

FAO Chris Nash

South Derbyshire District Council
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Dear Mr Nash

Re: Axis 50, Land at Etwall Road, Willington - Outline planning application for the erection of up to 100,00 sqm B1, B2 and B8 commercial floorspace and associated infrastructure (ref. DMPA/2019/0948)

I refer to the above planning application submitted by Brackley Property Developments Limited currently being considered by the Council and enclose an **OBJECTION** on behalf of our client, Willington Parish Council. Following review of the application documents available online, the proposed development seeks:

“Outline application (matters of access to be considered now with matters of layout, scale, appearance and landscaping reserved for later consideration) for the erection of up to 100,000 sqm of commercial floorspace (use classes B2 (general industrial) and B8 (storage and distribution) with ancillary B1(a) offices) along with associated landscaping, surface water drainage infrastructure and access.”

Background

The site extends to 31.52ha and comprises grazed pasture fields. It is bound by the railway line to the south, the A38 (Burton Road) to the west, the B5008 (Etwall Road) to the east and a residential and commercial property to the north. The junction of the A50 and A38 adjoins the commercial property to the north.

This site has been subject to an earlier, similar planning application in 2007 (ref. 9/2007/1470), which was dismissed at appeal on 19 August 2010 (ref. APP/F1040/A/08/2081933). This sought planning permission for the following proposed development:

“The development proposed is the provision of up to 114,100 sq m gross external area (GEA) of built floorspace for strategic distribution use falling within Use Class B8, including ancillary Use Class B1(a) offices (not to exceed 10% of GEA). Ancillary car, cycle and lorry parking and loading areas are also provided. Such development will provide for revised ground contours, development platforms, strategic landscape, provision of vehicular as well as pedestrian access and infrastructure for drainage and services. The development will also provide for the potential connection of the site to the national rail network. As a result of this development, appropriate remediation where necessary of those parts of the site previously used for landfill will be undertaken. The application is submitted in outline with access to be determined. Full planning permission is sought for the provision of the new access and estate road, the remediation scheme, finished ground levels and

Phase 1 of the development amounting to 23,496 sq m (GEA) of built accommodation.”

The site area of the earlier dismissed scheme extended to circa 40ha, however the site area of the current scheme is somewhat reduced albeit extends to circa 31.5ha. It is understood that this reduction in area is due to the exclusion of land to the south of the railway line, which was previously proposed to form a landscaping buffer.

In summary, the Inspector dismissed the appeal for the following reasons:

1. **Landscape** – the site, together with the land to the south, forms a break between Willington and development associated with the gyratory system. The development would consume most of the separating zone. The landscape character of the area would suffer, with the erosion of the nucleated character of Willington. The Inspector confirms a policy presumption exists against such development, especially where it could be accommodated on allocated employment land.
2. **Visual** – despite the site having no protective designation, the landscape and visual effects of the proposals would be unacceptably harmful overall.
3. **Heritage** – the proposals would not preserve, but would have a harmful effect, on the character of the Trent and Mersey Canal Conservation Area, through its influence on views from the area. Further, the visual obstruction caused by the proposed development would have a significantly harmful effect on the setting of the Grade II listed Hill Farm building.
4. **Strategic Site Selection** – the proposed development conflicts with the Development Plan as the site is located in the open countryside and is not located on land allocated for employment use. The Inspector notes it has not been adequately demonstrated that accommodation on land allocated for employment uses lacks feasibility - limited justification has been provided to discount alternative sites which are allocated for employment development. Moreover, the Inspector considered the proposals are unacceptable on environmental grounds.

Overall, it was concluded that the proposals did not accord with the Development Plan. The Inspector stated: *“...the harm identified to landscape, views and heritage assets is sufficient to lead to dismissal of the proposals. The inadequacy of comparisons with other sites adds weight to this conclusion...”*

Statutory Development Plan

As a matter of law, Section 38 (6) of the Planning and Compulsory Purchase Act 2004 requires all planning decisions to be made in accordance with the Development Plan, unless material considerations indicate otherwise.

As a starting point, the Statutory Development Plan relevant to the site has been prepared in two parts. Part 1, adopted in June 2016, sets out the overall vision and spatial strategy for the District up to 2028. It contains strategic policies and site allocations, which define the quantum and distribution of growth and the hierarchy of settlements where development is to take place across South Derbyshire (this notably includes strategic employment sites). Part 2, adopted in November 2017, contains non-strategic allocations and more detailed development management policies.

The proposed development site sits in the open countryside (i.e. a ‘Rural Area’ as defined by the Local Plan), being located outside of any defined settlement. Further, the site is not allocated for any

specific purpose and fundamentally, as it was previously, is not identified as one of the Council's strategic employment sites required to meet identified employment needs over the plan period, this being 2011 – 2028.

It is accepted that the Development Plan has been updated since the appeal scheme was considered and dismissed, albeit essentially the current planning policy position does not alter the designations/allocations in relation to the application site (i.e. as per the appeal scheme, the site is still located outside of any defined settlement, in the open countryside and is not allocated for employment use).

In Development Plan policy terms, the principle of employment development on this site is quite simply not supported. Local Plan Part 1 Policy S1 seeks sustainable growth to support the District's objectively assessed growth needs, including those of commercial nature. Notably limb ii) of the policy sets out that employment development will be retained, promoted and regenerated on sites in urban areas and other locations which already are, or could be in the future, well served by infrastructure, including public transport. Policy S2 proceeds that development proposals will take a positive approach that reflects the presumption in favour of sustainable development contained in national policy i.e. the National Planning Policy Framework (NPPF).

Of essential relevance to the proposal at hand, Policy S5 seeks employment provision for a minimum of 53 hectares net additional land. Policy E1 allocates 7 sites for employment development (3 new sites and 4 committed sites) which will provide c.66ha of employment development – the application site is not included as any of these allocations noted.

Policy E2 builds on this strategy further and provides flexibility for the provision of additional employment sites elsewhere (other than those allocated) and sets out that development of land for B1 (b), B1(c), B2 and B8 of the Use Classes Order will be permitted where:

- i. the site lies within or on the edge of the Swadlincote urban area, Derby or Burton upon Trent, or a Key or Local Service Village; or
- ii. the proposal is for the expansion of an existing business; or
- iii. the proposal is for the redevelopment of established industrial or business land or premises.

Clearly, the proposed development does not meet any of these criteria, nor has this policy consideration been addressed in the application's accompanying Planning Statement.

Local Plan Part 2 Policy SDT1 confirms that outside of settlement boundaries and allocated sites (such as the application site), within the Rural Areas as defined in Policy H1 (Settlement Hierarchy), development will be limited to that considered acceptable by, inter alia, Policy BNE5. In this regard, Policy BNE5 confirms outside of settlement boundaries i.e. within the Rural Areas of the District such as the application site, planning permission will be granted where the development is:

- i. Allowed for by policies H1 (Settlement Hierarchy), H22 (Sites for Gypsies and Travellers and for Travelling Showpeople), E7 (Rural Development i.e. development will supported by the Council provided they support the social and economic needs of the rural communities in the District), INF10 (Tourism Development), H24 (Replacement Dwellings in Rural Areas), H25 (Rural Workers Dwellings), H26 (Residential Gardens within Rural Areas), H27 (Residential Extensions and Other Householder Development) or H28 (Residential Conversions); or
- ii. otherwise essential to a rural based activity; or
- iii. unavoidable outside settlement boundaries; or
- iv. considered to be infill that is in keeping with the character of the locality and represents the

- infilling of a small gap for not normally more than two dwellings, within small groups of housing; and
- v. will not unduly impact on: landscape character and quality, biodiversity, best and most versatile agricultural land, and heritage assets.

Again, in our view, the proposed development does not meet any of these criteria and this has not been addressed in the application's accompanying Planning Statement.

The applicant puts forward the argument that there is a risk that current, recently adopted Development Plan policy position is not sufficient in meeting the employment land needs of the District in order to justify the principle of employment development on the site. The applicant concludes that 27ha of the Local Plan employment allocations **may not be deliverable** (DLP emphasis) and that all the sites, except Dove Valley Business Park, would not be suitable for the proposed development. The Planning Statement sets out some very limited justification for this, summarised as follows:

1. Site E1A (Cadley Hill, Swadlincote) - the applicant questions the suitability of the site because it is located adjacent to residential development and has a restriction on the hours of operation. The availability is also being questioned as the applicant understands the site is not being actively marketed. However, no previous marketing details or evidence has been provided to reinforce these assumptions.
2. Site E1B (Hilton) – this site is discounted as being unavailable as the applicant understands it has been purchased by an occupier. However, no evidence in this regard has been provided, nor details of occupier's intentions.
3. Site E1C (Woodville Regeneration Area) – this site is argued as being unavailable, but no justification has been provided. It is also argued that deliverability is uncertain due to high infrastructure costs. However, no marketing details, viability assessment or evidence has been provided to reinforce these assumptions.
4. Site E1D (Tetron Point) – this site has been developed for employment use and is therefore argued as being unavailable. No further detail has been provided to reinforce that it is unavailable.
5. Site E1E (Dove Valley Business Park) - the applicant sets out that they understand the site is available and being marketed. However, goes on to question the site's deliverability due to the isolation and remoteness of the site and lack of immediate labour. No more detailed explanation is provided, nor are any marketing details provided to reinforce these assumptions.
6. Site E1F (Former Drakelow Power Station) - the applicant considers there is uncertainty regarding the availability and deliverability of the site as there are two land owners – one has a short term lease on part of the land and the other is potentially reserving part of the site for electricity generation. In addition, a new bridge link is required before the land can be developed, for which there is no current funding and it is unclear if all the necessary agreements to allow delivery of the bridge have been entered into. However, no marketing details, viability assessment or evidence has been provided to reinforce these assumptions.
7. Site E1G (Cadley Hill, Swadlincote) – the applicant considers the site is constrained by access and configuration. Despite the site being marketed for up to 80,000 sqf, the applicant sets out that the site will not appeal to units larger than 30,000 sqf, but provides no further

reasoning or justification for this.

The justification set out is light and does not provide thorough evidence to support the claims that a number of the sites allocated in the Local Plan are not suitable, available and/or deliverable. Wording such as 'it is questionable', 'it is understood' and 'it is uncertain' is used within the submission, devoid of any detailed or robust analysis on a site by site basis that would back the applicant's assertions or bring in to question the ability of the Development Plan to deliver the strategy recently found sound by the Local Plan Inspector and subsequently adopted by the Council. Therefore, consistent with the earlier appeal dismissal, it has not been adequately demonstrated that the allocated employment sites are not deliverable or suitable for the proposed development (the Inspector noted that it was not adequately demonstrated that accommodation on land allocated for employment uses lacks feasibility (paragraph 41)).

In this context, the Development Plan has been recently adopted. During the process of adoption, the Local Plan has been subject to robust public examination and Inspector scrutiny. It is based on a thorough, up to date evidence base which was subject to active participation by developers and landowners. Ultimately, the examining Inspector considered the Local Plan to be sound in accordance with NPPF requirements and confirmed that sufficient, deliverable employment sites are available to meet the identified employment needs over the Plan period (2011 – 2028). Indeed, the Inspector's Report, in respect of the Local Plan Part 1, notes at paragraph 93 that *"the Plan offers a range of sites for prospective investors in sustainable locations, allows for other development elsewhere (Policy E2), and envisages provision of start-up and grow-on business accommodation as well as more substantial sites."*

The Council's Employment Site Assessment Summaries (2013) document includes an assessment of the application site and confirms that the site would represent a prominent intrusion into the open countryside; there would be a significant impact on the setting of a Grade II Listed Building and the Trent and Mersey Canal Conservation Area; and that junction and highway capacity is constrained. Further, the Sustainability Appraisal, prepared in respect of the Local Plan Part 1, notes that the application site was not allocated for employment uses because *it is a "...large greenfield site extending 50ha. The site was subject to a planning application in 2007 for which an appeal was lodged on the grounds of non-determination. This was subsequently dismissed by the Planning Inspectorate partly on impact on local cultural heritage features. The site is poorly related to existing communities and would provide land well ahead of the identified need within the Plan period."* The Council clearly did not consider this site appropriate for employment development, a view shared by the Examining Inspector evident below.

At paragraph 99 of the Inspector's Report, reference is made to the application site itself as an omitted site, confirming *"It was suggested that additional employment land should be allocated along the A50 corridor, near to the junction with the A38. This would be near to the existing Toyota plant, but the capacity of the road junction raises concern. In view of the availability of other sites further east along the A50, I see no need for additional greenfield land to be allocated for employment use here."* The Inspector clearly did not consider the site to be appropriate for development nor identify that a need existed for its allocation. Ultimately, the sites allocated for employment uses through the Local Plan process were deemed suitable, available and deliverable to meet the Council's objectively assessed need.

As is standard practice, and in accordance with the relevant provisions of the framework at that time (NPPF 2012), the Council recognised the importance of monitoring the performance of Plan policies. A range of indicators are set out in the Implementation and Monitoring table. These Indicators include measurable targets which, if not achieved, will trigger further action to enhance plan performance. In relation to economic development, the target for delivery is an annual rate of new B1, B2 and B8

land area and floorspace completions commensurate with the delivery of the calculated quantum of employment development required for the Local Plan period. If this is not being met, then this will trigger a review of the Local Plan. Net total employment land need for the Plan period in the remainder of South Derbyshire, beyond the Derby Urban Area, is 42.27 ha.

The Council's latest Annual Monitoring Report (AMR, 2017-18) confirms that (at 31 March 2018), the amount of new land developed since 1 March 2011 was 32.51ha, with a further 2.81ha under construction at the time of the survey. A further 44.83ha had planning permission and 18.71ha did not yet have planning permission, but was allocated for industrial and business development in the Local Plan Part 1. Since April 2011, 18.07ha of land on established employment sites has been lost to other uses. 17.25ha of employment land has therefore been delivered since 2011 (taking into account losses). The Council does not indicate in the AMR that delivery of employment floorspace is falling short of its delivery targets. Given this, a review of the Local Plan is not required and there is no need for this site to come forward for employment development to meet unmet need during the Plan period.

In this regard, a clear conflict exists between the principle of the proposed development and the strategy set out by the Council in the Development Plan. If approved, given the size and scale of development sought, the proposal would result in a significant departure from the Development Plan.

Material Planning Considerations

Beyond the Development Plan, material considerations may indicate a decision, that is not in accordance with the Development Plan, is appropriate as set out at Section 38 (6) of the Planning and Compulsory Purchase Act 2004.

The NPPF is itself a material planning consideration in the determination of the application. Paragraph 2 reinforces the primacy of the Development of Plan and Chapter 2 explains that the purpose of the planning system is to contribute to the achievement of sustainable development. Paragraph 11 of the NPPF sets out that plans and decisions should apply a presumption in favour of sustainable development. For decision-taking this means:

- c) approving development proposals that accord with an up-to-date development plan without delay; or
- d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:
 - i. 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
 - ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

As set out above, a clear conflict exists between the principle of the proposed development and the recent strategy set out by the Council in the Development Plan, which was found sound by the Inspector. The proposed development is located outside of any defined settlement boundary, is not allocated for employment use and does not meet any of the Council's criteria for additional employment development. It therefore does not accord with an up-to-date Development Plan such that it is not considered appropriate. Ultimately, the Local Plan policies are relevant and up-to-date such that limb d) is not engaged.

The applicant argues that there is a risk that current local policy is not sufficient in meeting the employment land needs of the Local Plan in order to justify the principle of employment development

on the site, questioning the deliverability/suitability of a number of the allocated sites in the Local Plan. When making assessments to meet identified need, the Planning Practice Guidance (PPG) confirms that a site can be considered suitable if it would provide an appropriate location for development when considered against relevant constraints and their potential to be mitigated (Paragraph: 018 Reference ID: 3-018-20190722). For a site to be considered available, this may include the landowner or developer expressing an intention to develop the site (Paragraph: 019 Reference ID: 3-019-20190722). A site can be considered achievable (i.e. deliverable), where there is a reasonable prospect the development will be developed on the site at a particular point (Paragraph: 020 Reference ID: 3-020-20190722).

These factors would have been taken into consideration by the Council and the Inspector when assessing the Local Plan employment site allocations. In this context, it should be noted that paragraph 35 of the NPPF confirms that Plans are sound if they are (inter alia) effective i.e. deliverable over the Plan Period and justified i.e. provide an appropriate strategy, taking into account the reasonable alternatives, and based on proportionate evidence. The Inspector found the Plan sound and therefore the allocated employment sites were considered deliverable. Whilst it is noted the Local Plan would have been considered under the provisions of the 2012 NPPF and prior to updates to the PPG, the fundamentals remain the same.

The applicant cites paragraph 80 of the NPPF which sets out significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development. Paragraph 81 is also cited in that planning policies should be flexible enough to accommodate needs not anticipated in the plan...and to enable a rapid response to changes in economic circumstances. As set out above, there is no evidence that the employment needs of the district cannot be met by the sites allocated in the Local Plan for employment development, and the Plan was found sound by the Inspector. Notwithstanding this, Local Plan Policy E2 offers flexibility for the provision of additional employment sites, (subject to meeting a number of criteria), as recognised by the Local Plan Inspector at paragraph 93 of the Inspector's report.

It is recognised within the NPPF that effective use should be made of previously developed land in sustainable locations. Paragraph 118 of the NPPF states that planning policies and decisions should 'give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs, and support appropriate opportunities to remediate despoiled, degraded, derelict, contaminated or unstable land'. The NPPF clearly prioritises the development of previously developed/brownfield land over greenfield land. The development of the application site (i.e. a greenfield site) has not been justified/addressed in the context of the NPPF by the applicant.

Prior to submission of the application, the applicant sought pre-application advice from the Council in relation to the proposed development. The Council, in its pre-application response correctly notes that the application would be contrary to the plan-led system which aims to deliver employment opportunities in sustainable locations. The Council confirms that it finds no policy support for the proposed development. It is a matter of law that applications are determined in accordance with the Development Plan, unless material considerations indicate otherwise. There are no material considerations that indicate a departure from the Development Plan would be acceptable in this instance and as such, the application should be refused as the principle of development is not supported by planning policy.

Other Matters

The earlier appeal decision is also material to consideration of this proposal and the reasons for dismissal remain highly relevant. Notwithstanding the submitted Landscape and Visual Impact

Assessment, Heritage Settings Assessment and Transport Assessment, there are clearly concerns notably relating to designated heritage assets, landscape and traffic, which were identified by the appeal Inspector as part of the assessment when dismissing the earlier scheme on the site.

In terms of heritage, as set out in the PPG, protecting and enhancing the historic environment is an important component of the NPPF's drive to achieve sustainable development. In addition, the legislative framework requires any decisions relating to listed buildings and their settings, as well as conservation areas, to address the statutory considerations of the Planning (Listed Buildings and Conservation Areas) Act 1990, particularly sections 66 and 72, as well as satisfying the relevant policies within the NPPF and the Local Plan.

For clarity, Section 66 of the 1990 Act states that special regard must be given by the Local Planning Authority in the exercise of planning functions to the desirability of preserving or enhancing listed buildings and their setting. The Court of Appeal decision in the case of *Barnwell vs East Northamptonshire DC 2014* is relevant to this section, where the Court agreed that decision-makers should give 'considerable importance and weight' to the desirability of preserving (i.e. keeping from harm) the setting of listed buildings. Section 72 proceeds that that in exercising all planning functions, Local Planning Authorities must have special regard to the desirability of preserving or enhancing conservation areas. These are legally important heritage considerations for the Council in determining this planning application and the Council must be thoroughly satisfied that the proposed development is meeting these statutory tests.

In relation to impact on the landscape, as noted in the appeal decision for the earlier scheme, the site forms a break between Willington and development associated with the gyratory system. The proposed development would fundamentally erode the character of the area and encroach into open countryside, removing the majority of the break between Willington and the gyratory system consistent with the earlier dismissed appeal.

In relation to the traffic/highways impact of the proposed development, on behalf of Willington Parish Council, Connect Consultants Limited has undertaken a review of the position and has prepared a separate response highlighting concerns with the technical detailed contained in the submitted transport information. The key points can be summarised as follows:

- The predicted number of additional vehicle trips through Willington is not reliable;
- The traffic modelling used to assess the impact at the double mini roundabouts in Willington is not a suitable tool for a complex junction (as is the case here);
- The assessment of the A38/A50 shows that it is over capacity. The results contain errors, which casts doubt over the reliability of the modelling inputs and overall results;
- It is likely that traffic will choose to reroute/divert via Willington to avoid the A38/A50 junction, however this is not addressed or included in the modelling;
- Mitigation of the traffic impact in Willington is proposed only via soft measures in the Travel Plan - the effectiveness and results of which are not guaranteed or enforceable;
- The applicant appears agree with Highways England that the development impact at the A38/A50 requires mitigation, and that the details of the mitigation scheme can be dealt with at a later stage via planning condition. This should however be dealt with upfront.

These matters should also be properly considered by the Council, with due regard given to the assessment made when dismissing the earlier appeal.

Summary

A clear conflict exists between the principle of the proposed development and the recent strategy



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set out by the Council in the Development Plan, which was found sound by the Inspector. The proposed development is located outside of any defined settlement boundary, is not allocated for employment use and does not meet any of the Council's criteria for additional employment development. It therefore does not accord with an up-to-date Development Plan such that it is not considered appropriate. The issues raised by the Inspector of the earlier appeal are also material to consideration of this proposal and the reasons for dismissal remain highly relevant. Overall, it was concluded that the proposals did not accord with the Development Plan. Indeed, these concerns were echoed by the Examining Inspector also. As such, the application should be refused.

We trust the Council will take this objection letter into account when reviewing the proposals. Should you require any further information, or wish to discuss any element of this letter, please contact me, or my colleague, Darren Abbott. We would be grateful if you could notify of us any additional information submitted by the applicant in due course so we can review and comment, if considered necessary.

Yours sincerely

A handwritten signature in black ink that reads 'Beth Evans'.

Beth Evans
Senior Planner