerable importance, since it shows that the appeal proposal would not “under-provide” infrastructure that the wider Garden Suburb might be expected to provide, if it is ultimately endorsed as part of the emerging Local Plan.

188. That investment would accommodate the appeal proposal, but would not solve the pre-existing problems which were described by third parties and whose veracity is not disputed. However the planning system does not operate on the basis of resolving pre-existing problems, and it is no criticism of the appeal proposal that it does not do so. It is however important to note that in respect of the A50 roundabout and the M6 J20 proposals, the mitigation does more than simply mitigate to severe impact, and to that extent these works would be beneficial. More importantly still, there is not a scrap of technical evidence to suggest that the proposed mitigation would not be effective and successful.
189. SWP argued that there would be a problem at the A50 Roundabout, as the S106 agreement involves paying a sum of about £1.5 million, but then leaving it to the local highway authority to decide when best to spend it. The reasoning for this, arising from page 37 of the 2019 Officers’ Report<sup>78</sup>, is that the local highway authority wants the flexibility to decide when would be least disruptive to travellers, and to avoid the possibility of undertaking 2 sets of roadworks in quick succession if other planning permissions are granted. It is unclear why SWP considers that the local highway authority would not act responsibly in deciding when best to intervene on the highway.
190. However, this concern resulted in SWP arguing that a Grampian condition would be necessary to secure the works before occupation, despite having never argued for such a condition previously. SWP went on to argue that if the appeal proposal came on stream before the mitigation of the A50 roundabout, in circumstances where the local highway authority thought it appropriate to delay it in order to co-ordinate roadworks, then this would result in harm. However, in reality this point is contrived and unconvincing. If there were to be a short period when there would be sub-optimal operation of the road network, in order to minimise disruption, then that could not reasonably be described as “significant harm”. Rather, it would be “responsible planning”. Arguing for this “additional harm” shows the weakness and not the strength of SWP’s case.
191. For the proposed alterations to Barleycastle Lane – the emphatic position of the local highway authority and the Council is that significant and positive benefits would arise from improving its geometry and width. Further benefits would arise from the creation of a dedicated cycleway along this length of road, which is frequented by HGVs, notwithstanding the fact that it is coloured green on the Council’s cycle network map – a point which SWP accepted.
192. The £20,000 for improvements to link the cycleway to Grappenhall Lane are not required to make the scheme acceptable<sup>79</sup>. Thus whilst the funding is accounted for in the S106 agreement, the fact that these works would require third party land in order to be delivered is a matter of indifference, since on the Appellants’ case the monies are not required, in any event, to make the scheme acceptable.

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<sup>78</sup> Appendix 2 of the SoCG

<sup>79</sup> See page 11 of Appendix 3 to Doc APP/GH/1



193. Importantly, the existing Barleycastle Trading Estate is presently not served by public transport. Based on experience of instituting dedicated, shift-friendly bus services to large employment areas in the Borough, the local highway authority has asked for a payment of £600,000 to “pump prime” such a service to the appeal site, which would provide start-up costs and fund the service on a 3-shift basis for 1 year, by which time the local highway authority expects the service to be self-financing. This would provide excellent public transport linkages between nearby residential areas and the site, and would also provide a realistic choice of mode of transport for existing workers at the estate, as well as opening up job opportunities at the site to those with no or limited access to a car. In short, it would be potentially transformative as well as rendering the appeal site readily accessible by non-car modes. It therefore amounts to necessary mitigation which would also provide wider benefits.
194. Many third parties raised complaints about lorries travelling down unsuitable roads. The appeal proposal recognises that more can be done in this regard, and through Condition 4 substantial sums would be directed to introducing additional signage aimed at discouraging lorry drivers from using unsuitable routes. The evidence shows that ESL is doing a great deal to minimise such concerns<sup>80</sup>, although it is accepted that from time to time errors are made, both by ESL drivers and those of other contractors. Mindful of this, the signage proposals would plainly be another benefit of the proposal, not just for any newly generated traffic but also for HGVs that are on the network now.

#### *The effect on air quality*

195. The only expert evidence on this issue is that contained within the ES<sup>81</sup>, provided by Rambolls on behalf of the Appellants. This information, which was scrutinised and endorsed by the Council’s Environmental Protection Officer, concludes that there would be a negligible impact upon air quality objectives (AQOs), and no significant effect overall.
196. AQOs are primarily assessed against annual average concentrations. When assessing the effects of a proposal against those AQOs, detailed dispersion modelling is undertaken and the predicted concentrations are then judged against a matrix recommended by the Institute of Air Quality Management. In each instance in the design year the impacts are shown to not be significant. Against that are the understandable concerns of third parties – but the evidence is simply not supportive of a conclusion that there would be any significant impact or effect on air quality.
197. The only “serious” challenge to the conclusions was that by Cllr Palmer, who candidly said that she was not an expert, but who questioned why the assessment had not addressed PM<sub>2.5</sub> concentrations, and in particular, against WHO guidelines. In response, a further detailed note was submitted at the inquiry<sup>82</sup>, which comprehensively addressed Cllr Palmer’s concerns.
198. Amongst other matters, this note points out that contrary to Cllr Palmer’s assertions, monitoring data within Warrington was not simply ignored – rather, it was not considered suitable for model verification, being remote from the appeal

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<sup>80</sup> See Doc 24

<sup>81</sup> Chapter 11 in CD53, and Appendices 11.1 to 11.6 in CD54; also

<sup>82</sup> Doc 18

site, so an alternative, robust approach was adopted. Furthermore, the note makes it clear that whilst not specifically referenced in the ES, consideration of the impact of PM<sub>2.5</sub> concentrations was effectively covered by the assessment of PM<sub>10</sub> concentrations.

199. The note also points out that although Cllr Palmer refers to PM<sub>2.5</sub> readings from the Selby Street monitor pointing to the fact that Warrington had the highest levels of PM<sub>2.5</sub> in the entire UK, the data she refers to actually comes from 2014 and not 2018. Up-to-date data for this monitoring station shows that the measured concentration of PM<sub>2.5</sub> has fallen from the 2014 level of 14µg/m<sup>3</sup><sup>83</sup> to an annual mean value of 9µg/m<sup>3</sup> in 2018, putting it below the WHO annual mean guideline figure. In view of these points, and the other matters covered in this further note, it is firmly submitted that Cllr Palmer's concerns are misplaced.
200. This note also addresses NEE, referred to by Cllr Harris. It confirms that NEE are specifically included in the vehicle emission factors used for dispersion modelling, and which were used for the air quality assessment undertaken for the ES. In light of this information, and the other matters covered both in the ES and the further note, it is firmly submitted that Cllr Harris's concerns are also misplaced.

*The effect on the availability of the best and most versatile agricultural land*

201. Of the 15.7ha of development land, some 2ha comprise BMV agricultural land - Grade 3a - amounting to just about 13% of the site area<sup>84</sup>. That level of loss is an order of magnitude below the 20ha threshold which warrants Natural England being notified. Moreover it is just 1% of the total landholding of the agricultural enterprise of which it is a part. There is no evidence that the loss of this very modest area of land would adversely impact upon that enterprise, let alone the overall stock of BMV land in the Borough. Only minor weight should be attached to the loss of BMV land.
202. Whilst national policy in the Framework imports a preference to avoid the loss of BMV land<sup>85</sup>, the evidence clearly points to the need for this parcel of land being the optimum location to meet the identified needs. More importantly, there is no evidence of a better location which meets the needs of ESL and yet also avoids the loss of any BMV land. In this regard it is to be noted that SWP does not contend that there is any alternative site which could better meet ESL's needs anywhere in the Borough or the wider north-west.

*Whether there would be any drainage or flood risk problems*

203. The appeal site is located within the lowest flood risk area of Flood Zone 1. Nonetheless, as the site sits alongside a watercourse a freestanding Flood Risk Assessment<sup>86</sup> (FRA) was undertaken (as this matter had been scoped out of the EIA). The FRA assessed flood risk from all sources and found this to be low, with the exception of localised high risk for surface water flooding along the northern boundary, associated with Bradley Brook, although this does not extend significantly within the site boundary.

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<sup>83</sup> µg/m<sup>3</sup> – micrograms per cubic metre

<sup>84</sup> See paragraph 5.9 of Doc OD/1

<sup>85</sup> See footnote to Framework paragraph 171

<sup>86</sup> CD31

204. Based on the Flood Zone 1 classification the FRA considered that the Sequential Test was passed, as industrial buildings which are classed as “Less Vulnerable” to flooding are considered appropriate in Flood Zone 1. Development would be kept away from the area at high risk of surface water flooding along the northern boundary. In these circumstances the FRA concludes that the overall surface water flood risk to the site would remain low, even after development.
205. The FRA also explains that to ensure that there would be no increase in flood risk to downstream receptors, following any future development, surface water run-off from the proposed development would be managed using Sustainable Drainage Systems (SuDS). It is proposed to discharge surface water run-off from the development site to Bradley Brook, and to restrict run-off to greenfield rates by providing attenuation storage on-site for up to the 1-in-100 year storm event, including allowances for climate change over the lifetime of the development. In view of these points, the issues of flood risk and on-site drainage have been robustly addressed.

*Consistency with the development plan for the area*

206. Despite the allegation of tension with the Appleton Thorn NDP, both the Appellants and SWP consider that the appeal proposal would only conflict with CS Policy CS5 (ie the Green Belt policy). All of the other policies in the development plan (both CS and NDP), listed at pages 8 and 9 of the SoCG, are agreed to be either not breached or complied with<sup>87</sup>. There is therefore a high degree of conformity with the adopted development plan. Moreover, insofar as the NDP assesses where large scale employment proposals should be located – it is wholly consistent with the location of the appeal proposal.
207. It is not contended that conformity with all of the other relevant policies except CS5 means that the appeal proposal complies with the development plan taken as a whole. Nonetheless, it is important that the only breach which is alleged is with Policy CS5. In all other respects the appeal proposal is development plan compliant. Moreover, if very special circumstances are proven, then the proposal would accord with national Green Belt policy and comply with the last sentence of CS5 in any event.
208. There is agreement that the weight to be afforded to the emerging Local Plan (the PSVLP) is limited, since it is not at an advanced stage and its relevant policies are the subject of extensive objection. That is all the more the case in respect of the Garden Suburb SPD.

*Whether the appeal proposal would be premature, in view of the Council’s emerging development plan*

209. SWP accepted that the PSVLP cannot be considered to be “advanced”, as it has not yet reached submission stage, and that paragraph 49 of the Framework is therefore not engaged in this case. Since this is the primary Framework paragraph on prematurity, that ought to have been the end of this matter. But SWP sought to argue that whilst paragraph 50 of the Framework tells one that where a Local Plan has not yet been submitted then prematurity will “seldom” be a reason for refusal, the prematurity concern could still be weighed in the planning balance as an extra harm, even if it is not a reason for refusal.

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<sup>87</sup> See Appendix 5 of Doc APP/GH/1

210. However, that argument fails for a number of reasons. Firstly, prematurity is a policy-made concept to describe when a proposal might be refused planning permission if it undermines the plan-making process. It is not a free-standing species of land-use harm. If a proposal is not premature then it is not premature. There is no secondary consideration of a proposal which is "prematurish".
211. Secondly, although SWP argued that being a big site in the Green Belt is what brings this proposal into the sub-category of the "seldom" circumstances, referred to in Framework paragraph 50, the Appellants maintain that to be at the "seldom" end of a spectrum of "very unlikely" events, one needs to be rather more exceptional than just "big" and "in the Green Belt". Finally, although SWP accepted that the burden is on the party asserting prematurity to clearly demonstrate why plan-making would be prejudiced, whether prematurity was being asserted as a reason for refusal or as a material consideration, it could not do this in any convincing way.
212. In short, SWP has not come close to demonstrating that allowing this appeal would prejudice the outcome of the plan-making process. Prematurity is a non-issue. The appeal proposal comprises a mere 5% of the total 277ha of additional land that the Council considers it needs in the PSVLP, of which 213ha is proposed in the Green Belt. SWP pointed out that this was 14% of the 116ha of the employment land in the proposed Garden Suburb, but this would only be a tiny proportion of the overall Garden Suburb, and it is nonsense to suggest that the grant of planning permission for the appeal proposal would undermine the ability of SWP to object to the remainder of the proposals. Nor would it pre-determine the merits of any part of the rest of the Garden Suburb.
213. In any case, the much larger "Six 56" proposal is clearly not for consideration as part of the current appeal. An application for this "Six 56" development has, indeed, been submitted, but it is subject to a planning performance agreement which requires that scheme to progress in parallel with the emerging Local Plan (subject to review). This means it will not be coming forward for determination any time soon. Moreover, SWP expressly disavowed any argument of precedent, and did not attempt to argue that the grant of permission here would render an otherwise unacceptable development acceptable.
214. This was the correct approach, as there is no meaningful evidence before this inquiry as to the merits of the "Six 56" scheme. So whilst it is on Green Belt land, and is for B8/B1 uses, that is where the similarities end. It is over 6 times bigger than the appeal proposal and comprises 85% of the employment land in the Garden Suburb and 35% of the overall employment land proposed in the PSVLP. In view of the above points it is clear that there is no credible prematurity case arising from the appeal proposal.

*Whether the appeal proposal would represent sustainable development*

215. It is firmly submitted that with the improvements to cycleways, pedestrian links and crucially the bus improvements, there would be a choice of access to the site other than by private car, and the appeal proposal would be manifestly sufficiently accessible for the uses proposed.
216. As for the wider concepts of sustainability of economic, social and environmental effects, these are assessed in detail in Mr Halman's PoE<sup>88</sup>, and were largely

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<sup>88</sup> See Section 8 of Doc APP/GH/1

unchallenged at the inquiry. In summary, the proposal would strongly accord with the economic element of sustainability for the following reasons:

- It would meet ESL's pressing need to construct a NDC, which is required to keep pace with and facilitate the future successful growth of the company, which is a top-performing business in the local economy;
- Approximately 480 direct jobs would be created by the proposed development on completion. As such, it would make a significant and positive contribution to the local economy in terms of creating stable, long-term jobs which would provide an income in excess of existing local average market earnings;
- The proposed development would facilitate expenditure in the wider local economy through spin-off benefits and multiplier effects;
- It would make a substantial contribution towards further strengthening Warrington's logistics sector, which is recognised as being critical to the future growth of the local economy and of regional, if not national importance; and
- The construction phase of the proposed development would generate some direct, temporary on-site employment as well as some indirect employment through the use of local contractors/businesses.

217. The appeal proposal would also make a positive contribution to the social aspects of sustainability. It would support the creation of strong, vibrant and healthy communities, by providing a significant employment boost to the local area. The social benefits of employment generation are extensive and include improved security, improved living standards, social cohesion and health. Workforce development and training is integral to the ESL business and it already makes a significant investment in "upskilling" the local labour force. The company is committed to maximising the employment, learning and training opportunities for the local community that would be delivered by the proposed development, as secured by measures in the S106 agreement and the agreed conditions.

218. The proposed expansion of the ESL business (a major, nationally renowned employer) at Appleton Thorn would positively enhance perceptions of the area, thus supporting the growth of positive local aspirations and confidence. Moreover, the DAS describes the steps that would be taken to ensure the proposed development would achieve a high quality design which would be appropriate for the site and would be compatible with the surrounding area. The resulting high quality built and landscaped environment would have a positive social impact on users of the development.

219. In relation to the environmental role, the proposed development is in a Green Belt location and, as already noted, would encroach into the countryside. However, a substantial amount of structural planting is proposed which would reduce and mitigate the visual impact of the built-form of the proposed development and may bring about ecological benefits, especially along the watercourse. In addition, a package of specific highways, ecological, and landscaping enhancements is proposed.

220. The scheme design has incorporated a series of measures which would assist in minimising carbon dioxide emissions and the impacts of climate change on the environment such as the use of a solar voltaic array to meet a significant part of



the development's electrical demand, a *brise soleil*<sup>89</sup> to reduce heat gain, and a reversible Air Source Heat Pumps system.

221. Whilst the development would be highly accessible by car, the Appellants are fully committed to encouraging staff to travel using more sustainable modes of transport and have developed a framework Travel Plan<sup>90</sup> containing a range of measures aimed at influencing travel behaviour. The proposed development also includes measures to ensure the prudent use of natural resources and the minimisation of waste. Every opportunity would be taken to minimise waste through the provision of waste reduction and recycling opportunities.
222. The ES assesses the potential significant environmental impacts of the proposal in detail and concludes that there would be no unacceptable environmental impacts arising as a result of the proposed development<sup>91</sup>. In addition, Chapter 8 of the ES, dealing with Ecology and Nature Conservation, states that the proposed development has been designed to retain areas of relatively high ecological value, with a range of mitigation and enhancement measures provided for the construction and operational phases of the development, to ensure no net loss of biodiversity.
223. The Framework advises that the 3 dimensions of sustainable development should be pursued in mutually supportive ways so that opportunities can be taken to secure net gains across each of the different objectives. When a balanced view is taken of these 3 elements, leaving aside the separate issue of very special circumstances, the proposed development is considered to be a sustainable form of development which would accord well with the Framework in this regard.

*Whether the submitted planning obligation would satisfactorily address the impact of the proposed development*

224. As has already been noted, the proposal is the subject of a S106 agreement between the site owners and the Council. The Introduction to this agreement explains that ESL has exchanged contracts to buy the site from the owners, and is the intended occupier of the development. In summary, the owners agree to make the following contributions:
- £1,460,984 towards the A50 Roundabout and Cliff Lane Improvements;
  - £20,000 towards the Eastern Cycle Path Extension Works;
  - £600,000 towards the provision of bus facilities and subsequent monitoring; and
  - £100,000 to enable the Council to devise and deliver a package of employment, training and skills development initiatives for local residents so that they can access the opportunities presented by the development.
225. The highway and transport obligations are justified and necessary for the reasons set out above, save for the £20,000 contribution towards public rights of way and an extension to the cycleway between Grappenhall Lane and Barleycastle Lane. The Council considers this to be necessary, whereas the Appellants regard it as desirable, but not necessary.

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<sup>89</sup> An architectural feature of a building that reduces heat gain within that building by deflecting sunlight

<sup>90</sup> Appendix 10.2 in CD54

<sup>91</sup> Paragraph 16.10 of CD53



226. The Council considers that the contribution of £100,000 to assist in local training and education is necessary to make the proposal acceptable in planning terms, as the economic benefits and employment opportunities are a key element of the proposed development. The Appellants accept that the aspiration to tie ESL's operations still further into the local workforce and education sector is mutually beneficial. At present 50% of the workforce live in the Borough<sup>92</sup>, but with improved public transport links and local employment provisions, that percentage is only likely to increase.

*How the planning balance, involving the benefits and disbenefits of the proposed development, should be assessed; and whether there are very special circumstances, which would clearly outweigh the potential harm to the Green Belt by reason of inappropriateness and any other harm resulting from the proposal*

227. These 2 matters can be considered together because if the Inspector concludes that very special circumstances are demonstrated, then it can be readily assumed that the statutory presumption in favour of the development plan, unless material considerations indicate otherwise, is also resolved in favour of the Appellants. The latter is the case for the obvious reason that there is no real prematurity case, and therefore the only breach of the development plan is of CS Policy CS5, the Green Belt policy, which cross-references back to the application of national Green Belt policy. If very special circumstances are demonstrated, then on one reading Policy CS5 would be complied with. But if it is read as breached, then plainly it cannot establish a higher or additional test to that for very special circumstances in paragraph 144 of the Framework.
228. It is firmly submitted that the question as to whether or not very special circumstances exist is the determinative issue in this appeal. As to that, there is no issue as to how to approach that issue – which is to weigh definitional harm, together with all other harm and to weigh the benefits against that harm and only if the latter clearly outweighs the former are very special circumstances demonstrated.
229. The harms are all addressed above, but the primary harm is to Green Belt. Similarly the non-economic benefits are addressed above (notably in respect of highways and transportation, but also matters such as local education and employment provision); but the primary benefits are the economic benefits which are addressed below.
230. Before doing so it is necessary to comment on some aspects of the SWP case. Firstly, Mr Groves' suggestion that Council Members were misled about what they were told in the Officers' Report to Committee, about the potential for an adverse impact on ESL's existing operation if the appeal was allowed, is nonsense. Mr Halman told the inquiry that if the appeal is dismissed then it would be a major blow, and ESL would need to reconsider its long-term strategy in Warrington. Indeed in Appendix 1 of Mr Halman's proof, ESL say, "should this appeal be dismissed Eddie Stobart would have to immediately review its north of England operational strategy".
231. Neither of these comments says that ESL would close or reduce its operations in Warrington, but both clearly indicate that if planning permission is not granted for the appeal proposal, then everything would need to be reviewed. This is

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<sup>92</sup> See Doc 22

clear from the SoCG, which explains that if it is not possible to construct the NDC on the appeal site ESL would, instead, have to bring the proposed development forward on another site outside of Warrington<sup>93</sup>. This is self-evidently not inconsistent with what is said at page 50 of the 2019 Officers' Report<sup>94</sup>, namely *"so the case is not simply what Warrington would gain by allowing the development but also what it would lose if it was not permitted (eg the potential loss of the headquarters and the application proposals) in the clear aim to physically co-locate the 2 premises"*.

232. A benefit of the proposal would therefore be the removal of the likelihood of the loss of the existing ESL headquarters, by the consolidation of the ESL proposals in Warrington. Thus, whilst the primary economic benefits are those which arise from the proposed development, securing and consolidating ESL's long-term future in Warrington and removing the prospect of that review is plainly a local benefit of the proposal which it would be wrong to discount.

233. The benefits of the appeal proposal were not challenged by SWP, nor meaningfully by any of the interested persons who spoke at the inquiry. These benefits are set out in the Officers' Reports to committee as well as in Mr Halman's PoE<sup>95</sup>, and the ESL statement<sup>96</sup>. Most importantly they are also set out in the SoCG itself and are summarised below:

- (i) The proposed development is deliberately within close proximity of ESL's existing operations, which comprise a multiplicity of uses on a campus centred upon the company's head office and national training facility<sup>97</sup> which generated a turnover of £843 million in the last 12 months<sup>98</sup>. There is an obvious synergy to an expansion adjacent to that extensive operation giving rise to transport, employee and logistical savings of co-location as well as maximising the economic impact of such co-location;
- (ii) The proposal would meet a need that was considered to be urgent in 2017 and has become ever more acute since then. The appeal proposal is for the expansion of the national base of ESL, and forms the last part of a national distribution network which is crucial to ESL's operations which are, in turn, part of the logistical underpinning of the UK economy. ESL operate a number of regional distribution centres nationwide, with the north-west currently the only core region with no such facility<sup>99</sup>. The proposal would operate in an innovative way which would facilitate its "last mile" business operations<sup>100</sup>;
- (iii) The proposed development would employ 480 FTE staff<sup>101</sup>, in addition to the 650 FTE currently employed at what is Warrington's 6<sup>th</sup> largest business (which rises to 950 FTE jobs in the local economy having regard to multiplier effects<sup>102</sup>). The overall economic benefit of the proposal's

<sup>93</sup> Paragraph 5.34 in Doc OD/1

<sup>94</sup> Appendix 2 to the Doc OD/1

<sup>95</sup> Section 6 of Doc APP/GH/1

<sup>96</sup> Appendix 1 of Doc APP/GH/1

<sup>97</sup> Totalling some 22,650sqm gross internal floor area

<sup>98</sup> See paragraph 5.19 of the SoCG

<sup>99</sup> See paragraph 6.11 of Doc APP/GH/1

<sup>100</sup> Paragraph 6.15 of Doc APP/GH/1

<sup>101</sup> Paragraph 5.25 of the SoCG and paragraph 6.24 of Doc APP/GH/1

<sup>102</sup> Paragraph 5.19 of the SoCG

impact would be 730 new FTE jobs when multiplier effects are considered;

- (iv) The proposal would add £25 million GVA to the north-west economy – of which £18 million would be net additional<sup>103</sup>;
- (v) The construction phase would generate 240 FTE jobs<sup>104</sup>, and this could increase through multiplier effects as, for example, demand for accommodation could arise, while construction workers could well place demands on existing food and drinks operators;
- (vi) The site is within 7km of half of all of the most deprived areas in Warrington, and within 10km of all of them;
- (vii) The proposed development would create a number of entry level positions which, with the right level of training, would be accessible to the most economically disadvantaged residents of the Borough, including young people not in education, employment or training;
- (viii) The proposed S106 agreement includes a local training and employment provision to specifically direct economic benefits locally - including £100,000 of direct funding<sup>105</sup>;
- (ix) It is consistent with major economic projects directed at the region such as the Atlantic Gateway project promoted by the north-west Local Enterprise Partnership and looking to secure the investment of £14 billion into the Merseyside, Greater Manchester and Cheshire economies<sup>106</sup>;
- (x) It involves a capital investment of over £75 million, including £6 million in respect highways and transportation measures<sup>107</sup>.

234. What is proposed is a purpose-designed national facility for one of the UK's most successful logistics companies, which is already one of the largest employers in Warrington. It comprises a very substantial investment in the local economy and would thereby generate substantial jobs and growth.

235. Mr Groves accepted that job generation and economic benefits in Warrington were "important" where they benefitted the Borough's residents, but considered that they were not important where they benefitted residents of other parts of the north-west. That appeared to be an argument initially founded on the erroneous proposition that most current employees do not live within the Borough. In fact, half of all employees do live within the Borough. But most importantly, most employees live within Warrington and its neighbouring towns of Runcorn, Widnes, St Helens and Newton-le-Willows. None of these are amongst the more affluent parts of the north-west.

236. Mr Groves' argument seemed to be that jobs for Warrington Borough's residents matter more in the planning balance, as the loss of Green Belt is in the Borough. As an objective planning judgment that is difficult to follow. To be blunt, the SoS is invited to give substantial weight to job creation at the appeal site even if that involves jobs for some people who may live in the towns close to but not in

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<sup>103</sup> Paragraph 6.25 of Doc APP/GH/1

<sup>104</sup> Paragraph 5.24 of the SoCG and paragraph 6.23 of Doc APP/GH/1

<sup>105</sup> Paragraph 6.26 of Doc APP/GH/1

<sup>106</sup> See Paragraph 6.27 of Doc APP/GH/1

<sup>107</sup> See Paragraphs 6.41 & 6.42 of Doc APP/GH/1

Warrington Borough, especially when they are amongst the least affluent areas of the north-west. The same is true for economic benefits by the huge boost to regional GVA.

237. Overall, there has been no really meaningful challenge to the substantial economic benefits which would arise in this case, and which together with the other benefits detailed above present a compelling case in favour of allowing the appeal. The Council agrees with this conclusion.
238. In summary, the totality of the benefits of the appeal proposal decisively outweighs the totality of the harm which arises in this case, including the definitional harm as well as the conflict with local policy. This is one of those rare cases where the decision maker can be readily satisfied that very special circumstances are clearly made out and that planning permission should be granted as soon as possible. The corollary would be that the north-west would miss out on the creation of hundreds of new jobs, £75 million of direct investment and a net GVA of £18 million per annum. This is a deliverable scheme to meet the economic aspirations of one of the Borough's most important employers, and one of the country's most important logistics businesses.
239. In conclusion, the Appellants respectfully say that there is no good reason why this appeal should not be allowed. The SoS should therefore be recommended to allow the appeal and grant planning permission.

### **The Case for the Council**

The material points were:

#### *Introduction*

240. The Council considers that the appeal should be allowed. In support of this position it relies upon the detailed consultation responses received in relation to the original and revised applications, and the Officer assessments in relation to both of the applications. The detail of the Council's position is recorded in its Officer Reports on the applications<sup>108</sup> and is condensed into the detailed SoCG produced for the purposes of this appeal.
241. The Council did not present any further written or oral evidence to the inquiry, but considered it necessary to respond to matters concerning the Council's position raised by other parties in their oral representations. This response is given in the following paragraphs, which also summarise the Council's position on the key material considerations and the overall planning balance.

#### *The determination of the planning applications*

242. Although some interested persons have criticised the way in which the Council approached the original planning application and this subsequent appeal (along with the second planning application), planning law requires applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. In this case the development plan consists of the Warrington Local Plan CS, which was adopted in July 2014; and the Appleton Thorn Ward NDP, which was made in June 2017.

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<sup>108</sup> See Appendices 3 & 4 in Doc SWP/JG/1, and Appendix 2 in Doc OD/1

243. What is a material consideration depends on the circumstances of any given case and whether or not something is a material consideration is ultimately a question of law. The general approach is that set out in *Stringer v Minister of Housing and Local Government* [1971] 1 All E.R. 65, at 77 by Cook J.:

*"In principle, it seems to me that any consideration which relates to the use and development of land is capable of being a planning consideration. Whether a particular consideration falling within that broad class is material in any given case will depend on the circumstances."*

244. A significant material consideration is the Framework, which sets out the Government's planning policies for England and how these should be applied.
245. As a matter of law, public opposition to a planning application is not a material consideration. However, where objections raise material considerations then, of course, they are considered. Here, the Council's Officers have reviewed all objections made by local residents and other interested parties. Whilst these were not then set out word for word in the Officers' Reports, they were accurately summarised and the issues they raised were considered.
246. An emerging Local Plan is capable of amounting to a material consideration. The weight to be attached depends on the proximity of the plan to being adopted, and the extent of objections to it. The Council is currently in the process of working towards adopting a new Local Plan (the PSVLP). The current published timetable shows the Regulation 19 consultation ending in June 2019, followed by submission to the SoS in October 2019 and final adoption in December 2020.
247. The Council accepts, however, that this timetable has slipped, and is currently continuing to review the representations and objections received during the latest round of consultation. As a result, it will not be submitting the PSVLP to the SoS in October 2019, and it is not currently known when submission will take place. Consequently the Council cannot currently confirm what the anticipated date of adoption of the new Local Plan will be. In these circumstances the Council is of the opinion that only limited weight should attach to the PSVLP.
248. Interested persons have raised comments and objections to the appeal scheme based on the LTP4. However, that document is yet to be adopted and there is currently no published timetable for its adoption. Moreover, when adopted it is not a document that will form part of the development plan. Rather, it is a document that is produced as a result of the Council being a transport authority, which means it has a statutory duty to produce a Local Transport Plan. This does not mean it has no relevance to planning – indeed the PSVLP makes many references to LTP4. However, at this stage the Council considers that the contents of the draft LTP4 are not material to the determination of this appeal.

#### *Prematurity*

249. What is meant by "prematurity" in the planning context is well explained by Patterson QC sitting as Deputy High Court Judge in *Truro City Council v Cornwall City Council* [2013] EWHC 2525 (Admin):

*"64. It is quite impossible to divorce the issue of prematurity from the local plan process: after all, the impugned decision is premature to what? The essence of a successful claim of prematurity is that the development proposed predetermines and pre-empts a decision which ought to be taken in the Development Plan process by reason of its scale, location and/or nature or that there is real risk that it might do so. Whether the proposed*



*development will actually do so is something which should therefore be addressed."*

250. Paragraph 49 of the Framework states that refusal of a planning application is unlikely to be justified on grounds of prematurity other than where the following criteria are met:

*"a) the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging plan; and  
b) the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area."*

251. In accordance with the assessment of the status of the PSVLP, outlined above, and given the guidance in paragraph 50 of the Framework, the Council's position is that criteria (b) set out above is not met. Officers' assessment of the application has been consistent in its treatment of the issue of prematurity. In the Officers' Report on the original application they stated:

*"The proposals would be an extension to the existing employment areas on Barleycastle Lane and would need to be considered in this context. The proposals, in the context of prematurity do not undermine the preparation of the Local Plan."*

252. In the report on the revised application, Officers reconsidered matters and made the same observation before concluding:

*"Whilst the comments of the local residents and Parishes have been carefully considered, the proposals would not be considered premature in the context of the tests of the National Planning Policy Framework, the preparation of the new Local Plan or the plan-making process."*

253. On the revised application, Members accepted that advice and for those reasons the Council's position before this Inquiry is that the application should not be refused on grounds of prematurity.

254. SWP raised the issue of how the approval of the appeal scheme could have a bearing on the delivery of development on the "Six 56" site. However, the Council can confirm that the determination of that application is subject to a planning performance agreement which provides as follows:

*"1.5 This outline planning application will be prepared, submitted and determined by WBC in parallel with the preparation of the new emerging Local Plan.*

*8.5 WBC will report the application for decision to, as required, Development Management Committee (or its successor) in or before November 2019 unless one of the following occurs:*

*The current timescales for the progression of the draft Local Plan as set out in WBC's Local Development Scheme (March 2019) change; or  
WBC receives fundamental objections to the relevant policy in the draft Local Plan relating to this site.*

*8.6 Either of the above will trigger a review of the relevant timescales for the determination of the planning application and the preparation and agreement of a new project programme between the Developer and WBC."*



255. For the avoidance of doubt, the Council considers that what falls to be determined in this appeal is the acceptability of the appeal proposal alone. Nor does the Council consider that the progression of the "Six 56" application would justify the refusal of the appeal proposal on prematurity grounds.

*Material Considerations*

256. Highways Impacts. The Council's Highways Officers and Officers from HE were actively involved in the consideration of the highways evidence submitted by the Appellants, and also in its development - providing feedback and requests for further information which were then considered and responded to by the Appellants.
257. The view of both the Council and HE is that the appeal scheme would cause harm to the highway network which would need to be mitigated. There are a number of locations which required particular consideration when assessing the highway impacts. The M6 J20 is currently at or above capacity during peak hours. The Appellants' highways evidence shows that with other committed development the appeal scheme would make the situation worse, and that the proposed development would add further to the issues of capacity, with some approaches exceeding 90% degree of saturation, which is taken as the practical capacity. As a result of this, mitigation works are required. The Appellants' highways assessment also demonstrates that the appeal proposal would have an unacceptable impact on the A50/Grappenhall Lane roundabout junction that would require mitigation.
258. In order to mitigate these impacts, detailed schemes have been worked up with the input of all relevant parties. In summary, direct access from the SRN to the site would be via J20, A50 Cliff Lane, B5356 Grappenhall Lane and Barleycastle Lane. This route is already the direct route for vehicles accessing the Appleton Thorn/Barleycastle Lane Trading Estate.
259. The improvements to Barleycastle Lane involve carriageway widening and the provision of a shared-surface footway/cycleway between the site and a point south of the B5356 Grappenhall Lane junction. This would widen the existing carriageway up to an appropriate standard to cater for 2-way HGV movements and would allow for improved access for vulnerable road users. All works would be carried out within the extent of adopted highway and/or land within the control of the Appellants. These works are ensured by agreed Condition 4.
260. The improvements to J20 of the M6 involve the signalisation of the A50 Cliff Lane approach to J20 and the M6 southbound exit arm of J20, together with carriageway widening through the existing dumbbell arrangement, a widening of the northbound M56/M6 exit arm, and associated changes to road-marking throughout the roundabout. These improvements would increase the capacity and efficiency of J20 and would be carried out within the extent of adopted highway and/or land within the control of HE. These works are ensured by agreed Condition 3.
261. Finally, the improvements to the A50 Cliff Lane/B5356 Grappenhall Lane roundabout involve the widening of the 3 approach arms and the signalisation of the roundabout. These improvements would increase the capacity and efficiency of the roundabout and would be carried out within the extent of adopted highway. A contribution for these works is secured by the S106 agreement.

262. The Council is of the view that the implementation of the highway improvement works would not simply provide mitigation but would also result in wider planning benefits, as set out in the SoCG at paragraph 5.35 and summarised below:

- Provision of a staff bus service for the wider Barleycastle Trading Estate (including the NDC) to be delivered via the S106 agreement;
- Off-site highway improvements on Barleycastle Lane, including road widening to assist in accommodating 2-way HGV movements through the bends and the creation of a new footway/cycleway, to be secured via condition and a S278 agreement;
- Improvements to J20 of the M6 (based on a scheme drawn up and agreed with HE), to be secured via condition and a S278 agreement;
- Improvements to the A50 Grappenhall Lane Roundabout (based on a scheme drawn up with the local highway authority) to be delivered via the S106 agreement;
- A contribution of £20,000 towards the improvement of public footpaths/ cycleways between Barleycastle Lane and Grappenhall Lane, to be delivered via the S106 agreement; and
- Provision of a signage scheme to mitigate the impacts of errant HGV drivers taking inappropriate routes on the local highway network, to be secured via condition and a S278 agreement.

263. Agreed Condition 3 prevents occupation of the development until the improvements to the junction of the M6/A50/B5158 are carried out; and agreed Condition 4 prevents occupation of the development prior to the implementation of improvements to Barleycastle Lane and a scheme of signage to prevent HGV drivers taking inappropriate routes.

264. The A50 Roundabout and Cliff Lane Improvements are not required to be delivered before the first occupation of the appeal scheme. This is so as to allow some flexibility in terms of the precise nature of the mitigation that is to be ultimately implemented, and for a judgment to be taken as to when the scheme is constructed, so that it can be done at a time which minimises disruption and also minimises any abortive work. The desirability of this approach was set out by Officers in the Committee Report on the revised application<sup>109</sup>:

*"The Council's Highways Team considers that this scheme would be deliverable and seek contributions to be able to deliver this improvement at an appropriate time which would be planned to minimise the impact and disturbance on highway users."*

265. Furthermore, having requested the contributions and deemed them both necessary and as a benefit of the scheme, the Council intends to see they are delivered. Condition 4 specifically requires that a timetable for delivery of the works at Barleycastle Lane is agreed and that those works are delivered prior to first occupation of the development.

266. Air Quality. The Council is satisfied that the Appellants have produced sufficient information to allow the air quality impact of the appeal proposal to be assessed. The Council accepts the conclusion of the ES, that the impacts of the proposal

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<sup>109</sup> See page 37 of Appendix 2 to Doc OD/1

would be negligible and the predicted levels of air pollution would not be significant or cause a significant effect on air quality.

267. In this regard the Council has not simply relied on the work carried out by the Appellants. The Council itself is responsible for monitoring air quality across the Borough, and has produced an Air Quality Action Plan which has the objective of improving air quality. It also produces an Annual Status Report.

268. From its own data the Council has reached the following conclusions:

*"...the Council has assessed air quality across the Borough for nitrogen dioxide and particulates. In the area of the proposed development the air quality has been assessed to be significantly below national standards, known as objective limits, set for nitrogen dioxide and particulates (PM<sub>10</sub>). In addition, there is a World Health Organization (WHO) guideline value for fine particulates (PM<sub>2.5</sub>), which whilst has no statutory bearing in the UK, is considered due to potential health impacts. The PM<sub>2.5</sub> levels in the area are assessed as meeting the WHO value<sup>110</sup>."*

269. Heritage Assets. The Council is cognisant of its legal duties under the Planning (Listed Buildings and Conservation Areas) Act 1990, and in considering the appeal proposal it accepts that special regard must be had to the desirability of preserving or enhancing the character or appearance of heritage assets. To this end, in the Officers' Report on both the original and revised applications, Council Officers produced a detailed analysis of the potential impact on heritage assets, dealing particularly with the Booths Farm buildings, which lie on the northern side of Barleycastle Lane, towards the south-western corner of the appeal site.

270. These buildings are unoccupied and in a poor state of repair, with some showing signs of fire damage. This physical damage and deterioration of the buildings' fabric has reduced their aesthetic value and substantially eroded their significance, such that a significant amount of work would be needed to bring the buildings and their curtilage back into use. In these circumstances the Council accepts the conclusions of the Heritage Assessment, that these heritage assets can only be considered to be of moderate significance.

271. Council Officers concluded that less than substantial harm would be caused to these identified heritage assets, but given the benefits of the appeal proposal, the policy tests in the Heritage section of the Framework are passed. This analysis is also the subject of agreement between the Council and Appellants as set out at paragraphs 5.10 to 5.12 of the SoCG. It is accepted that the less than substantial harm is "other harm" which must be taken into account when considering whether very special circumstances exist.

272. Alternative Sites and Fiddlers Ferry Power Station. The Council accepts that the availability of alternative sites is, in principle, capable of amounting to a material consideration. In the ES for both the original application and revised application the Appellants produced an assessment of alternative sites. These were considered and assessed by the Council who also reviewed its own employment land data to consider the issue<sup>111</sup>. The Council's view remains as set out in the 2019 Officers' Report:

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<sup>110</sup> See page 39 of the 2019 Officers Report, at Appendix 2 to Doc OD/1

<sup>111</sup> See pages 23-24 of Appendix 3 to Doc SWP/JG/1 and pages 33-34 of Appendix 2 to Doc OD/1

*"It is considered that based on the Council's review of sites and the applicant's assessment there are no other significant employment land opportunities within the Borough that are suitable or available to come forward within an appropriate timescale to meet the requirements of Stobart's operation."*

273. The SWP and many interested persons made comments about the availability of Fiddlers Ferry Power Station as an alternative site. The Council does not consider that this constitutes an alternative site for the appeal proposal. Whilst closure of the plant has been announced, the decommissioning and demolition of the existing Power Station will take a number of years to complete. Further, the existing ash processing activities at the site are also expected to continue beyond the Power Station's life span, until the existing deposits are fully depleted. Consequently there is no certainty as to when the site will become available or indeed even a timetable for when that is likely to be known.
274. Economic and Employment Impacts of the Appeal Scheme. The economic benefits that would be delivered by the proposed development are substantial, as detailed in paragraphs 5.13 to 5.29 of the SoCG. In summary, key benefits include:
- The construction phase of the proposed development would support a total of around 240 FTE jobs (on-site and off-site), with further multiplier effects also likely to arise during the construction process;
  - The NDC could create around 480 new FTE jobs, with the potential for further job growth in the future;
  - The economic impact of the proposed development would be in the region of 730 new FTE jobs and £25 million of GVA (of which £18 million would be net additional); and
  - The logistics sector is a key sector for Warrington and the location of a facility of this nature in Warrington would enhance the area's reputation as a logistics hub, thus helping to unlock further investment in this area.
275. Impact on the Green Belt. The appeal proposal is by definition inappropriate development and harmful to the Green Belt. This is a material consideration of substantial weight. The Council accepts that the site makes a strong contribution overall to the Green Belt and has been identified as doing so in the Council's Local Plan Review Green Belt Assessment<sup>112</sup>. The main contribution of the site to the purposes of including land in the Green Belt is safeguarding from encroachment due to its strong openness and predominantly non-durable boundaries. The Council accepts that efforts have been made to mitigate the appeal proposal's impact on openness, and its visual impact, and that it would be seen in the context of the M56 and M6 and the neighbouring industrial buildings. However, it remains a building of a substantial size and it would adversely affect the openness of the Green Belt in this location.
276. These are significant impacts that can only be only permitted if they, with any other harm caused by the appeal proposal, are clearly outweighed so that very special circumstances exist.
277. Loss of BMV agricultural land. The Officer's Report to Committee notes that the significant majority of the appeal site is classed as Grade 3b land, which is not

<sup>112</sup> Doc 14

considered BMV land. The breakdown is Grade 3b (87%), remainder Grade 3a (13%) or approximately 2ha of Grade 3a. As such, Officers concluded that the loss of BMV agricultural land would only carry minor weight against the proposal, and would not be significant in its own right.

#### *The Planning Balance and Overall Conclusion.*

278. The appeal proposal must be determined in accordance with the development plan unless material considerations indicate otherwise. The extent of the appeal proposal's policy compliance is set out at 4.3 to 4.6 of the SoCG. The Council considers that there is overall policy support for the appeal proposal. Notably the Council would point out that Policy AT-E1 of the NDP rather than opposing development of this nature is actually supportive of it.
279. Ultimately, when all other matters have been addressed, the Council considers that the acceptability of the appeal proposal stands or falls against the Framework's very special circumstances test. The development is inappropriate development. That does not mean it can never be approved, but it does mean there is a high policy threshold that must be passed in order for it to be deemed acceptable. Very special circumstances do not mean unique circumstances, but instead require that the harm caused by inappropriateness and all other harm is clearly outweighed by the benefits of the scheme.
280. The approach of the Council is not that economic benefits trump all. Such a suggestion is not borne out by a fair or reasoned reading of the Officers' Reports on both applications which show a thorough, detailed and rational analysis of the material issues raised by this appeal proposal. When considering whether very special circumstances exist, it is the Council's view that they do. This is on the basis of the breadth and scale of the economic impacts of the scheme but also for all the material benefits identified in the SoCG notably including the highway benefits.
281. The Council concludes that the harm to the Green Belt and any other harm brought about by the appeal proposal would be clearly outweighed by the benefits and that there are no other reasons which would justify refusal of the appeal proposal.

#### **Written Representations**

282. A significant number of written objections and representations have also been submitted, with those submitted at application stage being summarised in the Council Officers' Reports<sup>113</sup>. However, it seems to me that the matters they cover have essentially been put forward by those objectors who spoke at the inquiry, and raise no materially different points. I therefore do not discuss them specifically here.

#### **Conditions**

283. A schedule of 30 conditions<sup>114</sup> to be imposed should planning permission be granted, is set out at Appendix C to this Report together with stated reasons why each is considered necessary. The conditions were discussed at the inquiry and agreed between the Appellants and the Council.

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<sup>113</sup> Appendices 3 & 4 in Doc SWP/JG/1, and Appendix 2 in Doc OD/1

<sup>114</sup> See also Docs 21 & 26

284. A further, Grampian condition was suggested by SWP, relating to improvements at the A50/B5356 Cliff Lane/Grappenhall Lane Roundabout. This was suggested as SWP was concerned that harm to the highway network would arise if the proposed development was to become operational before this junction was improved. This condition is also set out in Appendix C, as Condition 31, but was not agreed by either the Appellants or the Council.

### **Planning Obligation**

285. As already noted, the Appellants submitted a S106 agreement between the Council and the land owners<sup>115</sup>, aimed at securing various contributions and obligations, which have already been summarised in paragraph 224 above. Should planning permission be granted, the Council considers that this agreement would provide the necessary obligations to make the development acceptable and meet the requirements of Regulation 122 of the CIL Regulations 2010. To this end it has submitted a CIL Compliance Statement<sup>116</sup>, in which it sets out its reasons why it considers each of the obligations to be justified. The Appellants are in general agreement with the Council, except insofar as the Eastern Cycle Path Extension Contribution is concerned. On this matter the Appellants accept that this contribution may be desirable, but do not consider it necessary, as set out in paragraph 225 above.

*My conclusions begin on the next page*

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<sup>115</sup> Doc 20

<sup>116</sup> Doc 4



## **Inspector's Conclusions**

286. I have reached my conclusions on the basis of the evidence before me, the written representations, and my inspection of the appeal site and the surrounding area. References in superscript square brackets [...] are to preceding paragraphs in this Report, upon which my conclusions draw.
287. I am satisfied that the requirements of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 2017, have been complied with, and I have had regard to the ES, the ES Addendum and the other environmental information in coming to my conclusions<sup>[10,11]</sup>.
288. The comprehensive SoCG agreed between the Council and the Appellants details the wide-ranging areas of agreement between these parties<sup>[1,4,35]</sup>. For the avoidance of doubt, the Council fully supports this proposed development, which it considers should be granted planning permission<sup>[240]</sup>. The appeal proposal was, however, strongly opposed by the South Warrington Parish Council's Local Plan Working Group (SWP), who appeared at the inquiry as a Rule 6(6) Party, along with a number of individuals and local Councillors. These parties provided the main opposition at the inquiry<sup>[37-152]</sup>, as the Council had withdrawn both of its original reasons for refusal, and presented no evidence at the inquiry.
289. The SoS's recovery letter<sup>[7]</sup> explained that the reason the appeal had been recovered was because it relates to proposals for significant development within the Green Belt. All parties agree that this proposal represents inappropriate development in the Green Belt, and National policy in the National Planning Policy Framework ("the Framework"), requires there to be very special circumstances to justify allowing such development. But whether or not very special circumstances exist can only be established once all potential harms and benefits of a proposal have been considered and weighed in the balance.
290. Because of this, although I begin by considering the effect of the proposed development on the purposes and the openness of the Green Belt, I then deal with other matters of concern raised by SWP and interested persons in written representations and in oral presentations at the inquiry. I then undertake a final planning balance, so as to be able to assess whether or not very special circumstances exist. I then reach my overall conclusion and recommendation.

## **Main Considerations**

291. In light of the above points, I have concluded that the main considerations for this appeal can best be expressed as:
- a) The effect of the proposed development on the purposes and the openness of the Green Belt;
  - b) The visual impact of the proposed development and its effect on the character and appearance of the surrounding area;
  - c) The effect of the proposal on the significance of nearby heritage assets;
  - d) Its effect in traffic and transport terms, on the safety and convenience of users of the nearby highway network;
  - e) Its effect on air quality;
  - f) Its effect on the availability of the best and most versatile agricultural land;

- g) Whether there would be any drainage or flood risk problems associated with developing this site;
- h) The extent to which the proposed development would be consistent with the development plan for the area;
- i) Whether the proposal would be premature, in the light of the Council's emerging development plan;
- j) Whether the proposal would represent sustainable development, in the terms of the Framework;
- k) Whether the submitted S106 agreement would satisfactorily address the impact of the proposed development;
- l) other matters which do not fall neatly into the above headings; and
- m) Whether there are very special circumstances to justify this proposed development in the Green Belt

***The effect of the proposed development on the purposes and the openness of the Green Belt***

292. Paragraph 133 of the Framework states that the Government attaches great importance to Green Belts, with the fundamental aim of Green Belt policy being to prevent urban sprawl by keeping land permanently open. It goes on to confirm that the essential characteristics of Green Belts are their openness and their permanence, with paragraph 134 explaining that Green Belt serves 5 purposes:

- a) to check the unrestricted sprawl of large built-up areas;
- b) to prevent neighbouring towns merging into one another;
- c) to assist in safeguarding the countryside from encroachment;
- d) to preserve the setting and special character of historic towns; and
- e) to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.

293. With regard to development proposals affecting the Green Belt, paragraph 143 states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 144 explains that substantial weight is to be given to any harm to the Green Belt, with very special circumstances not existing unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.

294. The only CS policy dealing with Green Belt is Policy CS5<sup>[25,227]</sup>. This states that the Council will maintain the general extent of the Green Belt as far as can be seen ahead and at least until 2032, in recognition of its purposes. It then sets out the relevant Green Belt purposes, reflecting those shown in paragraph 134 of the Framework, but omitting the fourth Framework purpose, which seeks to preserve the setting and special character of historic towns. The policy goes on to state that the strategic locations and proposals set out in Policy CS2 – "Quantity and Distribution of Development" – provide for significant growth throughout and beyond the plan period, and that there is therefore no need to review Strategic Green Belt boundaries during the plan period. Finally, the policy notes that development proposals within the Green Belt will be approved where they accord with relevant national policy.

295. Paragraph 145 of the Framework sets out the uses for which the construction of new buildings in the Green Belt are not considered inappropriate, but the appeal

proposal does not sit within any of these categories. This means – as is common ground between all parties – that the proposed development would be inappropriate development in the Green Belt<sup>[41,154,275]</sup>. In its own right this harm, which was referred to as definitional harm by the main parties, must be given substantial weight, in accordance with paragraph 144 of the Framework.

296. Insofar as the effect of the proposed development on the purposes of the Green Belt is concerned, it is helpful to refer to the Council's Green Belt Assessment document which was issued in July 2017<sup>[42,275]</sup>. This records the results of the Council's assessments of a large number of Green Belt sites, in terms of the contribution they make to the 5 purposes of the Green Belt set out in the Framework, and detailed above. In this study the appeal site, which is given the reference R18/061, is noted as consisting of open countryside in agricultural use, being flat, with no built form and with low levels of vegetation, apart from a copse to the east of the site.
297. The Assessment considered that the site makes no contribution to checking the sprawl of large built-up areas (Purpose 1), as it does not lie adjacent to the Warrington urban area. Similarly, it is considered to make no contribution to preserving the setting and special character of historic towns (Purpose 4). The site is, however, considered to make a strong contribution to safeguarding the countryside from encroachment (Purpose 3). It lies adjacent to Barleycastle Lane along its southern and south-western boundaries, which is noted as providing a durable boundary which could prevent encroachment into the site. The Stretton Green Trading Estate which houses the existing ESL headquarters lies on the southern side of Barleycastle Lane to the south-west of the site, whilst the Appleton Thorn Trading Estates lies immediately to the west and north-west<sup>[13]</sup>.
298. However, the site is connected to open countryside along much of its northern and eastern sides, with neither of these boundaries considered to be durable. That to the east simply consists of a field boundary lined by shrubs, with the northern boundary being formed by Bradley Brook which is lined by a fence and trees, some of which are spaced intermittently. The Green Belt Assessment indicates that these non-durable boundaries would be unable to prevent encroachment beyond the site if the site was developed, and I share that view. I do note that landscaping and tree planting is proposed along these northern and eastern boundaries, but the proposed planting belts appear to be relatively narrow in places, such that I do not consider that they would reinforce the existing boundaries significantly.
299. The Assessment concludes on this purpose, by noting that the site makes a strong contribution to safeguarding from encroachment due to its strong openness and predominantly non-durable boundaries. The study's overall assessment is that the site has a strong role in preventing encroachment and, accordingly, makes a strong contribution to fulfilling the fundamental aim of the Green Belt under paragraph 133<sup>117</sup> of the Framework, in protecting the openness of the Green Belt<sup>[42]</sup>. For completeness it also concludes that the site makes a moderate contribution to assisting in urban regeneration (Purpose 5) and a weak contribution to preventing towns from merging into one another. I note that

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<sup>117</sup> The Green Belt Assessment actually refers to Framework paragraph 79, which was the equivalent paragraph in the 2012 version of the Framework

both the Appellants and SWP are in general agreement with this overall assessment, and I see no reason to take a contrary view.

300. Drawing these points together the proposed NDC building, which the submitted plans indicate would measure some 345m by 165m, with a height of about 18.0m, would occupy a significant proportion of the site. In addition, it would be surrounded by dock levellers and tractor, trailer and car parking bays, some of which would sit relatively close to the site's northern and eastern boundaries<sup>[37,47]</sup>. Whilst I acknowledge that the finished floor level of the building would be some 4.25m below Barleycastle Lane, meaning that the apparent height of the building relative to the road would be about 14.0m<sup>[30]</sup>, the proposed development would still represent a clear encroachment into the countryside, giving rise to significant harm to Green Belt Purpose "c" and Purpose 3 of CS Policy CS5.
301. In terms of the effect on openness, SWP, through the evidence of Mr Groves, argued that the proposed development would have a severe and adverse impact. This would arise not simply as a result of the construction of the proposed NDC building, but also as a result of the considerable amount of parking, both HGVs and cars which would surround the proposed building, and which would impact on openness in their own right<sup>[47]</sup>.
302. Mr Halman, for the Appellants, takes a somewhat different view. In his PoE, he states that it is undeniable that the presence of a distribution building of this scale would have a significant impact on openness from both a spatial and visual perspective<sup>[45,170,173]</sup>. However, he then tempers this assessment by arguing that the visual aspect of openness is more nuanced, and that harm would be reduced by the proposed landscaping, which would screen and reduce the visual impact of the development<sup>[177,178]</sup>. In taking this view, he draws on the findings of the LVIA, undertaken as part of the ES, which concludes that after 15 years, when the proposed landscaping has matured, the magnitude of effect would reduce to low adverse. This causes Mr Halman to take the view that there would only be moderate harm to the visual aspect of openness<sup>[45]</sup>. Furthermore, he maintains that any impact on openness from traffic or parked vehicles would only be limited<sup>[47]</sup>.
303. The proposed NDC building would clearly occupy a significant proportion of what is currently a vacant site, and further space would be taken up by the considerable amount of parking and vehicle standing areas proposed. The PPG confirms that the degree of activity likely to be generated by a development proposal, such as traffic generation, is a factor which can be taken into account when considering the potential impact of development on the openness of the Green Belt<sup>[44]</sup>, and in this regard I share Mr Groves' view that the parked and standing vehicles likely to occupy this site would also have an appreciable impact on openness<sup>[47]</sup>. As such, it is my assessment that the construction of this very large building and its associated vehicular activity would have a very significant impact on the spatial aspect of openness.
304. Insofar as the visual aspect of openness is concerned, I consider that a LVIA could be a useful tool to assist in assessing the visual effects and impacts of a development proposal on Green Belt openness. But in this case, other than acknowledging that the appeal site lies within the Green Belt, the LVIA makes no further reference to Green Belt, nor is there any indication that the LVIA has had

any specific regard to openness<sup>[46]</sup>. It certainly has not made any direct assessments of the impact on openness as a sub-set of wider visual effects. Whilst this is not surprising, as Green Belt is a policy designation, rather than a landscape designation, it does lead me to conclude that in this case the LVIA's conclusions on visual impacts cannot simply be assumed to represent an assessment of the visual aspect of openness.

305. Notwithstanding the conclusions of the LVIA on visual matters, which I look at in more detail under the next main consideration, it is my assessment that this very large building would have an appreciable adverse visual impact on openness, particularly when seen from Barleycastle Lane, the closest public viewpoint, extending all along the site's southern boundary. Whilst the roadside vegetation would provide some shielding of the building and the parked and standing vehicles, once matured, this would not be for many years. Meanwhile, the view across the site would be dramatically transformed from a relatively flat, open, undeveloped area, into an intensively developed area housing a very large building and an appreciable number of vehicles. To my mind the visual harm to the openness of the Green Belt would be severe.
306. In conclusion on this issue, the definitional harm arising from the proposal being inappropriate development, coupled with the significant harm to the Green Belt purposes and the severe and significant harm to openness, mean that in accordance with Framework guidance this harm to the Green Belt has to carry substantial weight. In addition, the appeal proposal would be in conflict with CS Policy CS5, for reasons already set out above.

***The visual impact of the proposed development and its effect on the character and appearance of the surrounding area***

307. As already noted, a LVIA was submitted by the Appellants in support of this proposal, and this is the only detailed and professionally prepared evidence on landscape and visual matters before the inquiry. As such, I see no real reason to dispute its findings in most areas.
308. It is clear that the proposed development would alter the site from farmland to industrial development, with associated roads and parking, but the Conclusions of the LVIA note that the development would be seen in the context of the existing warehouse development to the west and south, and would be bordered by structure planting around its boundaries to provide a "green" interface with the adjacent countryside. It concludes that this is a landscape of low sensitivity, with a moderate adverse magnitude of effect identified. As a result, the significance of effect on landscape character on completion would be moderate to minor adverse.
309. The LVIA goes on to further conclude that after 15 years the development would have become an established part of the trading estates, and planting around the boundaries would have matured to help integrate the development into its surroundings<sup>[177,179]</sup>. This would reduce the significance of effect on landscape character to minor adverse.
310. In terms of likely visual impact, the LVIA notes that visual receptors are generally located close to the site, with Booth's Farm the closest property, located adjacent to but outside the site's western corner with the site wrapping round the farm's west, north and east sides. This farm is vacant and all of its buildings are derelict



and appear to be in a poor state of repair, with some fire damage<sup>[15,270]</sup>. The LVIA considered that substantial work would be required to return the farmhouse to a habitable condition and therefore did not include it as part of the visual assessment, arguing that the proposed development would form part of the future baseline to property views. Having seen the state of the buildings at my site visit, this seems to me to be a reasonable approach on the Appellants' part.

311. I agree with the conclusions of the LVIA, that the greatest visual effects on completion of the development – classed as moderate adverse – would be experienced from the length of Barleycastle Lane which borders the site. As part of my site visits I viewed the appeal site from the more distant public rights of way to the east and north, and agree that the proposed development would be seen against a backdrop of existing buildings on the Barleycastle Trading Estate. In these circumstances I see no reason to dispute the assessment of an effect of moderate to minor adverse significance. From closer viewpoints from the west and south, the proposed development would again be seen in the context of buildings on the existing trading estates and, as such, the assessment of effects of minor adverse significance seem reasonable.
312. I further share the Appellants' view, expressed in the LVIA, that after 15 years the planting around the site would be establishing and provide a greater degree of filtering to views of the proposed development and would also screen ground levels views across the site. This would reduce the extent of visual impacts, with the LVIA concluding that there would be no residual significant effects of greater than moderate to minor adverse significance.
313. In summary, as accepted by the Appellants, there would be an adverse impact on the character of the area, and some adverse visual impact, both of which would be mitigated over time, as the proposed landscaping matures. Whilst not at a level which would typically be considered significant in EIA terms, there would be some harm in both character and visual terms, which will need to be weighed against the appeal proposal in the final planning balance, which I undertake later in this Report.
314. In terms of compliance with development plan policy, I note that although the LVIA details a number of policies from the CS in its "Planning Policy Context" section, it does not mention these policies further, nor does it give any indication of how the proposed development would sit alongside these policies. Moreover, the LVIA does not make any reference to the Appleton Thorn Ward NDP, which is also part of the development plan, and which contains policies of relevance to this topic<sup>[24,80,120]</sup>.
315. Somewhat surprisingly, the Council Officers' Report to Committee does not appear to carry out any assessment of the proposed development against the landscape policies in either the CS or the NDP. It states that relevant policies are CC2, CS5, QE3 and QE7 of the CS, and AT-D1 and AT-D2 of the NDP, but then says nothing further about these policies. Rather, the Officers' Report simply adopts the conclusions contained within the ES (ie, from the LVIA), that the proposal would have a moderate to minor adverse impact on landscape character, and some visual impact. The Council accepts that this harm would need to be considered in the overall planning balance, but does not equate this harm to any conflict with policy.



316. Mr Halman does assess the appeal proposal against development plan policies in his Appendix 5, and finds no conflict with CS or NDP policies, except with the Green Belt Policy CS5 – and even then, Mr Halman maintains that there would be no conflict with this policy if very special circumstances are found to exist<sup>[207]</sup>. It is also the assumed presence of very special circumstances that allows Mr Halman to find no conflict with CS Policy CC2 “Protecting the Countryside”<sup>[206]</sup>.
317. The only meaningful references to development plan policies from those interested persons who spoke at the inquiry came from Mr McAloon, who drew specific attention to a number of NDP policies<sup>[120-122]</sup>. In particular he maintained that the proposal would conflict with Policy AT-D1, as it would destroy rather than maintain or enhance the unique local character, distinctiveness, local identity, sense of place and overall village character, as highlighted in this policy. He also alleged a conflict with Policy AD-T2, which seeks to protect and enhance local landscape character and views. In Mr McAloon’s opinion the proposed development would destroy village landscape and character, and would be highly intrusive, spoiling local rural views<sup>[120]</sup>.
318. Drawing the above matters together, it is clear that the LVIA has found that the proposed development would give rise to some landscape and visual harm, albeit just of moderate to minor significance, and that both the Council and the Appellants accept that this harm needs to be weighed in the planning balance. These points lead me to conclude that the proposed development would have an adverse impact on the character and appearance of the surrounding area.
319. In addition, I consider that there would be some conflict with the development plan. I acknowledge that the proposed development would be well-designed in itself, thereby addressing some aspects of CS Policy QE7 and NDP Policy AT-D1. However, the fact that it would cause some agreed harm shows that it would not fully protect, maintain, enhance or protect local character and distinctiveness and the settings of open landscapes, as is required by NDP Policies AT-D1 and AT-D2. I therefore find some conflict with these policies. Similarly, until it can be established whether or not very special circumstances exist, I have to also find some conflict with CS Policy CC2, which seeks to protect the countryside.

### ***The effect of the proposal on the significance of nearby heritage assets***

320. Turning to heritage matters, the SoCG indicates that the application was accompanied by a Heritage Assessment, which is to be found in Chapter 9 of the ES. There are no designated heritage assets on the appeal site, but the Heritage Assessment records that the appeal site lies within the setting of 6 designated heritage assets. However, it is only the settings of Booths Farm Farmhouse and the associated Booths Farm Shippon that the Heritage Assessment concludes would be harmed by the appeal proposal<sup>[183]</sup>. These are both Grade II listed buildings, and the likely impact on them was fully assessed, taking account of the statutory duty to have special regard to the desirability of preserving the buildings or their settings, or any features of special architectural or historic interest which they possess, as required by section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990<sup>[269]</sup>.
321. Policy QE8 of the CS requires development to take account of and preserve or enhance heritage assets. In addition, in assessing the likely impact of the proposed development on the significance of designated heritage assets I have had regard to paragraph 193 of the Framework, which explains that great weight

should be given to the asset's conservation, irrespective of whether any potential harm amounts to substantial harm, total loss, or less than substantial harm to its significance. The Framework's Glossary states that in the context of heritage policy, conservation means the process of maintaining and managing change to a heritage asset in a way that sustains and, where appropriate, enhances its significance.

322. Booths Farm lies on the northern side of Barleycastle Lane, towards the south-western corner of the appeal site, with the appeal site wrapping around the other 3 sides of this group of buildings. The buildings themselves are surrounded by mature trees, which are denser along the roadside boundary and to the south-west, and sparser on the north-western and north-eastern sides of the buildings. The buildings are unoccupied and in a poor state of repair, with some showing signs of fire damage<sup>[15,270]</sup>. I share the Council's view, that the physical damage and deterioration of the buildings' fabric has reduced their aesthetic value and substantially eroded their significance. It is clear that a significant amount of work would be needed to bring the buildings and their curtilage back into use, and, in these circumstances these heritage assets can only be considered to be of moderate significance<sup>[270]</sup>.
323. The Appellants' detailed Heritage Assessment concludes that the proposed development would adversely affect the setting of both Booths Farm Farmhouse and the Shippon. This is understandable, as much of the setting would change from agricultural in nature to industrial. However, there would be no direct impact on the buildings or their curtilage or former farmyard. Moreover, the appeal proposal includes a Landscape Strategy which includes planting within the site boundary around these buildings, and acoustic fencing would also be placed around much of the buildings' curtilage.
324. These measures would soften views of the proposed development, and would also reduce noise from the on-site operations. With these points in mind I see no reason to disagree with the findings of the Heritage Assessment, that the magnitude of effect on the significance of these assets would be low adverse, with the significance of effect being minor adverse, or "less than substantial" in the wording of the Framework<sup>[184,271]</sup>. In accordance with paragraph 196 of the Framework, this limited harm needs to be weighed against the public benefits of the proposal.
325. The Officers' Report to Committee also makes reference to Beehive Farmhouse, a further Grade II listed building which also fronts onto Barleycastle Lane, but lies a little further to the north-west, separated from the appeal site by an existing access road and a smaller industrial unit<sup>[15]</sup>. An area of woodland planting is proposed for the westernmost corner of the appeal site, closest to Beehive Farmhouse, which would serve to reduce the impact of the proposed development on the setting of this listed building. Nearby agricultural land would be replaced by an industrial use and buildings, but the Heritage Assessment concludes that the magnitude of the impact would be negligible, and therefore not significant in EIA terms. Having seen Beehive Farmhouse and its setting at my site visit, I share that view.
326. The Council and the Appellants both take the view that the provision of the development, with the highway, economic, employment and social benefits (detailed later), would be capable of providing public benefits that would

outweigh this less than substantial harm to setting of the listed buildings at Booths Farm<sup>[184,271]</sup>. As the intended layout of the proposed development would minimise the impact on the setting of these buildings I, too, consider that the public benefits of the proposal would outweigh the less than substantial harm to these buildings' setting.

327. Drawing the above points together, I conclude that the less than substantial harm to the significance of the Booths Farm Farmhouse and Booths Farm Shippon would be outweighed by the public benefits of the proposal. As such, the proposed development would not conflict with CS Policy QE8 "Historic Environment", nor with relevant paragraphs in the Framework.

***The effect in traffic and transport terms, on the safety and convenience of users of the nearby highway network***

328. A significant number of objections and representations from interested persons raised concerns about various aspects of traffic and transport. These cover such matters as claims that the current highway infrastructure in the area is already heavily congested and could not cope with the proposed additional HGV movements; concerns that the cumulative impact of this proposal and the "Six 56" proposal would result in constant gridlock; that the additional traffic would adversely affect residential amenity and increase air pollution; that HGV drivers currently ignore weight restrictions on some local roads; concerns about road safety; and the fact that there is a lack of public transport services in the area.
329. Some of these concerns are quite understandable, as the proposed NDC would operate 24 hours a day, 7 days a week, and is predicted to have HGV arrivals and departures each averaging about 16 an hour, meaning that there would be about 384 HGV arrivals and 384 HGV departures over a 24 hour period<sup>[37,122]</sup>. In addition, the TAA has assumed a robust "worse case" scenario of 200 operational staff arriving and 200 leaving during both morning and evening peak hours, and with 20 office staff assumed to arrive during the morning peak and leave during the evening peak<sup>[185]</sup>.
330. There are a number of relevant CS policies. Policy MP1 indicates that the Council will support proposals where, amongst other things, they reduce the need for private car use through their location, travel planning and marketing; and any other measures to change travel behaviour; and mitigate the impact of development by delivering site specific infrastructure which will support the proposed level of development. Policy MP3 states that a high priority will be given to the needs and safety of pedestrians and cyclists in new development; whilst Policy MP4 aims to secure improvements to public transport infrastructure and services.
331. Policy MP5 indicates that proposals for freight-related development will be supported where they achieve a reduction in road traffic kilometres through their location and/or where they reduce the impact of freight traffic on local or inappropriate routes. Any such development proposals should also demonstrate that they would not have an adverse impact in terms of HGV use of local or residential roads or congested central areas; and should not produce unacceptable pollution problems for neighbouring occupiers. Finally, Policy MP7 makes it clear that appropriate TAs and Travel Plans will be required in support of significant development proposals.

332. From the NDP, Policy AT-TH1 seeks to ensure that development assesses the impact on the highway network and makes provision for appropriate traffic management and transport improvements, where necessary; whilst Policy AT-TH2 indicates that development proposals should, where appropriate, make provision for the delivery of sustainable transport measures.
333. In terms of national guidance, Paragraph 109 of the Framework 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.
334. In considering the various matters raised by interested persons I have been mindful of the fact that none of those who spoke at the inquiry claimed any technical expertise in highways or transport-related fields. Rather, they simply made their points as concerned lay people who live in the area, and have experience of the existing transport situation as local residents and users of the transport network. Although SWP was represented by a planning professional - Mr Groves - he indicated that it was not his intention, or within his remit, to produce detailed highway evidence, but simply reflected the concerns of his clients.
335. Set against these views, I have a wealth of technical evidence in the form of a TA, forming part of the ES; along with a TAA in the ES Addendum and the Highways and Transport Statement appended to Mr Halman's PoE<sup>[185]</sup>. This latter document provides a synopsis of the various highways and transport issues raised and identified by the local community and other interested parties, and how the proposed development would respond to and resolve these issues.
336. It is common ground between the Appellants, the Council as local highway authority, and HE, that although without any mitigation the proposed development would worsen traffic conditions on the surrounding highway network<sup>[257]</sup>, implementation of the proposed highway improvement works would not simply provide adequate mitigation, but would also result in wider planning benefits<sup>[187,193,194,262]</sup>. With this in mind, these parties consider that there are no highway reasons why the development should not be approved, subject to the agreed conditions and the provisions of the S106 agreement.
337. Against this background I turn to address some of the specific matters raised, dealing first with concerns that the existing highway network in the vicinity is already congested, and would not be able to cope with the additional HGV and car traffic likely to be generated by the proposed development; and that this situation would worsen if other development, such as the large "Six 56" proposal on land to the north, north-east and east of the appeal site, also came on stream<sup>[117,129,139,146]</sup>.
338. Insofar as the local highway network is concerned, the TA and TAA indicate that none of the projected increases in traffic, due to the proposed NDC, would be of the order of magnitude which would have any material effect on the functioning or available capacity of any of the local junctions modelled. The impacts are therefore classed as "Negligible Adverse", which is considered "Not Significant" in EIA terms<sup>[186]</sup>.
339. For the A50/B5356 Cliff Lane/Grappenhall Lane roundabout, the local highway authority seeks a contribution towards any future improvement, secured by the S106 agreement, which it would want to implement at the appropriate time, when it is better understood what – if any – additional development is to be approved in the area<sup>[189,190,264]</sup>. This covers such matters as the "Six 56" proposal referred to

above, and raised by SWP and other interested persons at the inquiry. However, the progress of that proposal is linked to that of the PSVLP, and so no decision on whether or not it will be approved is likely to be issued for some time. As such, it is not a matter for this inquiry, and it is therefore not appropriate to speculate further on any highway impacts of this scheme. My role is to assess the likely impacts of the proposal at appeal.

340. SWP argues that only providing a contribution towards an improvement at the A50/B5356 roundabout could give rise to harm on the network, if the NDC became operational before this junction was improved<sup>[63,64]</sup>. This is a valid and reasonable concern, which prompted SWP to argue that a Grampian condition should be imposed, requiring this junction to be improved before the NDC is first occupied<sup>[64]</sup>. However, there is nothing before me to suggest that the local highway authority would not act responsibly in carrying out its duties to effectively manage the local highway network, and ensure that the extent of any such period of harm would be limited.
341. Indeed, at the inquiry session where Conditions were being discussed, the representative of the local highway authority indicated that if problems were to arise at this junction, prior to a final scheme being implemented, some interim measures could be introduced to address this situation. I do not regard this to be a wholly satisfactory situation, but on balance I see no reason to question the considered position of the local highway authority on this matter. As such I do not consider that the imposition of a Grampian condition would be either necessary or appropriate, if planning permission is granted.
342. With regards to the proposed works to widen and realign the section of Barleycastle Lane across the site frontage, improve junction access arrangements and provide lengths of shared footway/cycleway, I consider that this would result in a clear – albeit limited – benefit not just to vehicles associated with the proposed development, but for all other users of this stretch of Barleycastle Lane<sup>[191]</sup>. The fact that the proposed cycleway would not extend beyond the eastern limit of the appeal site means that cyclists using Barleycastle Lane to the east of the site would still have to share the carriageway with other vehicles. Whilst I do not consider that this would be a material worsening of the existing situation, it does make me question the need for the agreed £20,000 contribution towards an extension of the cycleway in the S106 agreement<sup>[192,225]</sup>. I return to this matter later in this Report, when I consider the S106 agreement itself.
343. The SRN is the responsibility of HE, and insofar as the dumbbell arrangement at M6 J20 is concerned, all parts of the junction are forecast to be operating at, close to, or beyond maximum capacity in the proposed development opening year – regardless of the introduction of the proposed NDC. However, the TA and TAA show that development traffic would only cause slight increases in the degree of saturation on junction approaches, and in these circumstances the assessments conclude that the impact of the proposed development on the SRN would only be “Negligible Adverse” which, again, would not be considered significant in EIA terms<sup>[186]</sup>.
344. The mitigation measures proposed, which would be secured by agreed Condition 3, aim to further minimise any effects, and ensure that residual effects – with the proposed NDC in place – would remain “Not Significant”. This approach is



acceptable to both the local highway authority and HE, and no persuasive, authoritative evidence was submitted to persuade me to take a contrary view.

345. Much was made at the inquiry of the fact that HGV drivers, from both ESL and other companies, disregard local weight limits and travel on unsuitable local roads<sup>[82,111,194]</sup>. This was borne out by a number of submitted photographs<sup>[111]</sup>. Such events clearly do happen, from time to time, but the actual extent of such contraventions has not been placed before me, and I am unable to form a view as to how serious a problem it is. But notwithstanding this, it is clearly a matter that the Appellants acknowledge, and want to try and address. This is the reasoning behind the proposed introduction of a scheme to mitigate the impacts of such "errant HGV drivers", which would be secured by agreed Condition 3, and would need to be implemented prior to first occupation of the proposed development<sup>[194]</sup>. I consider that this is a reasonable and appropriate response to this situation.
346. Turning to concerns about the absence of public transport serving the appeal site, I understand from the Travel Plan that the nearest bus stops to the site are approximately 1.5km away, in the village of Appleton Thorn, and I therefore appreciate that access to and from vicinity of the appeal site, other than by private car, would be difficult at the present time. However, the evidence before me shows that this situation would be addressed by the provisions of the S106 agreement and a number of the agreed conditions.
347. In particular, the S106 agreement makes provision for a "Public Transport Contribution" of £600,000, which would be used to "pump prime" a shift-friendly shuttle bus service for site employees<sup>[193,224]</sup>. It is intended that this contribution would provide start-up costs and fund the service on a 3-shift basis for 1 year, by which time the local highway authority expects the service to be self-financing. Such a service could also serve other destinations at the Barleycastle Lane Trading Estate. The final details of the proposed bus facilities would be defined in the final Travel Plan – which would be secured by agreed Condition 25. Other agreed conditions also seek to provide facilities to encourage cycling to the proposed development. I consider that these measures would serve to make the appeal site, and existing businesses in the surrounding area, more accessible by modes of transport other than the private car, and in this regard the proposal would accord with the aims of CS Policies MP1, MP3, MP4, and MP7.
348. Concerns that the proposed development would give rise to a worsening of road safety conditions are not supported by any firm evidence. In contrast, the Highways and Transport Statement appended to Mr Halman's evidence makes it clear that safety has been at the core of the NDC design process and the mitigation and improvement scheme design process<sup>[185]</sup>. The schemes have been subject to appropriate design checks and road safety audits which, in part, have enabled HE and the local highway authority to agree to the mitigation and improvement schemes and therefore meet issues relating to the safety of all highway users. In these circumstances I am satisfied that the appeal proposal would not have a materially adverse impact on the safety of road users.
349. Similarly, concerns that the additional traffic generated by the proposed development would adversely affect residential amenity and increase air pollution are not supported by any firm, meaningful evidence<sup>[85,101,104,109,141]</sup>. There is a clear route for HGVs from the proposed NDC location to and from M6 J20, via Barleycastle Lane, Grappenhall Lane and Cliff Lane, and I do not consider that use



of these roads by such vehicles would give rise to significant concerns of residential amenity.

350. "Errant" HGV drivers would be addressed by the proposed measures already detailed above, and concerns regarding air pollution are dealt with in the next section. None of the other traffic and transport-related matters raised in the various representations have been supported by detailed evidence, and because of this I am not persuaded that any of the objections to the proposed development on traffic and transport grounds should carry any meaningful weight.
351. In view of all the above points, I conclude that the proposed development would not have any materially adverse impacts in traffic or transport terms, or on the safety and convenience of users of the nearby highway network. Accordingly, I find no conflict with the development plan policies to which I have already referred, nor with the aforementioned guidance in paragraph 109 of the Framework, as there is nothing to suggest that any residual cumulative impacts of the proposed development on the local road network or the SRN would be severe.

### ***The effect on air quality***

352. The only authoritative technical evidence dealing with air quality was that submitted by the Appellants as part of the ES<sup>[195,197]</sup>. This was scrutinised by the Council's Environmental Protection Officer, who considered the air quality assessment to be acceptable, and raised no objections to the proposed development<sup>[195]</sup>. However, objections on the grounds of air quality were raised at the inquiry, primarily by Cllr Palmer and Cllr Harris, who both alleged omissions and inaccuracies in the air quality assessment<sup>[85-87,101-105]</sup>.
353. But whilst these objections were genuinely made, they contained nothing of real substance to persuade me that the findings of the ES, supplemented by the additional note submitted at the inquiry<sup>[195,197]</sup>, should be disputed. It seems to me that the assertions made by these objectors are likely to have arisen from a less than complete understanding of the air quality assessments contained within the ES, and their methodology. I say this because the assessments are comprehensively described in the ES and this information, together with that contained in the additional note, demonstrate to me that the assessments are robust and reliable. I see no reason to doubt the findings of the ES, that the proposed development would not cause any significant effect on air quality<sup>[195,266]</sup>.
354. In support of this view, I note that the Council Officers' Report to Committee for the second application explains that the Council has assessed air quality across the Borough for NO<sub>2</sub> and particulates. In the area of the proposed development the air quality has been assessed to be significantly below national standards, known as objective limits, set for NO<sub>2</sub> and particulates (PM<sub>10</sub>). In addition, the levels of fine particulates (PM<sub>2.5</sub>) in the area are assessed as meeting the WHO value<sup>[199,268]</sup>. The Officers' Report also agrees with the findings of the ES, that the impacts of the proposal would be negligible and the predicted levels of air pollution would not be significant or cause a significant effect on air quality<sup>[266]</sup>. As detailed above, I see no reason to take a contrary view.
- 355.** Taking the above points into account, I conclude that the appeal proposal would not have an adverse effect on air quality. Accordingly I find no conflict with CS Policy QE6 which, amongst other things, indicates that development which would

have an unacceptable impact on the surrounding area in terms of air quality will not be supported.

***The effect on the availability of the best and most versatile agricultural land***

356. Concerns about the loss of BMV agricultural land were raised in a number of the written representations, and this matter is dealt with specifically in the SoCG<sup>[201,281]</sup>. As noted in the Officers' Report on the second application, Framework paragraph 170 makes it clear that planning decisions should recognise the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of BMV agricultural land, and of trees and woodland. The footnote to paragraph 171 states 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<sup>[202]</sup>.
357. There is no firm definition as to what constitutes a "significant loss" of agricultural land, and in this case the overall appeal site of 15.7ha contains just about 2ha of BMV agricultural land at Grade 3a. This amounts to just some 13% of the site area. As the Appellants point out, that level of loss is way below the threshold of 20ha which would require Natural England to be consulted on this aspect of the proposal<sup>[201]</sup>. Furthermore, information provided by the Appellants, and not disputed, indicates that this BMV land amounts to just about 1% of the total landholding of the agricultural enterprise of which it is a part<sup>[201]</sup>. There is no evidence before the inquiry to suggest that the loss of this very modest area of land would adversely impact upon the existing farming enterprise, let alone the overall stock of BMV land in the Borough.
358. The Council and the Appellants agree that the loss of BMV agricultural land in this case should be seen as a factor which only carries minor weight against the appeal proposal<sup>[201,277]</sup>. I share that view and conclude that the appeal proposal would not have an unacceptable impact on the availability of BMV agricultural land within the Borough.

***Whether there would be any drainage or flood risk problems associated with developing this site***

359. In the representations made for the first application, SWP comment that the appeal proposal appears to deal inappropriately and inadequately with drainage issues, particularly given the extensive excavation needed to accommodate the proposed development. Such matters are then pursued in the written evidence of Mr Groves, where he indicates that he finds the scoping out of drainage issues from the EIA and ES to be curious, considering the scale of the proposed development, the massive expanses of roof space and hard standing, and the greenfield location<sup>[76]</sup>. He maintains that this is a combination of matters which needs to be fully appraised by the developer and understood by the decision maker. However, neither Mr Groves, nor any other objector, submitted any technical drainage or flooding evidence.
360. Such evidence is, however, before the inquiry in the form of a freestanding FRA which was undertaken on behalf of the Appellants, notwithstanding the fact that the appeal site is located within the lowest flood risk area of Flood Zone 1<sup>[203]</sup>. The FRA assessed flood risk from all other sources and found this to be low, with the exception of localised high risk for surface water flooding along the northern

boundary, associated with Bradley Brook, although this does not extend significantly within the site boundary<sup>[203]</sup>.

361. Industrial buildings are considered to be an appropriate form of development within Flood Zone 1, and the submitted plans show that the proposed development would be kept away from the area at high risk of surface water flooding along the northern boundary. In these circumstances I see no reason to dispute the FRA's finding, that the overall surface water flood risk to the site would remain low, even after development<sup>[204]</sup>. Downstream receptors would be protected from any increased risk of flooding, if the development went ahead, as a result of on-site SuDS techniques which would restrict run-off to greenfield rates by providing attenuation storage on the site. This would be designed to accommodate up to the 1-in-100 year storm event, including allowances for climate change over the lifetime of the development<sup>[205]</sup>.
362. Drawing all the above points together, I conclude that the proposed development would not give rise to any material problems in flood risk or drainage terms. It would therefore accord with CS Policy QE4 which, amongst other things, encourages sustainable design and construction, directs development to locations within the Borough at the lowest risk of flooding, supports developments which reduce flood risk elsewhere, and requires new developments to manage surface water run-off. It would also comply with CS Policy QE6 which seeks to ensure that the quality of water bodies is not affected by development proposals. In addition it would comply with NDP Policy AT-D3 which seeks to ensure that development does not result in flood risk, manages the water environment, and controls surface water run-off through the principles of sustainable drainage.

***The extent to which the proposed development would be consistent with the development plan for the area***

363. A list of the development plan policies considered to be relevant to this appeal is given in Section 4 of the SoCG, and I have referred to these policies, as appropriate, when dealing with each of the main considerations above. There is agreement between the main parties that the proposed development would be in conflict with the CS Green Belt Policy, CS5, unless very special circumstances can be demonstrated<sup>[25,206,207,227]</sup>. I address this matter in the planning balance section, later in this Report. Similarly, unless it can be established that very special circumstances exist, I have found some conflict with CS Policy CC2, which seeks to protect the countryside.
364. Moreover, as there is general agreement that some harm would be caused to the character and appearance of the surrounding area, I consider there to also be conflict with some aspects of NDP Policies AT-D1 and AT-D2, as detailed earlier, in paragraph 319. I have not, however, found any material conflict with any of the other relevant development plan policies highlighted.

***Whether the proposal would be premature, in the light of the Council's emerging development plan***

365. The Council's emerging Local Plan, the PSVLP, includes proposals for a large, sustainable urban extension in the south-eastern part of the Borough, referred to as the Warrington Garden Suburb. This is intended to deliver substantial new residential development, a neighbourhood centre, a network of open spaces and parkland, and a significant employment area allocation, which would include the

appeal site<sup>[27]</sup>. It is clear from the Warrington Garden Suburb Development Framework that a fundamental upgrade of the existing vehicular movement network would be required in response to the scale of change envisaged as part of the Garden Suburb<sup>[70,84]</sup>.

366. This has prompted a number of objectors, including SWP, to argue that it would be premature to proceed with the proposed NDC development at this stage. These objectors contend that any development of the appeal site should only be undertaken – if at all – as part of the overall Garden Suburb proposal, so that the appropriate and necessary infrastructure – including transport infrastructure – can be comprehensively planned for and delivered<sup>[65-75,80,110]</sup>.
367. However, the Framework is quite clear on the topic of prematurity. Its paragraph 49 states that particularly in the context of the presumption in favour of sustainable development, arguments that an application is premature are unlikely to justify a refusal of planning permission other than in the limited circumstances where both:
- a) the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging plan; and
  - b) the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area.
368. Dealing with this latter point first, I have already noted that the timetable for the preparation of the new Local Plan has slipped, such that it is not currently known when it will be submitted to the SoS, or when it will be put forward for examination. The main parties also agree that in these circumstances, only limited weight should attach to the PSVLP<sup>[29,70,208,247]</sup>, and with this in mind it is self-evident that the emerging Local Plan cannot be described as being at an advanced stage. This means, that without even assessing part “a” of paragraph 49, the Framework advises that in the circumstances pertaining here, arguments of prematurity would be unlikely to succeed.
369. With regards to part “a”, the evidence before me is that the appeal proposal would only amount to some 5% of the total of 277ha of additional land which the Council considers it needs to find for the PSVLP, of which 213ha is proposed in the Green Belt<sup>[212]</sup>. Whilst I note that the appeal site area would be about 14% of the 116ha of employment land proposed in the Garden Suburb<sup>[73,212]</sup>, I am not persuaded that this development would be so substantial that it would undermine the plan-making process. Moreover, I share the Appellants’ view that a development of this size would not pre-determine the merits of any part of the rest of the Garden Suburb<sup>[212]</sup>.
370. Turning to paragraph 50 of the Framework, this states that refusal of planning permission on grounds of prematurity will seldom be justified where a draft plan has yet to be submitted for examination. It goes on to explain that where planning permission is refused on grounds of prematurity, the local planning authority will need to indicate clearly how granting permission for the development concerned would prejudice the outcome of the plan-making process.

371. As has already been noted, the Council did originally refuse this proposal on the grounds of prematurity, but after reflecting on this matter it chose not to defend this reason for refusal. It seems likely to me that this decision was taken, in part at least, because the evidence showed that in the light of the proposed infrastructure improvements, secured by condition and the S106 agreement, no unacceptable harm would be caused (if very special circumstances can be demonstrated). In view of the points outlined above, I believe that to be the correct decision.
372. SWP is quite correct that the language used in these Framework paragraphs – “unlikely” and “seldom” – does not necessarily mean “never”. It argued, further, that the criteria for prematurity in these paragraphs is not a “bar” preventing the prematurity argument being run if they are not met, but is instead setting a “high bar” for any argument that does not meet the criteria to be accepted<sup>[65,69]</sup>.
373. SWP makes it plain that it takes 2 positions. Its primary position is that the appeal should be refused on a prematurity ground<sup>[69]</sup>. However, whilst I have had regard to the 2 judgements referred to by SWP<sup>[67,68]</sup>, I do not consider that they add anything material to this case as the Council has decided that the proposed development is not of a scale that would pre-empt decisions which ought more properly to be made through the plan-making process. I share that view.
374. I have noted SWP’s references to draft Policy MD2 in the PSVLP, and the Garden Suburb Development Framework, and its contention that the clear expectation set out by these documents is that the Garden Suburb would come forward through a linked-up delivery strategy and phasing plan, to ensure comprehensive and co-ordinated development<sup>[70]</sup>. However, whilst I acknowledge that the PSVLP demonstrates the Council’s preferred “direction of travel”, the fact remains that I can only reasonably give limited weight to proposals in this emerging plan, for reasons already outlined. In these circumstances, provided the development could satisfactorily deal with its own infrastructure requirements – as appears to be the case from my assessment of the earlier main considerations – and accepting the Appellants’ position that it would not involve a significant proportion of the overall Garden Suburb area, then I do not accept SWP’s argument that it should be refused on a prematurity ground.
375. The secondary position that SWP adopts is to argue that even if it is considered that this proposal did not reach the high bar to be refused on prematurity grounds, prematurity should still be seen as a material consideration to be taken account of in the very special circumstances balance. In SWP’s view, the “harm” associated with this aspect of prematurity would be the pre-judging and undermining of the emerging Local Plan and its process, especially in light of the fact that it involves the loss of Green Belt land to substantial development<sup>[69,75]</sup>.
376. But whilst this is an interesting line of argument, I am not persuaded that it should be supported. It does not appear to bring anything new to the argument, as the harm which SWP alleges is simply that which has to be assessed in a straightforward “Framework paragraphs 49 and 50” assessment of prematurity in any case. In this regard I share the Appellants’ view that the proposal either is premature or it is not – and I have already concluded, for reasons given above, that the proposal should not be considered as premature, in the light of the current status of the Council’s emerging Local Plan.



***Whether the proposal would represent sustainable development, in the terms of the Framework***

377. The Framework makes it clear that the purpose of the planning system is to contribute to the achievement of sustainable development, through 3 overarching and inter-dependent objectives – economic, social and environmental. I explore how the appeal proposal would perform against each of these roles in the following paragraphs, and what weight this should carry in my overall assessment. Whilst this matter was not discussed to any great extent at the inquiry, Mr Halman covered it in detail in his PoE<sup>[216]</sup>. This evidence was largely unchallenged, and I therefore draw on this material in coming to my conclusions on this topic.

The economic objective

378. The submitted evidence indicates that during the construction period the proposed development would support a total of around 240 FTE jobs (on-site and off-site), with completion targeted for Q4 of 2020<sup>[233]</sup>. Although not quantified, I see no reason to doubt the Appellants' assertion that further multiplier effects are likely to arise during the construction process as, for example, demand for accommodation could arise, while construction workers could place demands on existing food and drinks operators<sup>[233]</sup>.

379. Once completed, the NDC could create around 480 new FTE jobs, and there would also be potential for the proposed development to create additional employment opportunities in the future<sup>[216,233,274]</sup>. A further 250 FTE off-site jobs are also predicted, meaning that the overall economic impact of the proposed development would be in the region of 730 new FTE jobs and £25m of gross value added (of which £18m would be net additional)<sup>[159,233,274]</sup>.

380. In addition, the Appellants have agreed to make a financial contribution of £100,000 towards local employment (supporting the work of the Council's Employment Development and Social Regeneration team), which would be secured through the S106 agreement<sup>[224,226]</sup>. This would help to maximise the employment, learning and training opportunities for local communities. The Council agrees that this is an appropriate and necessary contribution which is directly related to the proposed development, and I see no reason to take a contrary view.

381. These seem to me to be the key economic benefits of this proposal, although I acknowledge that both the Council and the Appellants have claimed that further items should be seen as economic benefits. For example, in the "Economic Benefits" section of Mr Halman's PoE, he states that the scheme would meet ESL's pressing need to construct an NDC, which is required to keep pace with and facilitate the future successful growth of the company, which is a top performing business in the local economy<sup>[216]</sup>. Mr Halman further states that the scheme would make a substantial contribution towards further strengthening Warrington's logistics sector, which is recognised as being critical to the future growth of the local economy and of regional, if not national importance<sup>[216]</sup>.

382. I have also noted that the proposed development would create a number of entry level positions which, with the appropriate training, would be accessible to the most economically disadvantaged residents of the Borough, including young people not in education, employment or training<sup>[233]</sup>. Moreover, I acknowledge that the appeal site is located within 7km of half of Warrington's most deprived



areas, and within 10km of all the most deprived areas in Warrington<sup>[233]</sup>.

However, whilst I do not dispute any of these points, I do not consider that they constitute separate, quantifiable benefits over and above those already identified above.

383. Similarly, it seems to me that in the section in Mr Halman's PoE entitled "The Case for Very Special Circumstances", and in the SoCG, a great deal is made of the current economic value of ESL, which is described as a unique and hugely important asset for the local economy<sup>[50,51,56,216]</sup>. Again, I see no reason to doubt any of the points raised in these sections, which set out in detail the extent of the company's impact and contribution to the Warrington and wider economy, including its support for local businesses through spend in its supply chain. But in my view, these matters, which relate to the benefits of the existing ESL operations, do not translate into additional, quantifiable benefits of the appeal proposal, over and above those already identified earlier.
384. I have also noted the Appellants' claim, supported by the Council, that there are no other suitable and available sites which would be capable of accommodating the proposed development<sup>[202,272,273]</sup>. On this point, much was made by objectors at the inquiry of the fact that the closure of Fiddlers Ferry Power Station has recently been announced<sup>[96,121,142]</sup>. But whilst this may well offer future redevelopment opportunities, there is general agreement between the Appellants and the Council that this site would only become available in the medium to long-term, and therefore would not represent a feasible or realistic alternative option for ESL's current requirements<sup>[273]</sup>. That said, in my opinion it is questionable whether this matter should carry any material weight in terms of economic benefits of the proposal, although I do return to this matter when considering the case for very special circumstances, later in this Report.
385. I do acknowledge there would be some benefits of locating the proposed NDC close to the existing ESL headquarters. Indeed the SoCG states that such a location would provide an opportunity for the NDC to establish synergies with the headquarters functions, thus enabling the business to provide a significantly better service to its clients. Clearly, however, these would primarily be benefits to ESL. Whilst there would undoubtedly be some benefits arising from reduced travel distances, these would not be easy to quantify, and I therefore do not consider that this matter could be said to give rise to any significant economic benefits.
386. Finally on this matter, the SoCG makes it clear that if it is not possible to construct the NDC on the appeal site ESL would, instead, have to bring the proposed development forward on another site outside of Warrington<sup>[231]</sup>, such that the Borough would miss out on the significant contribution that the scheme would otherwise be able to make to the local economy. It goes on to indicate that such a course of action could result in the need for ESL to consider rationalisation of the company's existing facilities within Warrington.
387. Such matters were clearly of concern to the Council, as they prompted Officers to state, in their Report to Committee, that "*the case is not simply what Warrington would gain by allowing the development but also what it would lose if the development was not permitted (eg the potential loss of the headquarters and the application proposals) in the clear aim to physically co-locate the 2 premises*"<sup>[231]</sup>. But whilst I note the concerns expressed, I do not consider that

they give rise to any other economic benefits to be considered at this stage. I return to this matter in the very special circumstances balance later in this Report.

388. Summarising the above points, in my assessment the economic benefits of creating a large number of full-time jobs, supporting existing businesses and providing funds towards supporting local employment initiatives would be significant. As a result, I consider that the proposed development would satisfy the economic objective of sustainable development. This weighs significantly in the proposal's favour.

#### The social objective

389. The Framework summarises the social objective of sustainable development as supporting strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering a well-designed and safe built environment, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being.
390. Clearly the appeal proposal would not result in new housing, but I see no reason to dispute the Appellant's claims that the social benefits of employment generation can be extensive, and include improved security, improved living standards, social cohesion and health. I also acknowledge that the company is committed to maximising the employment, learning and training opportunities for the local community that would be delivered by the proposed development, as shown by the local training and employment provision in the S106 agreement. In addition, I accept that the proposed development is intended to be of a high design quality, as detailed in the DAS, and share the Appellants' view that the resulting built and landscaped environment would have a positive social impact on users of the development.
391. Overall on this topic, I conclude that the proposed development would satisfy the social objective of sustainable development, and that this should also weigh significantly in the proposal's favour.

#### The environmental objective

392. The Framework explains that the environmental objective of sustainable development is to contribute to protecting and enhancing the natural, built and historic environment, including making effective use of land, helping to improve biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy. To a great extent, the appeal proposal would be in clear conflict with this objective as the proposed development would be on Green Belt land, and is agreed by all parties to constitute inappropriate development<sup>[41,154,275]</sup>. It would encroach into the countryside and have an adverse impact on openness.
393. I do accept, however, that there are some ways in which the appeal proposal would contribute to protecting and enhancing the natural, built and historic environment. A substantial amount of structural planting is proposed which would reduce and mitigate the visual impact of the built form of the proposed development upon maturity, at least to some extent. This planting may bring about ecological benefits, especially along the watercourse, and the ES concludes that the proposed

development would result in no net loss of biodiversity<sup>[222]</sup>. A package of specific highways, ecological, and landscaping enhancements is also proposed<sup>[219]</sup>.

394. In addition, the scheme design has incorporated a series of measures which would assist in minimising carbon dioxide emissions and the impacts of climate change on the environment, and the proposed development also includes measures to ensure the prudent use of natural resources and the minimisation of waste<sup>[221]</sup>. Finally, although the NDC would be highly accessible by car, the Appellants would seek to encourage staff to travel using more sustainable modes of transport, by means of a Travel Plan containing a range of measures aimed at influencing travel behaviour<sup>[221]</sup>.

395. Nevertheless, overall on this objective I consider that the harm to the Green Belt would outweigh these other matters, such that on balance the proposal would not satisfy the environmental objective of sustainable development. I consider that this harm should carry moderate weight against the proposal.

### Summary

396. On this consideration as a whole, and having regard to all the above points, it is my overall conclusion that the appeal proposal would satisfy the economic and social objectives of sustainable development, as detailed in the Framework, but would not satisfy the environmental objective.

### ***Whether the submitted S106 agreement would satisfactorily address the impact of the proposed development***

397. As already noted, the Appellants submitted a S106 agreement between the site owners and the Council, providing a number of obligations, which are summarised below:

- a contribution of £1,460,984 towards alterations to improve the operation and efficiency of the existing A50/B5356 Cliff Lane/Grappenhall Lane Roundabout, in accordance with a scheme to be approved by the Council;
- a contribution of £600,000 towards the provision of bus facilities and subsequent monitoring. Final details of the proposed bus facilities to be defined in the Final Transport Plan, secured by agreed Condition 25;
- a contribution of £100,000 to enable the Council to devise and deliver a package of employment, training and skills development initiatives for local residents so that they can access the opportunities presented by the development;
- a contribution of £20,000 towards works for the provision of footway/cycleway facilities between the new footway/cycleway along Barleycastle Lane secured by agreed Condition 4, and the existing public right of way No 23, situated to the east of the site.

398. Having regard to the detailed note on this matter submitted by the Council<sup>[9]</sup>, I agree with the parties that the first 3 of these obligations are necessary to make the development acceptable and that all meet the requirements of paragraph 56 of the Framework and Regulation 122 of the CIL Regulations 2010. These obligations are necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.

399. However, insofar as the final obligation is concerned, I share the view of the Appellants that whilst no doubt desirable, it cannot be considered as necessary to make the development acceptable in planning terms. I reach this view because no detailed evidence on likely cycle use of Barleycastle Lane to the east of the appeal site was placed before me, and there is nothing to suggest that the proposed development could not proceed without this extended cycleway being in place. I have therefore not had regard to this particular obligation when coming to my conclusion on this proposal.

### ***Other matters***

400. Matters raised by Mr Thrower. Mr Thrower, a local resident, had undertaken an exercise to examine a number of documents published by such bodies as DfT, Transport for the North, the Campaign for Better Transport, the Labour Party, and the Council itself, with a view to demonstrating that the proposed development would be at odds with established policies<sup>[136]</sup>. He argued that this would be the case because the appeal proposal seeks to perpetuate and cater for road-based freight transport, whereas the various documents he referred to all place increased emphasis on provision for rail freight, through facilities such as SRFIs<sup>[126-136]</sup>.
401. However, I am not aware that any of the documents referenced by Mr Thrower, suggest that there is no place at all for road-based freight provision in the future. Indeed, I note that the Chapter on Freight Management in the Council's LTP4<sup>[248]</sup> states that the strategic spatial location of Warrington on the highway network is a vital asset for the town in attracting freight and logistics companies that support the local economy.
402. My role is to assess the proposal before me against relevant development plan policies, and to also have regard to material considerations. In this case I have found no conflict with CS Policy MP5, dealing with Freight Transport. This clearly accepts that there will be road-based freight transport during the lifetime of the plan. Nor have I have found any conflicts with the transport-related NDP policies brought to my attention (AT-TH1 and AT-TH2)<sup>[122]</sup>. None of the matters raised by Mr Thrower or other parties cause me to think that a road-based freight proposal would be unacceptable as a matter of principle. With these points in mind I give very little weight to the matters raised by Mr Thrower.
403. Matters raised by Mr Roberts. Mr Roberts made representations about the financial standing and management of ESL, rather than putting forward any planning reasons why this development should not proceed. In summary he argued that for a variety of reasons, including that ESL is currently a takeover target, he did not believe that ESL would be in a position to afford or deliver the economic benefits it has put forward. He questioned why valuable Green Belt land should be given to a company that is clearly in financial crisis and will struggle to stay afloat if it is not taken over, and argued that on these grounds alone, the appeal should not be allowed<sup>[152]</sup>.
404. However, the Appellants strongly disputed and did not accept the points made by Mr Roberts, maintaining that his written submission to the inquiry contained multiple inaccuracies and flawed inferences. Rather, the Appellants pointed to the fact that the statement from ESL at Appendix 1 to Mr Halman's PoE post-dated the events described by Mr Roberts, and therefore represents a more up-to-date position of the company than was portrayed by Mr Roberts. Most

importantly, the appeal proposal is not seeking a personal permission for ESL, but is simply a proposal for a large-scale B8 distribution centre with ancillary office development, for which there is an identified end-user<sup>[165]</sup>.

405. The Appellants also made it clear that they felt it unfortunate that the inquiry had been held at a time when public comments by the company were constrained by the City Code on Takeovers and Mergers<sup>[164]</sup>. I can take this matter no further, but it is likely that by the time the SoS comes to make a decision on this proposal, these points may well have been clarified, somewhat. But on the basis of the evidence before me, I do not consider that the matters raised by Mr Roberts constitute valid and reasonable planning grounds to weigh against the appeal proposal.
406. Conditions. A schedule of 30 planning conditions were agreed between the Council and the Appellants and are listed at Appendix C to this Report, along with the reasons why each condition is considered necessary. I am satisfied that these conditions all accord with the 6 tests for planning conditions set out in paragraph 55 of the Framework.
407. As has been noted earlier, a further, Grampian condition was suggested by SWP, relating to improvements at the A50/B5356 Cliff Lane/Grappenhall Lane Roundabout. This was suggested as SWP was concerned that harm to the highway network would arise if the proposed development was to become operational before this junction was improved<sup>[64]</sup>. This suggested condition is also set out in Appendix C, as Condition 31. I have slightly changed the wording from the version submitted by SWP, to take on board amendments suggested by the Appellants and the Council. As I have already concluded earlier, I do not consider this condition to be necessary, as there is no reason to expect the Council, as local highway authority, not to act reasonably in managing the local highway network.
408. General points. Many of the matters raised as objections by interested persons relate to proposals in the PSVLP – such as the 40m wide dual-carriageways referred to by Cllr Harris, Mr Appleton and Mr Mack<sup>[84,111,138]</sup> – or to the “Six 56” proposal<sup>[72-74,98,146]</sup> – rather than to the appeal proposal itself. However, these are not matters which are before me at this inquiry – and the inquiry is not the correct forum at which these matters should be discussed. Notwithstanding the concerns of some interested persons, the appeal proposal is put forward as a stand-alone development, with a package of highway and transport improvements to address its own predicted impacts. I have assessed it as such, and therefore give very little weight to these other matters raised by interested persons.
409. Similarly, although Mr Appleton, and others, raised a number of general concerns, such as harm to and destruction of the local flora and fauna, harm to local wildlife, increased severe wear and tear on the structure of existing roads, increased light pollution, an increased health risk, and an increased road safety risk, no further details were provided regarding the substance of these concerns<sup>[113,122]</sup>. Most of these points have, however, been comprehensively dealt with in the ES, and in the absence of any further evidence I give these concerns very little weight.
410. Finally, several of the interested persons raised concerns about the amount of litter at the roadside around the Barleycastle Trading Estate, and maintained that



the proposed development would result in a worsening of this situation<sup>[82,113]</sup>. I note, from the minutes of a meeting held between ESL and a number of the local Parish Councils, earlier in 2019, that this matter had been previously raised with ESL, but that no progress had been made on setting up a "working group" to address this problem<sup>[82]</sup>. But whilst I accept that this is clearly a topic of concern to local Councillors, there is nothing in the evidence before me to show either that ESL is a primary cause of this problem, or that the proposed development would result in an increased litter problem.

411. In any case, I note from the same meeting minutes that this matter would be addressed, at least in part, by the proposed works to Barleycastle Lane, which would create a landscape which would make it far easier to clean up litter in the future. In view of these points I am not persuaded that this matter should add any material weight against the appeal proposal.

***Planning balance, and consideration of whether very special circumstances exist to justify this inappropriate development in the Green Belt***

412. In accordance with section 38(6) of the 2004 Act, this application has to be determined in accordance with the development plan, unless material considerations (which include the Framework), indicate otherwise.
413. A key policy in this case is CS Policy CS5, which states that the Council will maintain the general extent of the Green Belt for as far as can be seen ahead and at least until 2032, in recognition of its purposes – one of which is to assist in safeguarding the countryside from encroachment. The policy goes on to state that development proposals within the Green Belt will be approved where they accord with relevant national policy.
414. This national policy is to be found in the Framework, which makes it clear that the Government attaches great importance to Green Belts, with the fundamental aim of Green Belt policy being to prevent urban sprawl by keeping land permanently open. The essential characteristics of Green Belts are their openness and their permanence. With regards to proposals affecting the Green Belt, inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. All parties agree that the development proposed through this appeal should be seen as inappropriate development in the Green Belt.
415. In addition, I have concluded, earlier, that the proposed development would result in a clear encroachment into the countryside, giving rise to a significant harm to one of the purposes of the Green Belt, and that the harm to the openness of the Green Belt would be severe and significant. Taken together with the definitional harm by reason of inappropriateness, the Framework makes it clear that **substantial weight** should be attached to this harm.
416. In terms of other harm, I have concluded that the proposed development would have an adverse impact on the character and appearance of the surrounding area, to which I attach **moderate weight**. I also attach **moderate weight** to the harm which would result from the proposed development's failure to satisfy the environmental objective of sustainable development. It is also the case that there would be less than substantial harm caused to the significance of the Booths Farm listed buildings. Whilst I have concluded that this would be outweighed by the public benefits of the proposal, it is still necessary to account for



this harm here, to ensure that it is not overlooked in the overall assessment. Notwithstanding the special regard that should be had to the desirability of preserving listed buildings and their settings, I consider that a **small amount of weight** should be attached to this harm. It is also right to record that there would be a **minimal amount of weight** attached to the harm arising from the loss of BMV agricultural land.

417. Against these items of harm, there are a number of factors which weigh in the proposal's favour, as detailed below. Firstly, there would be clear and significant economic and employment benefits arising from the proposed development, both in terms of temporary jobs created during the construction period, and permanent jobs created once the NDC is completed and operating<sup>[216,233,274]</sup>.
418. On this point I note that initially, through Mr Groves' written evidence, SWP were doubtful as to whether economic factors should comprise part of a very special circumstances balance. It was to address this concern that the Appellants submitted 2 local authority decisions, from Heywood in Rochdale Metropolitan Borough and at Haydock in St Helens, concerning large-scale development proposals in the Green Belt, where economic factors had been accepted as part of very special circumstances cases, in favour of the proposals<sup>[59,166]</sup>. Whilst neither of these developments are directly comparable to the appeal proposal, they do provide examples of where economic benefits were counted as part of very special circumstances cases, and where the SoS decided not to call in or recover either scheme.
419. As such, I am satisfied that the inclusion of economic benefits of the appeal proposal represent a legitimate element of the very special circumstances case. It is estimated that around 240 full-time jobs would be created during construction, and around 480 full-time jobs on the site itself, once completed – with a further 250 full-time off-site jobs<sup>[216,233]</sup>. These are appreciable figures, and I therefore consider that these benefits warrant being given **significant weight**.
420. The proposed financial contribution of £100,000 towards local employment, aimed at maximising the employment, learning and training opportunities for local communities would be a clear benefit of the scheme – but as this contribution is deemed necessary to make the proposal acceptable<sup>[226]</sup>, I consider that it just warrants **moderate weight**.
421. However, it does not seem to me that the other economic and employment matters put forward by the Appellants as part of their very special circumstances case should actually be seen as items carrying weight in this balance. Many of the points noted relate specifically to the current standing of ESL and its contribution to the economy of Warrington and the wider region. But as these are existing features of the ESL operation, they cannot, in my opinion, carry weight in favour of the proposed development.
422. Similarly, I am not persuaded that the absence of any other suitable sites to accommodate the proposed development, within the area canvassed, can add any material weight in favour of this proposal. Indeed the Appellants have made it quite clear in the SoCG, that if it is not possible to construct a NDC on the appeal site ESL would, instead, have to bring the proposed development forward on another site outside of Warrington, such that the Borough would miss out on the significant contribution that the scheme would otherwise be able to make to

the local economy<sup>[230]</sup>. Whilst this identifies a reason why the Council does not seek to oppose this proposal, it does not, to my mind, indicate any planning imperative for the proposed development to be restricted to Warrington Borough.

423. Insofar as any benefits from the proposed co-location of the NDC and the existing ESL headquarters on the Stretton Green Trading Estate are concerned, it seems likely that some environmental benefits could arise as a result of reduced travel distances. However, as no attempt has been made to quantify any such benefits, I can only give them **minimal weight**.
424. I have concluded that there would also be some social benefits such as improved security, improved living standards, social cohesion and health, arising from the employment generation and the training opportunities the proposed development would offer. In addition, the high-quality design of the proposed development and the landscaped layout would result in a positive social impact. Overall I consider that these social benefits warrant being given **significant weight**.
425. In traffic and transport terms, there would be some benefits from the proposed contribution to "pump prime" a shift-friendly shuttle bus service for site employees. However, although the local highway authority expects the service to be self-financing after a year, this cannot be known for certain. To my mind the relatively limited time-span involved means that the weight to be given to this benefit has to be somewhat lessened.
426. The proposed improvements to M6 J20, and the A50/B5356 Roundabout would benefit not only development-related traffic, but also other traffic on the network. However, producing a "nil detriment" situation at these junctions implies to me that there would be no overall improvement. Both junctions would be congested in the design year without the proposed development – and both would still be congested if the development was to proceed. In these circumstances it is questionable whether users of the network would be able to discern any real benefit.
427. Some benefits would arise as a result of the improvements proposed for Barleycastle Lane, and these would be available to all users of this road, not just traffic associated with the proposed development. But as the improvements would be limited in extent, the benefits would likewise be limited. Furthermore, whilst the proposed signing scheme to prevent HGV use of unsuitable roads could also be seen as beneficial, it would, in fact, only be ensuring that existing weight restrictions etc are properly observed. Overall I consider it appropriate to give **moderate weight** to these various highway benefits.
428. Drawing all the above matters together, it is my firm view that the **substantial** weight arising from the Green Belt harm, together with the other harm identified, would **not** be clearly outweighed by the other considerations detailed above. As such, I conclude that very special circumstances do not exist to justify this inappropriate development in the Green Belt. Accordingly, the proposal would conflict with CS Policies CS5 and CC2, and with NDP Policies AT-D1 and AT-D2. It would also be at odds with Green Belt policy in the Framework.

## Summary and overall conclusion

429. In light of all the above points, my assessment of the planning balance leads to the overall conclusion that very special circumstances do not exist in this case,

such that this inappropriate development in the Green Belt is not justified. The proposed development would conflict with the CS and the NDP, both of which have been adopted or made sufficiently recently to be considered up-to-date.

430. Even if I am wrong on this last point, and the SoS considers that the policies which are most important for determining this proposal are out-of-date, such that determination follows the route of paragraph 11(d) of the Framework, the application of protective policies in relation to the Green Belt, referred to in the footnote to paragraph 11(d)(i), provide a clear reason for refusing the development proposed. As the first limb of the presumption in favour of sustainable development has not been met, there is no need to consider the application of paragraph 11(d)(ii) of the Framework.
431. With these points in mind, it is my overall conclusion that this appeal should be dismissed.
432. However, if the SoS takes a contrary view, and decides to grant planning permission for the scheme, then the Conditions Nos 1-30 set out in Appendix C to this Report should be imposed. These conditions and the reasons for their imposition have been agreed between the parties. They are appropriate to the development proposed and all meet the relevant tests set out in paragraph 55 of the Framework. The SoS will also need to consider whether or not to impose Condition 31, suggested by SWP. If considered necessary, then this condition would also meet the relevant tests set out in the Framework.

### **Recommendation**

433. I recommend that the appeal be dismissed.

*David Wildsmith*

INSPECTOR

## **APPENDIX A - APPEARANCES**

### **FOR WARRINGTON BOROUGH COUNCIL (WBC):**

Mr Freddie Humphreys of  
Counsel

Instructed by Warrington Borough  
Council

*Mr Humphreys called no witnesses, but simply made an opening statement indicating that the Council no longer resisted the appeal and would not call evidence at the inquiry. Council participation was limited to the Round Table Sessions dealing with the submitted planning obligation and the agreed conditions, and representation at the accompanied site visit. Mr Humphreys also made a closing statement to summarise the Council's case.*

### **FOR THE APPELLANTS, LIBERTY PROPERTIES DEVELOPMENTS LTD & EDDIE STOBART LTD:**

Mr Paul Tucker QC

Instructed by Mr Gary Halman BSc(Hons)  
FRICS FRTPI, Avison Young Ltd

#### **He called**

Mr Gary Halman BSc(Hons)  
FRICS FRTPI

Principal & Senior Director, Avison Young  
Ltd, Manchester

### **FOR THE SOUTH WARRINGTON PARISH COUNCILS LOCAL PLAN WORKING GROUP (SWP) (RULE 6(6) PARTY):**

Mr Piers Riley-Smith of  
Counsel

Instructed by Mr John Groves, Groves  
Town Planning Ltd

#### **He called**

Mr John Groves MRTPI

Director, Groves Town Planning Ltd

### **INTERESTED PERSONS OPPOSING THE PROPOSALS:**

Cllr Sharron Harris

Borough Councillor for Appleton,  
Hatton, Stretton and Higher Walton;  
Chair of Appleton Parish Council

Cllr Ryan Bate

Borough Councillor for the Grappenhall  
& Appleton Thorn Ward

Cllr Gerry Palmer

Parish Councillor for Appleton Thorn;  
local resident

Mr John Appleton

Chairman of the Stretton  
Neighbourhood Development Steering  
Group

Mr Kevin McAloon

On behalf of the Appleton Thorn Ward  
NDP Team

Mr Steve Fensom

Local resident

Mr David Thrower

Ditto

Mr William Mack

Ditto

Mr Bill Roberts

Ditto

## **APPENDIX B - DOCUMENTS**

### **CORE DOCUMENTS**

<b>Planning Application Documents</b>	
1	Cover Letter
2	Application Forms
3	Site Location Plan (10133-P-L02_A)
4	Illustrative Site Location Plan (10133-P-LOI_A)
5	Existing Site Plan and Topographic Survey (10133-P-L03_A)
6	Proposed Site Plan (10133-P-L04_C) SUPERSEDED
7	Proposed Entrance Area - Enlarged Layout (10133-P-L05_D) SUPERSEDED
8	Proposed Truck Entrance - Enlarged Area (10133-P-L06_C) SUPERSEDED
9	Proposed Staff Car Park — General Arrangement (10133-P-L07_B) SUPERSEDED
10	Vehicle Maintenance Unit - Enlarged Layout (1033-P-L08_A) SUPERSEDED
11	Proposed External Works (10133-P-LI LB) SUPERSEDED
12	Proposed Building Plan -Ground and First (10133-P-POI_B) SUPERSEDED
13	Proposed Roof Plan (10133-P-P02_B) SUPERSEDED
14	Proposed Site Sections (10133-P-S01_C) SUPERSEDED
15	Proposed Northern Boundary Site Sections (10133-P-S02_C) SUPERSEDED
16	Proposed Southern Boundary Site Sections ) 0133-P-S03_C) SUPERSEDED
17	Pond Area North East Corner— Enlarged Layout (10133-P-L09_A)
18	Vehicle Washing Area (10133-P-LIO_A)
19	Site Preparation Drawing (10133-P-LI 2_A)
20	Vehicle Maintenance Unit - Plans, Sections and Elevations (10133-P-P03_A)
21	Proposed Building Sections (10133-P-S05_B)
22	North and South Elevations (10133-P-EOI_A)
23	East and West Elevations (10133-P-E02_A)
24	Materials Elevations (10133-P-EOI_A)
25	Supporting Planning Statement
26	Section 106 Draft Heads of Terms
27	Utilities Statement
28	Lighting Assessment
29	Landscape Strategy
30	Landscape Masterplan
31	Flood Risk Assessment
32	Energy and Sustainability Statement
33	Economic Impacts Report
34	Drainage Strategy
35	Design and Access Statement
36	Contaminated Land and Geotechnical Desk Study
37	Arboricultural Impact Assessment
<b>Supplementary Planning Application Documents</b>	
38	Supplementary Submission Cover Letter
39	Addendum Supporting Planning Statement
40	Proposed Site Plan (10133-P-L04_D)
41	Proposed Entrance Area — Enlarged Layout (10133-P-L05_E)
42	Proposed Truck Entrance Area — Enlarged Layout (10133-P-L06_D)

43	Proposed Staff Car Park — General Arrangement (10133-P-L07_C)
44	Vehicle Maintenance Unit — Enlarged Layout (10133-P-L08_B)
45	Proposed External Works (10133-P-LI I_C)
46	Proposed Building Plan — Ground and First (10133-P-POI_C)
47	Proposed Roof Plan (10133-P-P02_C)
48	Proposed Site Sections (10133-P-SOI_D)
49	Proposed Northern Boundary Site Sections (10133-P-S02_D) 50) Proposed
50	Southern Boundary Site Sections (10133-P-S03_D)
51	Updated Landscape Masterplan
<b>Environmental Statement</b>	
52	Non-Technical Summary
53	Volume 2: Main Text
54	Volume 3: Appendices
55	Environmental Statement Addendum
<b>Planning Policy Compendium</b>	
PPC1	Local Plan Core Strategy Policies
PPC2	Appleton Thorn Ward Neighbourhood Development Plan Policies
PPC3	Supplementary Planning Documents (SPDs): <ul style="list-style-type: none"> <li>• Standards for Parking in New Development SPD</li> <li>• Environmental Protection SPD</li> <li>• Design and Construction SPD</li> <li>• Planning Obligations SPD</li> </ul>
PPC4	Proposed Submission Version Local Plan (Relevant Extracts)
PPC5	Other Relevant Documents: <ul style="list-style-type: none"> <li>• Economic Development Needs Assessment Update</li> <li>• Warrington Garden Suburb Development Framework</li> <li>• “Warrington Means Business” Regeneration Programme</li> <li>• Cheshire and Warrington Local Enterprise Partnership's Strategic Economic Plan</li> </ul>

## PROOFS OF EVIDENCE

<b>Appellants</b>	
APP/GH/1	Proof of Evidence & Appendices – Gary Halman
APP/GH/1S	Summary of Proof – Gary Halman
<b>Rule 6(6) Party - SWP</b>	
SWP/JG/1	Proof of Evidence & Appendices – John Groves
SWP/JG/1S	Summary of Proof – John Groves

## OTHER DOCUMENTS SUBMITTED BEFORE THE INQUIRY OPENED

INSP/1	Inspector's Pre-Inquiry Note, dated 19 September 2019
OD/1	Statement of Common Ground between the Council and the Appellants, with Appendices
OD/2	Bundle of correspondence from Avison Young on behalf of the Appellants, containing a response to Mr Groves' Appendix 5, and a Final Report by Hatch Regeneris dated 22 March 2019



**DOCUMENTS SUBMITTED AT THE INQUIRY**

Doc 1	Opening Statement of behalf of the Appellants
Doc 2	Opening Statement on behalf of the Council
Doc 3	Opening Statement on behalf of the Rule 6(6) Party SWP
Doc 4	CIL Regulations Compliance Statement, submitted by the Council
Doc 5	Statement and photographs from Mr Appleton
Doc 6	Statement from Cllr Palmer
Doc 7	Bundle of 2 Statements from Cllr Harris
Doc 8	Statement from Mr McAloon
Doc 9	Statement from Mr Fensom
Doc 10	Statement and Summary Statement from Mr Thrower
Doc 11	Statement from Mr Mack
Doc 12	Statement from Cllr Bate
Doc 13	Statement from Mr Roberts
Doc 14	Extracts from the WBC Local Plan Green Belt Assessment – July 2017, submitted by the Appellants
Doc 15	Consultation Draft of the Warrington Fourth Local Transport Plan (LTP4), March 2019, submitted by the Council
Doc 16	Extracts of a Report to St Helen's Council's Planning Committee on 17 January 2017, relating to Application P/2016/0608/HYBR for the development of land at Florida Farm North, Slag Lane, Haydock, submitted by the Appellants
Doc 17	Extracts of a Report to Rochdale Borough Council's Planning and Licensing Committee on 15 March 2018, relating to Application 16/01399/HYBR for the development of land at South Heywood, submitted by the Appellants
Doc 18	Note from Ramboll, containing additional air quality information, submitted by the Appellants
Doc 19	Errata Sheet to Mr Halman's Proof of Evidence, submitted by the Appellants
Doc 20	Signed and executed S106 Agreement, along with a copy of the dated front page
Doc 21	List of Planning Conditions agreed between the Council and the Appellants
Doc 22	Email from Rupert Nichols of ESL, dated 16 October 2019, confirming the number of ESL employees who are resident within Warrington Borough
Doc 23	Report on the Economic Impact of ESL and its Proposed Expansion - Clarification Note from Hatch Regeneris, dated 17 October 2019, submitted by the Appellants
Doc 24	Technical Note dated 17 October 2019, prepared by Ramboll, providing a Supporting Statement regarding errant routing of ESL HGVs at Appleton Thorn, submitted by the Appellants
Doc 25	Plan showing the extent of existing Green Belt in the south Warrington area, submitted by the Appellants
Doc 26	Proposed Grampian condition submitted by SWP
Doc 27	Closing Submissions on behalf of SWP
Doc 28	Closing Submissions on behalf of the Council
Doc 29	Closing Submissions on behalf of the Appellants

**APPENDIX C - CONDITIONS TO BE IMPOSED IF PLANNING PERMISSION IS GRANTED (30 in total)**

1. The development hereby approved shall be commenced before the expiration of 3 years from the date of this permission.

**Reason:** *To ensure that the local planning authority retains the right to review unimplemented permissions and to comply with Section 91 (as amended) of the Town & Country Planning Act 1990.*

2. The development shall be carried out in accordance with the following approved plans, except where revised versions are required by other conditions:

- Drawing ref P-L101: Site Location Plan (Illustrative)
- Drawing ref P-L102: Site Location Plan
- Drawing ref P-L103: Existing Site Plan based on Topographical Survey
- Drawing ref P-L104: Proposed Site Plan
- Drawing ref P-L105: Proposed Entrance Area – Enlarged Layout
- Drawing ref P-L106: Proposed Truck Entrance Area – Enlarged Area
- Drawing ref P-L107: Proposed Staff Car Park – General Arrangement
- Drawing ref P-L108: Vehicle Maintenance Unit (VMU) – Enlarged Layout
- Drawing ref P-L109: Pond Area (NE Corner) Enlarged Layout
- Drawing ref P-L110: Vehicle Washing Area
- Drawing ref P-L111: Proposed External Works
- Drawing ref P-L112: Site Preparation Drawing
- Drawing ref P-E101: Proposed Main Building Elevations (North/South)
- Drawing ref P-E102: Proposed Main Building Elevations (East/West)
- Drawing ref P-E103: Materials Elevations
- Drawing ref P-P101: Proposed Building Plan – Ground & First
- Drawing ref P-P102: Proposed Roof Plan
- Drawing ref P-P103: VMU – Plan, Sections and Elevations
- Drawing ref P-S101: Proposed Site Sections
- Drawing ref P-S102: Proposed Northern Boundary Site Sections
- Drawing ref P-S103: Proposed Southern Boundary Site Sections
- Drawing ref P-S105: Proposed Building Sections
- Drawing ref 1620002759-XX-XX-SK-C-00008 Rev I03: Proposed Junction Design Options
- Drawing ref 1620002759-XX-XX-SK-C-00009 Rev I03: Visibility Splay Check
- Drawing ref 1620002759-XX-XX-SK-C-000011 Rev I02: Vehicle Tracking Single Decker Bus
- Drawing ref 1620002759-XX-XX-SK-C-00015 Rev I01: Barleycastle Lane Improvements Sheet 1 of 2
- Drawing ref 1620002759-XX-XX-SK-C-00016 Rev I01: Barleycastle Lane Improvements Sheet 2 of 2
- Drawing ref RAM-01-M6-DR-J-00100 Rev P03: M6 Roundabout: General Improvement
- Drawing ref RAM-01-CL-DR-J-00100 Rev P03: Cliff Lane Roundabout: General Improvement
- Drawing ref D6317.001 Rev E: Landscape Strategy Plan

**Reason:** *To define the permission, to ensure that the proposals deliver appropriate and satisfactory development.*

3. No development pursuant to planning application number 2017/31757 shall commence unless and until the developer has submitted full design and

construction details of the required improvements to the Junction of the M6 / A50 / B5158; Such details to be agreed in writing by the local planning authority, in consultation with the secretary of State for Transport, as shown in outline on submitted drawing number RAM-01-M6-DR-J-00100 P03, including:

- a) how the scheme interfaces with the existing highway alignment, carriageway markings and lane destinations;
- b) full signing, lighting and highway drainage details;
- c) signal phasing plan for all signalised elements of the highway improvements;
- d) confirmation of full compliance with current Departmental Standards (DMRB) and Policies (or approved relaxations / departures from standards);
- e) an independent stage 2 Road Safety Audit (taking account of any Stage 1 Road Safety Audit recommendations) carried out in accordance with current Departmental Standards (DMRB) and Advice Notes; and
- f) a time table for the phasing of works.

No part of the development shall be first occupied unless and until the highway improvements, as shown in outline on drawing number RAM-01-M6-DR-J-00100 P03 and as furthermore agreed in detail in accordance with the above, has been implemented and received written approval of the local planning authority in consultation with the Secretary of State.

**Reason:** *To mitigate the impact of the development on the local and strategic highway network. The condition is required to be pre-commencement due to the need to agree and implement mitigation prior to significant new traffic movements being brought on to the highway network.*

4. The development authorised by this permission shall not begin until an agreement under s278 of the Highways Act 1980 (as amended by any subsequent legislation) or such other legal agreement as is capable of delivering the necessary highways improvement works has been agreed in writing by the local planning authority. Such an agreement shall include, but is not restricted to, the following matters:

**A:** A scheme to mitigate the impacts of the development on the local highway network based on the improvements shown on Drawings 1620002759-XX-XX-SK-C-00015 Rev I01 and 1620002759-XX-XX-SK-C-00016 Rev I01 (attached to Appendix 6 of the Transport Assessment Environmental Statement Addendum, September 2018), including the provision of cycle and pedestrian facilities as well as carriageway widening to Barleycastle Lane, has been submitted to and agreed in writing by the local planning authority. The scheme shall include details of works to:

- a) Improvements to Barleycastle Lane from the eastern limit of the site to the eastern side of the stopped-up spur connecting Barleycastle Lane and Grappenhall Lane;
- b) Implementation of the new accesses and bellmouths as shown on Drawing numbers P-L104: Proposed Site Plan and P-L105: Proposed Entrance Area – Enlarged Layout;
- c) Bellmouth and pedestrian facilities at the junction of Barleycastle Lane and Lyncastle Road; and
- d) Bellmouth and pedestrian facilities at the junction of Barleycastle Lane and Langford Way.

The submitted scheme shall include a timetable for implementation and detail the provision of appropriate lighting and highway drainage to an appropriate standard, the proposed works shall be informed by appropriate Road Safety Audits. All works shall be completed in accordance with the approved timetable.

**B:** A scheme to mitigate the impacts of errant HGV drivers taking inappropriate routes on the local highway network shall be submitted to and agreed in writing by the local planning authority.

The schemes detailed in "A" and "B" shall be implemented prior to first occupation of the development and retained thereafter.

**Reason:** *To mitigate the impact of the development on the local and strategic highway network and to ensure pedestrians and cycling improvements are implemented in a manner to promote sustainable travel in a safe and attractive environment in accordance with policies MP1 and MP7 of the Warrington Local Plan Core Strategy. The condition is required to be pre-commencement due to the need to agree and implement mitigation prior to significant new traffic movements being brought on to the highway network.*

5. No development shall take place within the red line area shown on drawing P-L102 until the Appellants, or their agents or successors in title, has secured the implementation of a programme of archaeological work including, if appropriate, recording and safeguarding, in accordance with a written scheme of investigation which has been submitted by the Appellants and approved in writing by the local planning authority. The work shall be carried out strictly in accordance with the approved scheme.

**Reason:** *The condition is in line with the guidance set out in Paragraph 194 of the National Planning Policy Framework (2019) and policy QE8 of the Warrington Local Plan Core Strategy, and is required to be prior to commencement due to the potential impact of excavations on potential archaeological remains.*

6. No development (other than demolition and site clearance works) shall take place until the steps in Sections A and B below are undertaken:

**A: CHARACTERISATION:** With specific consideration to human health, controlled waters and wider environmental factors, the following documents must be provided (as necessary) to characterise the site in terms of potential risk to sensitive receptors:

- Preliminary Risk Assessment (PRA or Desk Study)
- Generic Quantitative Risk Assessment (GQRA) informed by an Intrusive Site Investigation
- Detailed Quantitative Risk Assessment (DQRA)
- Remedial Options Appraisal

Completing a PRA is the minimum requirement. DQRA should only to be submitted if GQRA findings require it.

**B: SUBMISSION OF A REMEDIATION & VERIFICATION STRATEGY:** As determined by the findings of Section A above, a remediation strategy (if required) and verification (validation) strategy shall submitted in writing to and agreed with the local planning authority.

This strategy shall ensure the site is suitable for the intended use and mitigate risks to identified receptors. This strategy should be derived from a Remedial Options Appraisal and must detail the proposed remediation measures/objectives and how proposed remedial measures will be verified.

The actions required in Sections A and B shall adhere to the following guidance: CLR11 (Environment Agency/DEFRA, 2004); BS10175 (British Standards Institution, 2011); C665 (CIRIA, 2007).

**Reason:** *To mitigate risks posed by land contamination to human health, controlled water, and wider environmental receptors on the site (and in the vicinity) during development works and after completion. In accordance with: Policy QE6 of the Adopted Local Plan Core Strategy (July 2014); Paragraphs 170(f) & 178 of the National Planning Policy Framework (February 2019), and Section 4 of the Environmental Protection Supplementary Planning Document (May 2013).*

7. Prior to the commencement of any development, a surface water drainage scheme, based on the hierarchy of drainage options in the National Planning Practice Guidance with evidence of an assessment of the site conditions shall be submitted to and approved in writing by the local planning authority. The surface water drainage scheme must be in accordance with the Non-Statutory Technical Standards for Sustainable Drainage Systems (March 2015) or any subsequent replacement national standards and unless otherwise agreed in writing by the local planning authority, no surface water shall discharge to the public sewerage system either directly or indirectly. The development shall be completed in accordance with the approved details.

**Reason:** *To promote sustainable development, secure proper drainage and to manage the risk of flooding and pollution. This condition is imposed in light of policies within the National Planning Policy Framework and the Planning Practise Guidance and policy QE4 of the Warrington Local Plan Core Strategy. The drainage details will need to be installed and understood at an early stage in the development process and therefore it is appropriate to require this detail prior to commencement of development.*

8. No development shall commence until a local employment scheme for the construction phase and engineering work associated with the development has been submitted to and approved in writing by the local planning authority. The scheme shall outline the means of maximising the local impact from the development in terms of contracting and supply chain opportunities for local businesses and job opportunities for the local community/residents. The approved employment scheme shall be fully implemented.

**Reason:** *To facilitate the socio-economic benefits to the local workforce outlined in the application submission and required by Policy SN6 and PV3 of the Warrington Local Plan Core Strategy. This condition is required to be pre-commencement as it relates to the construction phase of development.*

9. Prior to the commencement of development, including site clearance, a detailed ecological, tree and hedgerow protection scheme shall be submitted to and agreed in writing by the local planning authority. The agreed scheme shall be implemented to protect all trees and hedgerows to be retained in or immediately adjacent to the boundary of the application site in accordance with BS5837: 2012 "Trees in relation to construction". Any tree works shall be carried out by a recognised tree surgeon, or a person who is appropriately insured and competent in such operations.

**Reason:** *To protect trees on the site, and to ensure the satisfactory appearance of the finished development in accordance with policy QE5 and QE7 of the Warrington Local Plan Core Strategy. The condition is pre-commencement due to*



*the need to install tree protection measures and protect trees during the construction process.*

10. Prior to the commencement of development details of foul water drainage shall be submitted to and agreed in writing by the local planning authority. The foul water drainage scheme shall be implemented in accordance with the approved details.

**Reason:** *To ensure that the proposals do not result in pollution and foul water drainage. The condition is required to be pre-commencement due to the need for approved to be installed and understood at an early stage in the construction phase.*

11. a) No development shall take place, including any works of demolition, until a Construction Phase Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:

- a) The parking of vehicles of site operatives and visitors;
- b) Loading and unloading of plant and materials;
- c) Storage of plant and materials used in constructing the development;
- d) Wheel washing facilities;
- e) Measures to control the emission of dust and dirt during construction;
- f) A scheme for recycling/disposing of waste resulting from demolition and construction works; and
- g) Identification of "biodiversity protection zones" and management of sensitive works to avoid harm to biodiversity features (including the appointment of an Ecological Clerk of Works).

b) The development shall be fully carried out in accordance with the agreed Construction Phase Method Statement and agreed details shall be retained throughout the construction period.

**Reason:** *In the interest of Highway Safety, biodiversity and to ensure the free flow of traffic using the adjoining Highway and to safeguard the amenities of residents and occupiers in the vicinity in accordance with policy QE6 of the Warrington Local Plan Core Strategy. This condition is required to be pre-commencement as it relates to the construction phase of development.*

12. Prior to the commencement of development a Construction Traffic Routeing Agreement shall be submitted to and approved in writing by the local planning authority. During the period of construction, all traffic to and from the site shall use the agreed route at all times.

**Reason:** *To ensure that all construction traffic associated with the development does not use unsatisfactory roads to and from the site in accordance with policy QE6 of the Warrington Local Plan Core Strategy. This condition is required to be pre-commencement as it relates to the construction phase of development.*

13. No development shall take place until a landscape management plan, including long-term design objectives, management responsibilities and maintenance schedules for all landscaped area has been submitted to and approved in writing by the local planning authority. The landscape management plan shall be carried out as approved and any subsequent variations shall be agreed in writing by the local planning authority. The management plan shall include the following elements:

- a) Description and evaluation of features to be managed;
- b) Details of maintenance regimes;



- c) Details of treatment of site boundaries and/or buffers around water bodies;
- d) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a 5-year period); and
- e) Details of management responsibilities.

**Reason:** *To ensure the protection of wildlife and supporting habitat in order to secure opportunities for the enhancement of the site's nature conservation value in line with national planning policy contained within the National Planning Policy Framework and policy QE5 of the Warrington Local Plan Core Strategy.*

14. No above ground construction work shall be undertaken until details of the materials to be used in the construction of the external surfaces of the development have been submitted to and approved in writing by the local planning authority. The development shall be constructed of the approved materials in accordance with the approved method.

**Reason:** *To ensure satisfactory development of the appeal site and in accordance with policy QE7 of the Warrington Local Plan Core Strategy.*

15. Prior to the completion of the main building shown on Drawing ref P-L104: Proposed Site Plan, Drawing ref P-E101: Proposed Main Building Elevations (North/South) and Drawing ref P-E102: Proposed Main Building Elevations (East/West), a local employment scheme for the operational phase of the development shall be submitted and approved in writing by the local planning authority. The scheme shall outline the means of maximising the local impact from the development in terms of contracting and supply chain opportunities for local businesses and job opportunities for the local community/residents. The approved employment scheme shall be fully implemented.

**Reason:** *To facilitate the socio-economic benefits to the local workforce outlined in the application submission and required by Policy SN6 and PV3 of the Warrington Local Plan Core Strategy.*

16. a) Prior to the first occupation of the development hereby approved details of the landscaping proposals and ecological improvements based on the principles outlined on the Landscaping Strategy Plan (Drawing Number D6317.001 Rev E) shall be submitted to and approved in writing by the local planning authority. The landscaping proposals shall include the following details:

- a) bat and bird boxes (including number, location and size);
- b) temporary measures to be implemented during construction process;
- c) details of new ponds (including cross sections and planting detail and wetland habitats to be created);
- d) Proposed planting species, density, and size and site preparation for soft landscaping works;
- e) New hedgerow planting (including species, density and ongoing management);
- f) New tree planting (including species, density and ongoing management);
- g) Measures to safeguard the integrity of the Bradley Brook; and
- h) Full details of all proposed boundary treatments.

b) The approved scheme shall be implemented prior to the first use of the site or within the first planting season. All planted and grassed areas and associated protective fencing shall be maintained for a period of 5 years from the full completion of the approved scheme. Within this period any tree, shrub or plant

which dies, becomes seriously diseased, damaged or is removed shall be replaced with a tree, shrub or plant of the same or greater size and the same species as that originally required to be planted and any damage to protective fences shall be made good.

**Reason:** *To ensure that the proposal delivers appropriate level of ecological mitigation in accordance with policies QE5 and QE6 of the Warrington Local Plan Core Strategy.*

17. The development hereby permitted shall not be taken into use until the following requirements have been met and required information submitted to and approved in writing by the local planning authority:

**A:** REMEDIATION & VERIFICATION: Remediation (if required) and verification shall be carried out in accordance with an approved strategy. Following completion of all remediation and verification measures, a Verification Report must be submitted to the local planning authority for approval.

**B:** REPORTING OF UNEXPECTED CONTAMINATION: All unexpected or previously-unidentified contamination encountered during development works must be reported immediately to the local planning authority and works halted within the affected area(s). Prior to site works recommencing in the affected area(s), the contamination must be characterised by intrusive investigation, risk assessed (with remediation/verification measures proposed as necessary) and a revised remediation and verification strategy submitted in writing and agreed by the local planning authority.

The site shall not be taken into use until remediation and verification are completed. The actions required to be carried out in Sections A and B above shall adhere to the following guidance: CLR11 (Environment Agency/DEFRA, 2004); BS10175 (British Standards Institution, 2011); C665 (CIRIA, 2007).

**Reason:** *To mitigate risks posed by land contamination to human health, controlled water, and wider environmental receptors on the site (and in the vicinity) during development works and after completion. In accordance with: Policy QE6 of the Adopted Local Plan Core Strategy (July 2014); Paragraphs 170(f) & 178 of the National Planning Policy Framework (February 2019), and Section 4 of the Environmental Protection Supplementary Planning Document (May 2013).*

18. Prior to occupation of the development hereby permitted a sustainable drainage management and maintenance plan for the lifetime of the development shall be submitted to and agreed in writing by the local planning authority. The sustainable drainage management and maintenance plan shall include as a minimum:
- a) Arrangements for adoption by an appropriate public body or statutory undertaker, or, management and maintenance by a management company; and
  - b) Arrangements for inspection and ongoing maintenance of all elements of the sustainable drainage system to secure the operation of the surface water drainage scheme throughout its lifetime.

The development shall subsequently be completed, maintained and managed in accordance with the approved plan

**Reason:** *To ensure that management arrangements are in place for the sustainable drainage system in order to manage the risk of flooding and pollution during the lifetime of the development in accordance with policy QE4 of the Warrington Local Plan Core Strategy and the National Planning Policy Framework.*

19. Prior to first occupation of the development hereby permitted details of waste and recycling facilities shall be submitted to and agreed in writing by the local planning authority. The waste and recycling facilities shall be implemented in accordance with the agreed details prior to first occupation.

**Reason:** *To ensure satisfactory functioning of the application proposals and to promote recycling of waste in accordance with policy MP8 of the Warrington Local Plan Core Strategy.*

20. Prior to first occupation of the development hereby permitted and the installation of external lighting, details of any external lighting shall be submitted to and approved in writing by the local planning authority. The details shall include:
- a) Areas/features on site that are potentially sensitive to lighting for bats;
  - b) Detail of any proposed lux levels beyond the site boundary that may impact on the amenity of residents;
  - c) Detail through appropriate lighting lux contour plans that any impacts on bats and on the amenity of residents is acceptable; and
  - d) Specify frequency and duration of use.

All external lighting shall be installed in accordance with agreed specifications and locations set out in the strategy.

**Reason:** *To ensure that the development does not cause light pollution and to manage the impact of lighting on protected species in accordance with Policy QE5 of the Warrington Local Plan Core Strategy.*

21. Prior to the first occupation of the development hereby permitted the internal roads, turning areas and parking areas shall be hard surfaced in a material to be submitted to and agreed in writing by the local planning authority and shall be completed and made available for use for the purposes of the development.

**Reason:** *To maintain satisfactory functioning of the site and in the interests of highway safety having regard to policies QE6 and MP1 of the Warrington Local Plan Core Strategy.*

22. Prior to the first occupation of the development hereby permitted the bus stop details, including details of a shelter, shall be submitted to and agreed in writing by the local planning authority and shall be completed and made available for use for the purposes of the development.

**Reason:** *To maintain satisfactory functioning of the site and in the interests of highway safety and in accordance with policies QE6, MP1 and MP7 of the Warrington Local Plan Core Strategy.*

23. Prior to first occupation of the development hereby permitted details of cycle store shall be submitted to and agreed in writing by the local planning authority. The cycle store shall be implemented in accordance with the agreed details prior to first occupation.

**Reason:** *To promote satisfactory functioning of the development and to promote sustainable and alternative modes of transport and satisfactory appearance of the site and to ensure cycle stores are provided in a secure and safe environment in accordance with policies MP1 and MP3 of the Warrington Local Plan Core Strategy.*

24. Prior to first occupation of the development hereby permitted, details of the gatehouse and barriers shall be submitted to and agreed in writing by the local

planning authority. The gatehouse and barriers shall be implemented in accordance with the agreed details prior to first occupation.

**Reason:** *To promote satisfactory functioning of the development and satisfactory appearance of the site in accordance with policies QE6 and QE7 of the Warrington Local Plan Core Strategy.*

25. a) Prior to the first occupation of the development hereby permitted, the Final Travel Plan, based on the principles of the draft Travel Plan (Ramboll June 18), shall be submitted for the written approval of the local planning authority. The Travel Plan submission will identify a package of measures consistent with the aim of reducing reliance on the car, and should include (but not be limited to) providing information on/promoting the use of alternative modes of transport, by:
- a) The appointment of a travel plan co-ordinator;
  - b) The establishment of targets for modal shift;
  - c) The details of measures to be employed to achieve the identified targets;
  - d) Mechanisms for ongoing monitoring and review of targets and travel plan measures;
  - e) Details of penalties and/or additional measures to be investigated/implemented in the event that the identified targets are not met;
  - f) Public transport information and ticket details;
  - g) Cycle provision, showers and lockers and associated infrastructure;
  - h) Walking and cycling initiatives; and
  - i) Car park allocation and management strategy.
- b) The approved Travel Plan shall be implemented during the 6 months following the first occupation of the premises.
- c) Within 12 months of its implementation under part "b" of this condition a review of the Travel Plan shall be carried out, and submitted to the local planning authority for written approval. The review will identify any refinements and clarifications deemed necessary to the Plan. The Travel Plan shall be thereafter be reviewed and re-submitted annually.
- The development shall comply with the requirements of the revised plan approved under part "Council" of this condition, at all times.

**Reason:** *To ensure the satisfactory functioning of the development, to promote the use of a range of modes of transport, and minimise the use of the car in accordance with policies MP1 and MP7 of the Warrington Local Plan Core Strategy.*

26. Prior to first occupation of the development hereby permitted, details of electric charging points and renewable energy provision shown on the approved roof plan (Drawing ref P-P102: Proposed Roof Plan) shall be submitted to and approved in writing by the local planning authority. Parking areas not provided with charging points shall be installed in a manner to allow the future installation of electric charging points.

**Reason:** *To promote low carbon technologies, to tackle climate change and to ensure that future increased use of electric vehicles is managed having regard to policy MP1 of the Warrington Local Plan Core Strategy and Standards for Parking in New Development SPD.*

27. Foul and surface water shall be drained on separate systems.

**Reason:** *To secure proper drainage and to manage the risk of flooding and pollution in accordance with policy QE4 of the Warrington Local Plan Core Strategy.*

28. The proposed offices shown on the approved plans shall remain ancillary to the main building as a B8 use and shall not be used as a separate planning unit.

**Reason:** *The site is not in a recognised town centre and is not in a location appropriate location for office uses and to maintain satisfactory functioning of the site having regard to policy SN5 of the Warrington Local Plan Core Strategy and guidance within the National Planning Policy Framework.*

29. The Vehicle Maintenance Unit shown on Drawing ref P-P103: VMU – Plan, Sections and Elevations shall remain ancillary to the principal building on the site and shall not be separated from the main building.

**Reason:** *To maintain satisfactory functioning of the site.*

30. Prior to the installation of roof top solar PV panels as shown on Drawing ref P-P102: Proposed Roof Plan, the following information shall be submitted to and approved in writing by the local planning authority in consultation with the Aerodrome Safeguarding Authority for Manchester Airport:

- a) A Glint & Glare Assessment of the proposed solar PV installations;
- b) A formal management process (Bird Hazard Management Plan) to ensure that birds do not congregate or nest on the roof; and
- c) Written confirmation from the National Air Traffic Services (NATS) that there will be no adverse effect upon Instrument Landing Systems (ILS).

Any approved recommendations/measures contained therein shall be fully implemented as part of the solar PV installation and retained at all times unless otherwise agreed in writing by the local planning authority in consultation with the Aerodrome Safeguarding Authority for Manchester Airport.

**Reason:** *In the interest of aviation safety.*

**Additional condition suggested by SWP – not agreed by the Appellants or the Council:**

31. The development hereby permitted shall not be occupied until the alterations and improvements to the A50/B5356 Roundabout as shown on Drawing ref RAM-01-CL-DR-J-00100/P03, or any such alternative scheme as agreed in writing with the Council to mitigate the impact of the development on the local highway network, have been delivered and are operational.

**Reason:** *To mitigate the impact of the development on the local highway network. The condition is required to be pre-commencement due to the need to agree and implement mitigation prior to significant new traffic movements being brought on to the highway network.*

**APPENDIX D - LIST OF ABBREVIATIONS**

AIM	Alternative Investment Market
AQMA	Air Quality Management Area
AQO	Air Quality Objective
BMV	Best and Most Versatile
CD	Core Document
CEO	Chief Executive Officer
CIL	Community Infrastructure Levy
CS	the Warrington Local Plan Core Strategy
DAS	Design and Access Statement
DfT	Department for Transport
DMRB	Design Manual for Roads and Bridges
Doc	Document
DQRA	Detailed Quantitative Risk Assessment
EBR	Evidence Base Review
EDNA	Economic Development Needs Assessment
EIA	Environmental Impact Assessment
ES	Environmental Statement
ESL	Eddie Stobart Ltd
FRA	Flood Risk Assessment
FTE	Full Time Equivalent
GQRA	Generic Quantitative Risk Assessment
GVA	Gross Value Added
ha	hectare
HE	Highways England
HGV	heavy goods vehicle
ILS	Instrument Landing Systems
J10	Junction 10 of the M56 Motorway
J20	Junction 20 of the M6 Motorway
km	kilometre
LTP4	Consultation Draft of the Council's Local Transport Plan
LVIA	Landscape and Visual Impact Assessment
m	metre
NATS	National Air Traffic Services
NDC	National Distribution Centre
NDP	the Appleton Thorn Ward Neighbourhood Development Plan
NEE	Non-Exhaust Emissions
NO <sub>2</sub>	Nitrogen Dioxide
NO <sub>x</sub>	Nitrogen Oxides
PM <sub>10</sub>	particulates
PM <sub>2.5</sub>	small particulates
PoE	Proof of Evidence
PPG	Planning Practice Guidance
PRA	Preliminary Risk Assessment
PSVLP	Proposed Submission Version of the Local Plan
Q4	Fourth Quarter
S106	Section 106
S278	Section 278
SoCG	Statement of Common Ground



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SoS	Secretary of State for Housing, Communities and Local Government
SPD	Supplementary Planning Document
sqft	square feet
sqm	square metres
SRFI	Strategic Rail Freight Interchange
SRN	Strategic Road Network
SuDS	Sustainable Drainage Systems
SWP	South Warrington Parish Council's Local Plan Working Group
TA	Transport Assessment
TAA	Transport Assessment Addendum
the 1990 Act	the Town and Country Planning Act 1990
the 2004 Act	the Planning and Compulsory Purchase Act 2004
the Appellants	Liberty Properties Developments Ltd & Eddie Stobart Ltd
the Council	Warrington Borough Council
the Framework	the National Planning Policy Framework
WBC	Warrington Borough Council
WHO	World Health Organisation



# Ministry of Housing, Communities & Local Government

[www.gov.uk/mhclg](http://www.gov.uk/mhclg)

## RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

### SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

#### Challenges under Section 288 of the TCP Act

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

### SECTION 2: ENFORCEMENT APPEALS

#### Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

### SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

### SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.