Ministry of Housing, Communities & Local Government

Gateley plc
Ship Canal House
98 King Street
MANCHESTER
M2 4WU

Our ref: APP/R3705/W/16/3149827
Your ref: PM\25385445.1\066139.010\KPPM

21 March 2018

Dear Sirs

TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY HARWORTH ESTATES
LAND AT DAW MILL COLLIERY, DAW MILL LANE, ARLEY
APPLICATION REF: PAP/2014/0339

1. I am directed by the Secretary of State to say that consideration has been given to the report of Frances Mahoney DipTP PGDipTP MRTPI IHBC, who held a public local inquiry commencing on 21 February 2017 into your client's appeal against the decision of North Warwickshire Borough Council to refuse your client's application for outline planning permission (with all matters reserved for subsequent approval other than access) for the redevelopment of land at Daw Mill Colliery, Arley for a maximum of 24,652 sq m (265,345 sq ft) of built floorspace for employment uses comprising either wholly B2 (General Industry) development /or part B2 (General Industry) and a rail distribution depot for the purposes of maintaining rail infrastructure comprising the stabling of trains and the storage, handling and processing of railway related materials, ancillary open storage areas, associated car parking, service yards, gantry crane, infrastructure and utilities; retention and use of existing infrastructure including rail head and sidings, site vehicular access, grid connection, electricity sub-station and reconfigured surface water drainage infrastructure system in accordance with application ref: PAP/2014/0339 dated 27 June 2014.

2. On 26 June 2016, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be dismissed.

4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and agrees with her recommendation. He has decided to dismiss the appeal and refuse planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Ministry of Housing, Communities & Local Government
Richard Watson, Decision Officer
Planning Casework Unit
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Procedural matter

5. Having regard to your client's wish to restrict, by means of conditions, the use of the appeal site to any of the following B2 (general industrial) uses (IR4-5 and IR246):

   - the manufacturing of rails, sleepers, track, signalling, gantries and associated railway construction, operation and maintenance equipment;

   - train and rail rolling stock maintenance and repair including ancillary stabling of such trains and stock;

   - train and rail rolling stock manufacturing facility.

   the Secretary of State agrees (IR247-253) that no prejudice would be caused by determining the appeal on the basis of the amended proposals, and he has proceeded on that basis.

Matters arising since the close of the inquiry

6. On 25 January 2018, the Secretary of State wrote to the main parties to afford them an opportunity to comment on a statement submitted by Craig Tracey MP and Marcus Jones MP on behalf of the Leys and Whitacre Residents Action Group (LAWRAG) and Over Whitacre Parish Council. These representations were circulated to the main parties on 5 February 2018, and further correspondence was received on 7 and 11 February 2018. The Secretary of State is satisfied that the issues raised do not affect his decision, and no other new issues were raised in this correspondence to warrant further investigation or necessitate additional referrals back to parties. A list of representations received is at Annex A and copies may be obtained from the address at the foot of the first page of this letter.

7. Applications for full awards of costs were made by North Warwickshire Borough Council and LAWRAG and Over Whitacre Parish Council against Harworth Estates (IR3). These applications are the subject of separate decision letters, also being issued today.

Policy and statutory considerations

8. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.

9. In this case the development plan includes the North Warwickshire Core Strategy (CS) adopted in October 2014; the saved policies of the North Warwickshire Local Plan (NWLP 2006) (July 2006); and the Arley Neighbourhood Development Plan (NP) made in December 2016. The Secretary of State agrees with the Inspector (IR12) that the development plan policies of most relevant to this case are those listed in Section 5 of the Statement of Common Ground (Inquiry Doc 1) and referred to as appropriate below.

10. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance').

11. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the proposals, or their settings or any features of special architectural or historic interest which they may possess.

12. In accordance with section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special attention to the desirability of preserving or enhancing the character or appearance of conservation areas.

Emerging plan

13. Paragraph 216 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework. The emerging local plan is currently subject to the pre-submission consultation process. Therefore, as it still at an early stage and may be subject to further unresolved objections, the Secretary of State gives it little weight.

Main issues

Whether the appeal site constitutes Previously Developed Land (PDL)

14. The Secretary of State has carefully considered the Inspector's analysis and reasoning at IR256-272 and he agrees with the Inspector that, for the reasons given, Daw Mill was a mine started before 1 July 1948 (IR271). The Secretary of State therefore also agrees with the Inspector at IR273 that the appeal site cannot be considered to be PDL.

Baseline against which the impacts of the proposed scheme should be considered

15. For the reasons given at IR274-282 the Secretary of State agrees with the Inspector's view that, in the absence of convincing evidence to the contrary, the possibility of the site returning to a green field, in accordance with the Restoration Plan, needs to be taken into account not only as a material consideration but as the baseline comparative scenario.

Green Belt

16. The Framework states that inappropriate development is, by definition, harmful to the Green Belt and substantial weight should be given to any harm to the Green Belt. The Secretary of State agrees with the Inspector that, using the green field restored site as the baseline, the appeal proposal would clearly have a greater impact on openness, introducing an expansive industrial spread of development across the site (IR283-287). Furthermore, the Secretary of State also agrees with the Inspector at IR288 that, even in comparison with the current state of the appeal site, the scale and nature of the proposal would introduce an industrial, urbanising character of built form which would present a significantly greater spread of development across the site than currently exists. He therefore agrees with the Inspector that both the openness and permanence of the Green Belt would be eroded (IR289) so that, for the reasons given at IR290-291, the appeal proposal is inappropriate development in the Green Belt and should not be approved except in Very Special Circumstances (IR292).

Any other harm

- Landscape

17. For the reasons given at IR293-297, the Secretary of State agrees with the Inspector that the landscape of the appeal site does not include specific attributes or landscape features sufficient for it to amount to a 'valued landscape' in terms of the Framework (IR297). Nevertheless, for the reasons given at IR298-302, the Secretary of State also agrees with the Inspector's conclusion at IR303 that the proposal would not respect its local context and would seriously harm the character and appearance of the countryside setting. The Secretary of State gives substantial weight to this, and agrees with the Inspector that it would conflict with CS Policies NW12, NW13 and NP Policy ANP1.

- Noise

18. For the reasons given at IR304-319, the Secretary of State agrees with the Inspector at IR320 that the impact of noise from the proposed development cannot be regarded as having anything less than a significant adverse impact, to which he gives significant weight.

- Tranquility

19. For the reasons given at IR321-326, the Secretary of State agrees with the Inspector that there can be no surety that the noise from the rail-related uses would not give rise to significant adverse impacts on the long term health and quality of life of residents and those who enjoy the countryside, which would be conflict with CS Policy NW12. The Secretary of State gives significant weight to this against the proposal.

- Highways

20. Despite the fact that Highways England has raised no objection to the development proposal (IR327), the Secretary of State has given careful consideration to the Inspector's analysis at IR 328-344 and agrees with her conclusions. In particular, the Secretary of State agrees that, for the reasons given in IR331, it would generally be possible to implement the mitigating highways works at Fillongley Junction without straying over third party land; and that the junction improvements in respect of Furnace End junction (IR332) would be a distinct benefit for traffic flows, road users and residents. However, he also agrees that a greater sense of the actual practicality of achieving this road junction improvement would have given more confidence when considering its mitigating effects. With regard to the Green Man Crossroads at Coleshill, the Secretary of State agrees with the Inspector at IR333-337 that the proposed Church Hill diversion route is likely to be more attractive to drivers as congestion increases, thereby removing significant levels of traffic to the point at which the crossroads would be no worse with the development than without.

21. Turning to the provision of public transport, the Secretary of State agrees with the Inspector that, for the reasons given at IR338-341, little weight can be placed on the Travel Plan and the bus service in the package of mitigation measures. Furthermore, for the reasons given at IR342-344, the Secretary of State shares the Inspector's reservations about the practicality of enforcing the terms of conditions 12 in Annex A and 8 in Annex B to the IR in respect of HGV and other traffic movements in and out of the site.

22. Overall, for the reasons given at IR345, the Secretary of State agrees with the Inspector that the residual cumulative impacts of the development would be severe and CS Policy NW10, in so far as it encourages sustainable forms of transport, would be compromised. He considers that the impacts of vehicle movements on the local highway and the other issues identified in relation to sustainable transport weigh heavily against the proposal.

- *Historic Heritage*

23. For the reasons given at IR346-349, the Secretary of State agrees with the Inspector that, whilst the impact of the proposal on the settings of the listed buildings in the immediate locality would be limited, overall the scale, extent of site coverage and degree of activity would be such that it would fail to preserve the settings of the listed buildings. The Secretary of State also agrees that, for the reasons given at IR350-354, there would be limited harm to the significance of Fillongley Conservation Area (IR351) while, although the proposal would not preserve the character and appearance of the Coleshill Conservation Area as a whole, that harm would be reduced by the localised enhancing effect described by the Inspector at IR353. The Secretary of State also agrees with the Inspector at IR355 that no evidence had been provided to suggest that there remains a discernible Forest of Arden which could be considered a non-designated heritage asset.

24. Overall, the Secretary of State considers that the proposal would result in less than substantial harm to the significance of designated heritage assets which he agrees with the Inspector at IR354 has to be weighed against the public benefits of the proposal.

- *Ecology*

25. For the reasons given at IR256-357, the Secretary of State agrees with the Inspector that, in comparison with the baseline of the restored site, the proposed development would damage habitats and features of importance for nature conservation and that CS Policy NW15 would be offended. He affords this harm substantial weight, whilst acknowledging that, in a situation where the Restoration Plan was not considered to be the baseline (IR358), the appeal proposal would offer some improvements to biodiversity.

- *Flooding*

26. For the reasons given at IR 359-361, the Secretary of State agrees with the Inspector that there would be no significant impacts of the proposed development in respect of flood risk or drainage.

Other considerations

- *General need*

27. Having carefully considered the Inspector's reasoning in respect of general need (IR362-377), the Secretary of State agrees with her that only limited weight can be given to the potential allocations in the emerging local plan (IR375). He also agrees that CS Policies NW2, NW3 and NW10 are out-of-date and only limited weight can be attached to them (IR376). Nevertheless, he also agrees (IR377) that the appeal site would go some way to meeting the need for employment land, creating jobs and benefiting the local and national economy; and that this should weigh heavily in favour of the scheme.

- *Rail related need*

28. However, for the reasons given at IR378-381, the Secretary of State agrees with the Inspector that Daw Mill's remote location significantly reduces the weight to be given to the appeal scheme as a contributor to the need for rail related sites (IR382) and, for the reasons given at IR383, he agrees that very little weight should be given to the expression of interest from Cemex.

Planning conditions

29. The Secretary of State has carefully considered the Inspector's analysis at IR227-241, IR339, IR341 and IR343-344 and the recommended conditions set out at the end of the IR and to national policy in paragraph 206 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 206 of the Framework. However, he does not consider that the imposition of these conditions would overcome his reasons for dismissing this appeal and refusing planning permission.

Planning obligations

30. Having had regard to the Inspector's analysis at IR242-244, the planning obligation dated 16 May 2017, paragraphs 203-205 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 204 of the Framework. However, the Secretary of State does not consider that the obligation overcomes his reasons for dismissing this appeal and refusing planning permission.

Planning balance and overall conclusion

31. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with CS Policies NW10 (with regard to encouraging sustainable forms of transport), NW12, NW13, NW15 and NP Policy ANP1; and is not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

32. Given that CS Policies NW2, NW3 and NW10 are out-of-date, paragraph 14 of the Framework indicates that planning permission should be granted unless (a) any adverse impacts of doing so significantly and demonstrably outweigh the benefits when assessed against policies in the Framework as a whole, or (b) specific policies in the Framework indicate development should be restricted.

33. Weighing heavily in favour of the proposal, the appeal site would go some way to meeting the need for employment land, creating jobs and benefiting the local and national economy. The Secretary of State also gives moderate weight to the wider benefits of some of the mitigating highways works at junctions which would reduce delays.

34. Against the proposal, the Secretary of State gives substantial weight to the harm which, by definition, it would cause to the Green Belt; added to which the fact that it would permanently reduce the openness of the Green Belt and would conflict with some of the purposes of designation also attract substantial weight. The Secretary of State then gives further substantial weight to the other harms to the landscape and countryside which the scheme would cause, including the loss of a green field site (in comparison with a baseline position of the restored site). Furthermore, the impacts of vehicle movements on

the local highway and uncertainties relating to sustainable transport, together with the impact of noise, all weigh heavily against the proposal.

35. Paragraph 134 of the Framework is a 'specific policy' for the purposes of paragraph 14 of the Framework, and the Secretary of State has considered whether the identified 'less than substantial' harm to: the significance of Coleshill Conservation Area, the settings of the listed buildings along Church Hill, the Fillongley Conservation Area and the settings of the listed buildings in the immediate vicinity of the appeal site is outweighed by the public benefits of the proposal. The Secretary of State has concluded on the benefits of the proposal in paragraph 24 of this letter. Overall the Secretary of State agrees with the Inspector at IR395 that the benefits of the appeal scheme are collectively sufficient to outbalance the identified 'less than substantial' harm to the significance of the identified heritage assets.

36. Overall, the Secretary of State concludes that the harm caused by the inappropriate nature of the proposal in the Green Belt and any other harm would not be clearly outweighed by other considerations and thus very special circumstances would not exist to justify development in the Green Belt.

37. The Secretary of State concludes that there are no material considerations to indicate that the appeal proposal should be determined other than in accordance with the development plan and that the appeal should be dismissed and planning permission refused.

Formal decision

38. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for the redevelopment of land at Daw Mill Colliery, Arley for a maximum of 24,652 sq m (265,345 sq ft) of built floorspace for employment uses comprising either wholly B2 (General Industry) development /or part B2 (General Industry) and a rail distribution depot for the purposes of maintaining rail infrastructure comprising the stabling of trains and the storage, handling and processing of railway related materials, ancillary open storage areas, associated car parking, service yards, gantry crane, infrastructure and utilities; retention and use of existing infrastructure including rail head and sidings, site vehicular access, grid connection, electricity sub-station and reconfigured surface water drainage infrastructure system in accordance with application ref: PAP/2014/0339 dated 27 June 2014.

Right to challenge the decision

39. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

40. A copy of this letter has been sent to North Warwickshire Borough Council and LAWRAG and Over Whitacre Parish Council and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

Richard Watson
Authorised by the Secretary of State to sign in that behalf

Annex A: SCHEDULE OF REPRESENTATIONS

General representations

Party	Date
Craig Tracey MP & Marcus Jones MP on behalf of Lawrag & Over Whitacre Parish Council	22 January 2018

Representations received in response to the Secretary of State's reference back letter of 25 January 2018

Party	Date
Gateley plc	31 January 2018
E Stirrop on behalf of Lawrag and Over Whitacre PC	31 January 2018
North Warwickshire BC (no comment)	30 January (received 7 February 2018)

Circulation of responses	5 February 2018

Responses following circulation

Party	Date
Gateley plc	7 February 2018
E Stirrop	11 February 2018

The Planning Inspectorate

Report to the Secretary of State for Communities and Local Government

by Frances Mahoney DipTP PGDipTP MRTPI IHBC

an Inspector appointed by the Secretary of State for Communities and Local Government

Date: 1 December 2017

TOWN & COUNTRY PLANNING ACT 1990

NORTH WARWICKSHIRE BOROUGH COUNCIL

APPEAL BY HARWORTH ESTATES

Inquiry commenced on 21 February 2017

Daw Mill Colliery, Daw Mill Lane, Arley, Coventry CV7 8HS

File Ref: APP/R3705/W/16/3149827

File Ref: APP/R3705/W/16/3149827
Daw Mill Colliery, Daw Mill Lane, Arley, Coventry CV7 8HS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Harworth Estates against the decision of North Warwickshire Borough Council.
  The application Ref PAP/2014/0339 is dated 27 June 2014 was refused by notice dated 4 November 2015.
- The development proposed is outline planning application (with all matters reserved for subsequent approval other than access) for the redevelopment of the site for a maximum of 24,652 sq m (265,345 sq ft) of built floorspace for employment uses comprising either wholly B2 (General Industry) development /or part B2 (General Industry) and a rail distribution depot for the purposes of maintaining rail infrastructure comprising the stabling of trains and the storage, handling and processing of railway related materials, ancillary open storage areas, associated car parking, service yards, gantry crane, infrastructure and utilities; retention and use of existing infrastructure including rail head and sidings, site vehicular access, grid connection, electricity sub-station and reconfigured surface water drainage infrastructure system.

Summary of Recommendation: The appeal should be dismissed.

CONTENTS

Preliminary matters

1. The Inquiry sat from the 21 – 24 February, 28 February - 3 March and 16 May 2017, with a site visit[1] on the 3 May 2017.

2. This appeal was recovered on the 6 June 2016 under Section 79 and paragraph 3 of Schedule 6 of the above Act by the Secretary of State (SoS), because the appeal involves a significant development in the Green Belt[2].

3. At the Inquiry applications for costs were made by North Warwickshire Borough Council and Over Whitacre Parish Council & the Leys & Whitacre Residents' Action Group – Rule 6 Party (LAWRAG)[3] against Harworth Estates[4]. These applications are the subject of a separate Report.

4. The description of the proposed development set out above in the bullet points is an amended version of the original description which appears on the planning application form[5]. Over the life of the planning application to address highway issues and with particular interest being shown by Network Rail for use of the appeal site as a concrete sleeper production plant and a rail distribution depot[6], the description of development was amended and amended plans and technical information submitted[7] with the agreement of the then applicant company and the Council[8]. The decision of the Council was taken on 3 November 2015 and the decision notice issued on the 4 November 2015.

5. Since the determination of the application, Network Rail has indicated that the timescales associated with an appeal would not respond to their pressing operational requirements. As a result they are no longer pursuing the appeal site. Consequently the appellant company initially, as part of the appeal process, was promoting the deletion of consideration of the 'or part B2(General Industry) and a rail distribution depot for the purposes of maintaining rail infrastructure comprising the stabling of trains and the storage, handling and processing of railway related materials' element of the appeal proposal[9]. Whilst the decision-maker cannot change the description of development, in the circumstances where the Council and the Rule 6 party are fully aware of the wish not to pursue this element and the fact that the development left for consideration would be something less than was originally proposed, such a deletion would not prejudice

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[1] Both accompanied and unaccompanied.
[2] Direction of recovery letter dated 6 June 2016 – Inquiry Doc 48.
[3] Inquiry Docs 45 & 46.
[4] Inquiry Doc 47.
[5] Employment development 11,072 sq m (119,176 sq ft) of B1 (Business) use, 11,072 sq m (119,176 sq ft) of B2 (General Industry) use, 49,723 sq m (535,216 sq ft) of B8 (Storage and Distribution) use (including retained building 4) and 2.19 Ha (5.4 acres) of open storage, associated car parking, service yards, infrastructure and utilities, and retention and use of existing colliery buildings and infrastructure including existing rail head and site vehicular access, grid connection, electricity sub-station, gatehouse, weighbridge and reconfigured /existing surface water drainage infrastructure system.
[6] Pressing need for a rail distribution depot for producing concrete sleepers for the purposes of maintaining rail infrastructure on the West Coast main line.
[7] Statement of Common Ground (SofCG) Inquiry Doc 1 – para 1.9.
[8] Date of amendment 28 July 2015.
[9] Inquiry Doc 4 - Appellant company's Opening para 4.

anyone by such a change[10]. The effect of such deletions would be a proposal which is essentially for wholly B2 use with ancillary open storage area and retention of the rail head and sidings[11]. The appellant company's position has now changed and they are promoting conditions to seek some restriction on the B2 uses to those related to certain aspects of railway related uses[12]. This matter will be returned to later in the report[13].

The Site and Surroundings

6. The appeal site lies within the valley of the River Bourne, in a countryside setting including arable fields and open pasture. The River, along with Ballard Brook, run in culverts under the site. Mature mixed woodland provides definition to the sloping valley sides and is a prevalent characterising feature in the landscape. Within the immediate landscape there are a number of scattered homes and farm buildings with the small villages of Over Whitacre, Church End and Devitts Green being at a distance. The Birmingham to Nuneaton railway bounds the site to the south partially embanked to accommodate the bridging of Daw Mill Lane and the River Bourne. It also includes currently disused sidings, with most of the track still in place, which link the appeal site to the mainline railway. The strategic road network of the M6 (5.6 km away), M42 (7 km away), M69 (17.5 km away) motorways and the A5 (9km away) are several kilometres away although the appeal site is centrally located to this road network.

7. The appeal site is some 32.12 hectares, corresponding to the former operational land of the Daw Mill Colliery. A further 12 hectares or so is also within the appellant company's land holding and includes mature tree belts and settling lagoons on land in the valley bottom.

8. Daw Mill Colliery closed after a major fire underground in 2013. The impact was such that with the mine shafts having been capped and filled, Daw Mill will not re-open as a mine[14]. A scheme for the restoration of the site following the cessation of coal mining was approved in November 1996[15] under Part 20 (Coal Mining Development by the Coal Authority and Licensed Operators) Class A, Condition A.1 (a)(i) of the Town and Country Planning (General Permitted Development) Order 1995. This was approved in principle and included the removal of all buildings and structures; capping the mine shafts; retention of existing sandstone outcrops; low mounding to provide topographical variety; reinstatement of water courses; provision of public access; placing of soils and soil making materials; extensive woodland and shrub planting; creation of agricultural grassland; and artificial heathland habitats. In essence the aim of the Plan was the restoration of the site to the land uses prior to the commencement of the colliery use, including the removal of the culverts. Full details of the restoration scheme still need to be agreed. The Restoration Plan is a matter which I will return to later in the report.

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[10] Having regard to the principles established in Bernard Wheatcroft Limited v Secretary of State for the Environment (1980).
[11] Council's Statement of Case para 1.7 + Pre-Inquiry Note - Inquiry Doc 50 – section 7.
[12] Annex A – Condition 1.
[13] Paras 246-255
[14] Common ground between the parties.
[15] Inquiry Doc 44 – para 36 d.

9. Following the closure of the Colliery the majority of the surface buildings have been cleared and the mineshafts capped and filled. It appears derelict although the few remaining buildings, along with the tall lighting columns, retaining structures, sidings and the Memorial Garden represent the ghosts of the workings which were once Britain's biggest coal producer and the last remaining colliery in the West Midlands.

10. Across the site, responding to the change in levels within the valley, are two distinct flat, hardsurfaced platforms[16]. The expanse and wider extent of these hardsurfaced areas are the predominant characterising feature of the appeal site. Daw Mill Lane, in the vicinity of the rail bridge, along the south eastern boundary of the site is at a significantly higher level than the cutting of the closest siding and the lower platform of the appeal site[17].

11. The closest residence is Daw Mill Cottage on Daw Mill Lane (400 metres). Slowley Green Farmhouse on the Tamworth Road (B4098) is some 855 metres away to the south-east and Over Whitacre House (Grade II listed building), located off the Nuneaton Road (B4114) to the north-east, about 530 metres away.

Planning Policy

12. The Development Plan includes the North Warwickshire Core Strategy (CS) adopted in October 2014, the saved policies of the North Warwickshire Local Plan (NWLP 2006) (July 2006) and the Arley Neighbourhood Development Plan (NP) made December 2016. The SofCG[18] at Section 5 page 30 sets out the various Development Plan policies highlighted by the parties for consideration.

13. The Council is currently engaged in the production of a new local plan (LP) for the Borough. It is essentially an amalgamation of the CS, the saved policies of the NWLP 2006, the draft Development Management Plan and the draft Site Allocations Plan. The latter two documents were initially intended to support the CS and to form the Development Plan for the Borough. However, the Council in February 2016 took the decision to merge all these plans to form the new LP. The period of coverage of the new LP will be to 2031[19]. This was the subject of consultation until 31st March 2017. It will be submitted for examination at the beginning of 2018. However, whilst the production of the LP is advancing at a pace it has yet to reach adoption and therefore, I can give its policies only limited weight in the consideration of this appeal.

Matters not in dispute[20]

14. In relation to the planning considerations, the Council and the appellant company are in agreement that:

- the appeal site lies within the Green Belt;

[16] Generally the appeal site falls from higher ground in the north and east towards lower ground to the south and west.
[17] Some 3-4 metres height difference – source SofCG Inquiry Doc 1.
[18] Inquiry Doc 1.
[19] The CS covers a period to 2029.
[20] SofCG Inquiry Doc 1.

- the proposal is inappropriate development in the Green Belt and so paragraphs 87 and 88 of the Framework are engaged;
- the proposal would have no adverse impact upon the following Green Belt purposes:
  i. to check the unrestricted sprawl of large built-up areas;
  ii. to prevent neighbouring towns merging into one another;
  iii. to preserve the setting and special character of historic towns;
- the proposal would not have a detrimental impact on the safe and efficient operation of the local highway network, because suitable mitigation is identified – these matters were agreed with the Highway Authority (HA)[21]. However, whilst the Council supported the general position, concerns in respect of the implementation of the agreed off-site mitigation measures were raised. LAWRAG, on the other hand, did not support the agreed position, part of their case being that the proposal would unacceptably harm the safe operation of the highway network and that the presented mitigating works are not achievable. Therefore, these are matters which will be returned to later in the report;
- ground investigations to assess contamination and approval of subsequent remediation measures and verification of their completion can be addressed by condition;
- there is no residual heritage harm from the appeal proposals. This is not the position of LAWRAG so this matter will be addressed in the report;
- site specific proposals secured through subsequent reserved matters can assist in lessening the effect of landscape impacts. The detailed landscape proposals set within the landscape parameters confirmed at reserved matters can be secured via condition;
- the majority of the appeal site falls within Flood Zone 1[22] with the southern boundary in Flood Zones 2 and 3[23]. However, the appeal site is elevated several metres above the original flood plain and the River is in culvert.

The Case for appellant company[24]

15. The Daw Mill Colliery site represents a legacy of the declining coal industry. It presents the challenge of a large area of disused and increasingly derelict industrial land in the heart of the Green Belt. There is no reasonable prospect of its restoration by any means and it is poorly connected by road transport.

16. However, the site is ripe for redevelopment and it has the advantage of a functioning signalised connection to the main railway network, together with sidings. The appellant company proposes to be bound by conditions which would confine the use of the site to a primarily railway based usage in order to bring

[21] Warwickshire County Council.
[22] Low probability of flooding.
[23] Medium to high probability of flooding.
[24] Inquiry Doc 44.

forward one of three forms of railway related development[25]. These are, either a rail manufacturing and construction site, a train maintenance facility or a train manufacturing facility. It is the intention to utilise the particular feature of this site represented by the existence of a live rail connection. Whilst the commercial imperatives of Network Rail may have resulted in them seeking another site, they are not the only potential occupier[26].

17. It is accepted by all parties that the site is simply not commercially suitable for a road served development. Whilst the basic description of development no longer includes reference to rail related uses, the proposed conditions which would be attached to any permission would have the effect of controlling the nature and effects of the development[27]. In this way the planning permission sought through this appeal could never give rise to an unrestricted B2 permission as alleged by the Council. Instead, the operation of the permission will be fundamentally constrained to a rail-served development by the conditions[28].

18. Consequently for the decision-maker the basic questions are whether or not the conditions are sufficient to achieve the objective of bringing about solely a rail served development and whether or not some form of B2 development which did not comply with those conditions could ever lawfully take place.

19. The Council then suggested that such conditions could not be relied upon as in the outcome of the Birch Coppice Business Park appeal[29]. This case involved the over-turning of a condition which required the provision, maintenance and utilisation for the full life of the development of a rail link into the site as the primary means of receiving goods. The appeal was allowed. There was no suggestion that the condition was not enforceable. It turned on the facts which were essentially that the Business Park was a well-established site next to the M42. It was entirely suitable for supply by road and so not surprising that the appeal was allowed.

20. This appeal proposal is in complete contrast as a rail served development. The location is fundamentally commercially unattractive for a road based scheme.

21. In any event any application to modify or remove a condition would be the subject of a separate application considering the planning merits of the case. The case that the proposed conditions are uncertain or unenforceable and fail to satisfy the tests in the Framework is not demonstrated.

22. Any scheme which sought to move away from the rail served development, constrained by conditions and the parameters plan, which is promoted in this appeal, would need to be the subject of an application for planning permission during which the full planning merits, assessed at the time, of any other development would be considered. Such consideration cannot properly form any part of this decision for the SofS.

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[25] Annex A – Condition 1.
[26] Inquiry Doc 37.
[27] It is the developers who have been proactive in bringing forward such conditions.

[28] NWLP Policy TPT5 explicitly endorses the use of planning conditions to ensure that the rail use of the site is maximised.
[29] Brown Appendix 16 – APP/R3705/A/05/1189533.

23. Accordingly, the only basis upon which these proposals can be considered is for a rail served development in accordance with the three potential identified rail connected uses. This appeal is in respect of development as a rail and manufacturing and construction site, a train maintenance facility or a train manufacturing facility.

Need for the proposal

24. There is a pressing and current need for rail manufacturing facilities and maintenance and track facilities to support the expansion of rail usage[30]. With passenger volumes increasing, along with demand, it is expected that some 6000 new railway carriages will come into service by 2020. However, there is a deficiency in rail manufacturing capacity in the UK.

25. The appeal site due to its central UK location with ready links to the main rail network, including the likely route of HS2, the recent upgrade of track and signalling, the immediate availability of train paths to and from the site and of the site itself, along with its railway connection, are all factors which make Daw Mill an attractive location for meeting the identified need.

26. The appeal site is one of only three in the region that is suitable for the rail related development proposed and it is the only one to have definite, immediate availability[31].

27. The absence of a development partner or end-user does not undermine the case of a pressing need for the appeal site to come forward for railway related development. The refusal of planning permission resulted in the interest of Network Rail falling away. With this background it is not surprising that, initially, no interest from other suitable users has been shown. However, towards the end of the Inquiry a letter from CEMEX did indicate a continuing interest[32].

28. The evidence of the appellant company[33] in respect of need was essentially unchallenged. Sites such as Daw Mill are necessary to support an expansion of railway infrastructure which is a matter of regional and national importance. The appeal site is suitable, available and deliverable in the short term and has an operating mainline rail connection.

Previously developed land (PDL)

29. The definition of PDL[34] excludes land that has been developed for minerals extraction where provision for restoration has been made through development control procedures.

30. It is the appellant company's view that the appeal site is defined as PDL. This position is dependent upon the legal position to the effect that a restoration scheme[35] which has been agreed in outline for the site is of no legal effect.

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[30] Supported by Central Government in policy terms.
[31] Source - Wide ranging study of Mr Clarke – Clarke proof.
[32] Inquiry Doc 37.
[33] Mr Clarke.
[34] Annex 2 to the Framework.
[35] All that has been approved is an outline restoration scheme which sets out, in the broadest terms, the framework for a more detailed restoration scheme which has never been agreed and does not exist in any draft form.

31. This matter then turns upon the meaning of those provisions of the General Permitted Development Order 1995 (the Order)[36] which deal with the grant of planning permission for, and the requirement for restoration schemes concerning, coal mining operations.

32. The matters for consideration amongst others[37]are as follows:

- Can Daw Mill Colliery be described as 'a mine started before 1 July 1948'?[38];
- Article 1(2) of the Order defines the term mine as any site on which mining operations are carried out – directs attention to the surface manifestations of mining operations.

33. In July 1948 there was no physical manifestation of a colliery at Daw Mill and no evidence that in 1948 even any underground workings were in the vicinity of the Daw Mill site. The first development which took place at Daw Mill, with the benefit of planning permission granted in 1955, was for the sinking of a ventilation shaft between 1957 and 1959 for the benefit of Kingsbury and Dexter workings. Following further engineering works the shaft was adapted for the production of coal in 1965. The legally required mine manager for Daw Mill was not identified until 1966[39].

34. Prior to 1965, workings accessed from the Kingsbury and Dexter collieries worked the coal in seams which were in proximity (both horizontal and vertical) to those subsequently worked by Daw Mill. Seams are accessed to be mined from various separate locations and it is of course possible to link these locations by tunnels and ventilation shafts. It is clear from the evidence that not only Kingsbury, Dexter, Daw Mill but also Baddesley Colliery were at various times all connected in one way or another. However, they were not a single mine. They were separate mines operating within the same coalfield and accessing from entirely different and separate locations parts of the same seams.

35. Daw Mill only became a colliery in its own right following the sinking of the second shaft in 1965. Mr Blenkinsop confirmed that the miners would regard themselves as having worked either at Dexter or Daw Mill Colliery and did not consider themselves as working at some form of composite, linked colliery[40].

36. The advanced case of the Council and of LAWRAG is that mining operations below Daw Mill prior to 1965 were an extension to an existing mine. The Order does not accommodate such a concept. The focus is entirely on whether a mine, with a definition which focuses upon surface manifestations, was there on 1 July 1948. In this case there was no such mine at Daw Mill. In addition, the designated seam plan, within which the workings of any given mine have to be identified[41],

[36] Now superseded by the 2015 re-enactment of the Order, but it is still relevant for the purposes of this case.
[37] See Inquiry Doc 44 paras 37-54.
[38] Class A of Part 20 to Schedule 3 to the Order.
[39] Listing in Guide to the Coalfields.
[40] Evidence under XX.
[41] Have to be deposited with Coal Authority

covering Daw Mill is dated September 1993[42]. There is no earlier plan and this plan only covers Daw Mill, not any extension to other workings.

37. The seam plan shows the maximum extent of the coal seam or seams that could have been worked from shafts or drifts existing at a mine at 13 November 1992, those being the shafts at Daw Mill. Neither Dexter nor Kingsbury mines had designated seam plans. They had already closed. Therefore, permitted development rights attributable to Daw Mill could not have arisen on the basis of some suggested "connection" or "extension" to those collieries.

38. Therefore, Daw Mill Colliery only came into existence in 1965. It was not in existence on 1 July 1948. As such, the Daw Mill Colliery did not ever fall within the scope of Class A, Part 20 so as to have the benefit of deemed planning permission by way of permitted development rights.

39. In those circumstances, the outline restoration scheme, which relates to a surface area[43], is of no legal effect. This is because the Minerals Planning Authority which received and approved it had no legal power to do so. It also has no power to enforce the restoration scheme, there being no permitted development. In these circumstances an effective method 'through development control procedures' to bring about a restoration of the scheme does not exist.

40. It is accepted that all the parties have to date conducted themselves on the basis that Daw Mill did benefit from permitted development rights, such that the restoration scheme was valid. However, this is irrelevant in law. Estoppel has no application in the circumstances of the current case and the previous understandings and dealings of the parties are irrelevant.

41. Accordingly, this land must be regarded as PDL and the restoration scheme is of no legal effect and could never be enforced.

42. However, were it to be concluded that the appeal site was not PDL, the restoration scheme would therefore be enforceable. It could only be considered as a fallback position i.e. the difference in effect between the impact of the appeal scheme taking place and the impact of the restoration scheme taking place. However, this would only be relevant if it was found that there would be a realistic possibility of the restoration scheme actually occurring in the event that permission was refused for the appeal proposals.

43. The cost, difficulty and inherent disturbance in bringing about the restoration scheme places in doubt whether it could ever actually come about, even if the County Council sought to enforce it. This is particularly relevant taking into account the fact that even after four years of the colliery use ceasing the County Council has taken no steps to enforce a restoration scheme.

44. Therefore, the role of the restoration scheme as a back-up does not exist. Nonetheless, even if it is concluded that the land is not PDL and the restoration scheme is enforceable, the effect of the scheme as against a baseline of the existing, despoiled state of the site should be the basis for considering the evidence.

[42] Inquiry Plan A.
[43] In this case, in the main, only the appeal site.

Approach to the case

45. With the previously developed status of the land established, the appellant company's primary case is that the development is in accordance with the Development Plan as a whole and is thus, in line with both section 38(6) and paragraph 14 of the Framework, permission should be granted without delay.

- *Compliance with the Development plan – Environmental issues*

Landscape[44]

46. The landscape is of only local value and comes nowhere near the threshold to constitute a "valued landscape" within the meaning of paragraph 109 of the Framework. The topography of the area, where the appeal site sits at the bottom of a shallow valley, the extensive degree of natural screening, together with the relative paucity of receptors ensures that the impact of the scheme in both landscape and visual terms would be limited, being appropriately characterised as moderate to minor adverse. Whilst there would be lighting at the site, an appropriate lighting scheme can be conditioned which, given the ability to use directed and/or intelligent lighting and with appropriate controls on brightness, can ensure no more than moderate adverse effects even when the site were to be operational at night.

Noise[45]

47. It is not the purpose of noise policies within the Framework to ensure that no resident ever hears the sound from a development or that no resident is ever disturbed by noise. The purpose of noise policy is to ensure that significant adverse noise effects are avoided but adverse effects are not a reason for an automatic refusal of permission but simply a matter to be taken into account as part of the balancing exercise. Weight needs to be given appropriately in the planning balance to the desirability of sustainable economic development. In the assessment of the weight it must be remembered that in this rural location only a limited number of residents would be affected. That effect would be limited by a variety of mitigation measures[46].

48. One of the criticisms of the noise modelling was that locomotive modelling was based on operations some 580 metres along the sidings from Daw Mill Cottage rather than at the closest point to the dwelling. However, the modelling included the locomotive being present on the site and in operation at idling power for 100% of the time. This is wholly unrealistic as the frequency of trains was only likely to be up to 5 train visits per night. There would also be widespread use of engine cut-out mechanisms to prevent stationary locomotives from running their engines for more than a few minutes in an idling position. It was established that the total sound energy received by Daw Mill Cottage from a locomotive approaching right up to that cottage and then turning off its engine either automatically or manually, then starting up and departing in due course, would

[44] The evidence of Mr Grimshaw - landscape and visual impact assessment – was not challenged by the parties and no other expert landscape evidence was submitted to the Inquiry.
[45] Inquiry Doc 44 – paras 73 – 107.
[46] All the noise prediction values are based upon the scheme being in operation without any mitigation at all being in place.

be less than the sound energy modelled as being received by Daw Mill Cottage from a locomotive stationery, further away running on idle power for 100% of the time[47]. In addition, it is likely for operational reasons that the train would reverse into the sidings. As a result the locomotive element would be at a distance to Daw Mill Cottage reflecting the 580 metre separation modelling distance. Consequently, the modelled effect of the locomotive on Daw Mill Cottage is likely to be far greater than will occur in reality since the locomotive is correctly placed but is assumed to be operating at a wholly unrealistic 100% of the time.

49. In respect of the manoeuvring of trains, particularly relating to the manufacturing of railway vehicles options, the power of the type of diesel locomotive model was such that low-speed manoeuvring produced almost exactly the same amount of noise as idling. Also only low speeds would be achievable within the sidings[48].

50. Even on that unmitigated basis, with respect to each and every receptor, and in each scenario, the following can be observed[49]:

a) During the daytime and evening there are no exceedances at all of the threshold for significant adverse impact of an increase over existing baseline of 10 dB suggested in BS 4142.

b) At night, there is a suggestion of a +10 dB increase at Overbarns Cottage and Wagstaff Farm (in all three scenarios) and at Daw Mill Cottage (in one scenario). However, in each and every scenario the absolute level of noise will be below both the threshold for the onset of sleep disturbance effects and the threshold for onset of moderate annoyance which are set out in World Health Organisation guidance.

c) The effects also need to be understood, as is emphasised in the updated version of BS 4142, in this context. Whilst the appellant company places little reliance generally upon the previous existence of the Colliery, it is nevertheless relevant to the context of the noise environment at this site that within very recent memory considerably higher levels of noise than those which are predicted from this development were being experienced by local residents.

51. Therefore, it is concluded that in any of the three scenarios there would be an adverse but not significant impact due to noise.

52. In respect of a single instantaneous noise effect[50] the modelling of the noisiest event Mr Stephenson had encountered in an industrial/freight context[51]demonstrated that for each receptor the noise level was below that where sleep disturbance would occur.

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[47] Mr Metcalfe in XX.
[48] Mr Stephenson in XX.
[49] Based on summarised results within Mr Stevenson's proof - table 8.2, 8.4 and 8.5 – unmitigated figures.
[50] Mr Stephenson's proof – table 8.6.
[51] That being dropping of a large container onto hard standing from a crane or reach stacker – modelled in the open air area where such movements would be likely to take place.

53. Based on the expert evidence of Mr Stephenson on any view the noise generated by this development would be in accordance with paragraph 123 of the Framework. The proposal is also supported by robust noise conditions[52] which include strict noise limits which are capable of being complied with and would provide full protection to nearby residents.

Tranquillity[53]

54. Paragraph 123 of the Framework sets out that planning policies and decisions should aim to identify and protect areas of tranquillity which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason.

55. The Landscape Character Assessment for North Warwickshire[54] notes that in landscape terms the appeal site is a rural and tranquil area. There are no policy references to tranquillity, nor any suggestion that this is an area of tranquillity to which protection should apply.

56. The tranquillity assessment produced by Mr Bentley was based upon a wholly unproven and experimental methodology. Mr Bentley himself confirmed under cross-examination, it had not been peer reviewed in any meaningful way. This approach is entirely untested.

57. This is an area through which a railway line, extensively used, runs. The trains are required to sound their horns as they pass the site. A busy secondary road also runs through it and on frequent occasions the area is affected by disturbance from aircraft departing from Birmingham airport.

58. Therefore, it is inconceivable that this area could be identified, within the terms of the Framework as an area of tranquillity which is prized for its recreational and amenity value because of its tranquillity. Whatever value may be attributed to this area by local people for recreation or amenity, there was no evidence to say that was because of any particular tranquillity[55].

59. The area of the appeal site is no more tranquil (and probably, given the railway and the flight path, less tranquil) than very many areas of non-urban England. If it is really to be the case that this area is to be protected under paragraph 123 of the Framework then vast swathes of the English countryside will simply be immune from development on such grounds. This aspect of the Council's case[56] should be given no weight.

Ecology

60. The appeal proposal would lead to various ecological enhancements, all to be secured by an ecological management plan to be secured by condition. The

[52] Annex A Conditions 29, 30 & 31 – Annex B Conditions 23, 24 & 25.
[53] The issue of tranquillity was not raised by the Council until the submission of Mr Metcalfe's proof.
[54] CD21.
[55] The information obtained as to the value local people attached to the land came wholly from representatives of LAWRAG, who must be regarded as at least potentially partial, given their interest in the matter.

[56] Submitted late in the process.

illustrative Habitat Management Plan shows for example, new areas of woodland planting both to reinforce the existing boundaries and within the site, together with the improvement of the existing woodland around the perimeter. There would be the retention and improvement of areas of grassland, together with their management by hay cuts.

61. When considered against the current condition of the site, it was common ground between the parties that the scheme produces a net gain for ecology[57].

62. Bats were the only main area of contention and the initial 2014 survey indicated that the remaining buildings on the site being vandalised and set in an exposed location of predominantly concrete, with consequently no suitable foraging, gave the site a low potential for bat roosts. The site was re-surveyed in 2016 and the earlier findings were confirmed. An emergence survey would be the final step and could be required by condition.

63. In assessing the ecological impacts a conclusion that the appeal site is not PDL does not necessarily lead to a need to assess the proposal against some hypothetical baseline of a restored scheme[58]. It is logical to assess the scheme against what is actually there now, because what is there now is what will be lost in the event permission is granted and the scheme proceeds.

Traffic

64. The Council maintains no case with respect to the impact on the highway network of any traffic generated by the development. Concerns that the development would produce HGVs travelling to and from a location which is not well served by the highway network was still maintained but as a generalised point. However, LAWRAG did promote a case against the scheme on highway grounds.

65. The case against the proposal should be considered in light of the following factors.

- Paragraph 32 of the Framework sets out that 'Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe'.
- The full supporting transport assessment (TA) shows that subject to certain minor matters of mitigation, the scheme has no adverse effect on the highway network. In addition, the TA was based upon a scheme which was entirely HGV served. No use of the rail sidings was taken into account. As the scheme is now proposed to be primarily rail served and conditions imposed to ensure that it is so, the HGV trip generation figures in the TA are much higher than would ever actually occur in the reality of the proposal.
- The County Council as Highway Authority was fully consulted and raised no objection to the scheme.

66. In general the objections on transport matters were points of detail which as an outline application could be resolved at the reserve matters/design stage. These

[57] In compliance with LP Policies NW12 & NW15.
[58] The true state of any restoration is wholly impossible to determine.

details, particularly those relating to the mitigation scheme, would be the subject of a series of Section 278 agreements with the Highway Authority.

67. LAWRAG accepted that the appeal scheme[59] would generate considerably less HGV movements than one including B8 use[60]. They were concerned that the plans of mitigating works to junctions where a departure from theoretical best practice due to pre-existing situation on the ground had not been 'signed off' per se. However, this fails to take into account that the HA raising 'no objection' was, in itself, a sign off appropriate at this outline stage of the scheme. There is no doubt that the mitigation can be delivered.

68. There is nothing to suggest that anything approaching a severe residual impact would occur. Indeed there would be a slight beneficial impact on the overall functioning of the highway network due to the mitigation measures.

Heritage

69. Three matters are promoted by LAWRAG as impacting on Heritage Assets. The first is any impact on Over Whitacre House[61]. There would be some inter-visibility with parts of the appeal site. However, the extent of the parkland and setting of the house only extends up to Tamworth Road. The proposed changes would not impact on the significance of the listed building.

70. The second matter is any effect on the Forest of Arden. The extent or even existence of the Forest in the locality could not be identified nor its significance defined. Therefore no impact could be identified.

71. The third matter is any impact on the relationship between the local church spires and the appeal site. The basic topography of the landscape, where the churches are set upon hilltops, and the appeal site lies in the valley bottom, does allow for some inter-visibility between features, but this does not amount to an adverse impact.

- *Compliance with Development Plan – locational issues*

72. The appellant company accept that the scheme does not comply with the settlement hierarchy set out in CS Policy NW10[62]. However, when the CS was drafted and adopted it was anticipated that Daw Mill Colliery would continue as a functioning colliery for the duration of the plan period. The closure of the Colliery, and therefore the sudden availability of a large area of developed land with a rail connection, was unexpected and was not taken account of in the CS.

73. The CS was adopted on the proviso that there would be an early review to deal with issues of increased need for housing and employment land. The supporting evidence to the CS points to an employment land gap but it was suggested that some more suitable sites are available to meet the need[63]. Nonetheless, the

[59] Primarily rail access.
[60] The basis of the original trip generation figures – accepted by Mr Benison in x-examination.
[61] Grade II.

[62] CS Policy NW10 (CD2 Page 36) is purely a locational policy and does not deal with the environmental consequences of the location of a development in this place. The settlement hierarchy has been overtaken by events and the hierarchy is, therefore, considered to be out-of-date.
[63] Inquiry Doc 7.

Council accepted that the CS does not accommodate regional employment needs. It is on this basis that the breach of a settlement hierarchy policy which is accepted as being out-of-date cannot carry great weight.

74. This proposal would provide sustainable economic development, being environmentally acceptable, and meeting a wider regional, even national need for rail-served sites to support the expansion and greater utilisation of the national rail network[64]. In so doing, it supports in a direct way overall Government objectives for the expansion of a sustainable mode of transport for goods and people. The site is available and deliverable.

75. Even in the face of this identified breach the scheme complies with the Development Plan as a whole being a factor of huge weight in support of the proposal.

76. That said the provisions of paragraph 14 of the Framework, which set out the basis upon which decision-making is made within the context of the presumption in favour of sustainable development, must be considered. In the context of paragraph 14 the relevant Development Plan is absent and silent in respect of this particular type of development.

77. Relevant policy is out-of-date particularly in respect of the pressure for new land to satisfy wider than regional needs for employment sites. As a result the tilted balance in favour of development is engaged[65].

78. Looking at the benefits these include 50-500 highly skilled jobs, an area of despoiled industrial land would be returned to beneficial use, and wider highway and ecological improvements delivered[66]. They command very considerable weight in the weighing of the decision.

Harms

79. The appeal site lies in the Green Belt, and would represent inappropriate development. There is a degree of definitional harm to the Green Belt along with any other harm, which must be weighed in the balance.

80. The appeal site, being a large area of despoiled hardstanding, cannot be considered to be open countryside which performs a particular function in maintaining the purposes of the Green Belt. The proposal would have no greater impact upon the purposes of the Green Belt than the existing land. The development would not affect the ability to check the unrestricted sprawl of large built-up areas, being located well away from a settlement[67]. The same is true of preventing neighbouring towns merging into one another[68].

[64] The emerging LP is explicit that it does not deal with any of the wider than local need for large sites.
[65] Supreme Court in the *Suffolk Coastal/Hopkins Homes* case [2017] UKSC 37 – Inquiry Doc 49.
[66] Rolinson proof para 11.67 and following.
[67] 1st purpose of the Green Belt – para 80 of the Framework.
[68] 2nd purpose of the Green Belt.

81. Further, the fact of including buildings on a pre-existing piece of hardstanding could only conceivably result in a minimal impact upon safeguarding the countryside from encroachment[69].

82. There is no effect on the setting and special character of a historic town[70], nor impacts on attempts to assist with urban regeneration[71]. Consequently, there would be no harm to the purposes of including land in the Green Belt.

83. In respect of harm to openness the starting point is that the land is an area of very extensive decaying hardstanding in an area where, in recent memory, large quantities of buildings existed, being an operational mining unit in the Green Belt. The well screened valley bottom location would limit the landscape and visual impact.

84. Any focus on volumetric increases/calculations is not the be all and end all[72]. The Turner case[73]makes plain that the concept of openness is a holistic, multi-layered concept which encompasses aspects of visual and landscape context as well as simple calculations of volume. On this basis and taking into account the permitted Hams Hall development, a large similar employment site in the Green Belt, the impact on openness of the proposal would be limited.

85. Under paragraph 14 of the Framework the harm caused by the development must "significantly and demonstrably" outweigh the benefits[74].

86. The only identified harms would be the breach of locational planning policies which are seriously compromised by being out of date and unable to accommodate all the demands for employment land which now exist, and the limited harm to the Green Belt.

87. By contrast the benefits of the scheme would be extensive with a large area of derelict land being brought back into a beneficial use to serve a pressing need in support of national objectives for sustainable development, along with a number of resultant environmental benefits.

88. The limited harm cannot significantly and demonstrably outweigh the very considerable benefits. Under the first limb of paragraph 14, permission should be granted.

Very Special Circumstances

89. However, it is acknowledged that as the site is within the Green Belt the second limb of paragraph 14 applies[75]. Inappropriate development in the Green Belt is not restricted if Very Special Circumstances (VSC) can be established. In this case VSC do exist (summarised as follows):

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[69] 3rd purpose of the Green Belt.
[70] 4th purpose of the Green Belt.
[71] 5th purpose of the Green Belt.
[72] The Council's approach is that some large buildings would be allowed as part of the proposal.
[73] CDs 5 & 8 – Folder D.
[74] The tilted balance.
[75] Footnote 9 - specific policies in the Framework indicate development should be restricted – Green Belt.

- brings back into beneficial use a large area of derelict land in the Green Belt - rail related development for which the appeal site is particularly well suited and for which there is a pressing national need;
- brings a considerable number of highly skilled jobs;
- brings about environmental benefits; and
- supports a central objective of national planning policy to improve and expand the rail infrastructure so as to support use of the railways which is a most sustainable form of transport for both people and goods.

90. These matters represent VSC capable of clearly outweighing the relatively limited harm to the Green Belt in this particular case.

91. The Council has relied upon the decision of the SofS with respect to VSC in the Colnbrook Strategic Railfreight interchange case [2017] EWHC 947 (Admin)[76]. The balance between need and harm to the Green Belt is simply not the same as in the Daw Mill case. In the Colnbrook case, not only was there harm to the Green Belt, but that particular part of the Green Belt was regarded as being particularly sensitive as it fell in a strategic gap, a strategic gap which was itself protected by specific planning policy. The pre-existing area of hardstanding of the Daw Mill site does not offend any purposes of the Green Belt and performs no special function with respect to maintaining gaps between settlements or preventing urban sprawl. The balance with respect to VSC is entirely different.

Conclusion

92. The appellant company promotes conditions which would direct the development explicitly at a rail served user[77] securing substantial controls in this regard. Mr Brown acknowledged that the employment land opportunity here is a rare one- a rail served site - one which should carry substantial weight[78].

93. VSC do exist in this case and with Green Belt policy not being offended or the second limb of paragraph 14 of the Framework there is no basis for refusing planning permission.

The Case for the Council[79]

94. The SofCG[80] sets out the various amendments that the original planning application went through. However, the Council determined the proposal on the basis of the following development:

Outline planning application (with all matters reserved for the subsequent approval other than access) for the redevelopment of the site for a maximum of 24,652 sqm (265,345 sqft) of built floor space for employment uses comprising either wholly B2 (General Industry) development or part B2 (General Industry) and a rail distribution depot for the purposes of maintaining rail infrastructure comprising the stabling of trains and the storage, handling

[76] Council's closing Inquiry Doc 43.
[77] Any other form of B2 use would not be permitted.
[78] Report to planning committee dealing with planning application - page 4/19.
[79] Closing of the Council – Inquiry Doc 43.
[80] Inquiry Doc 1.

and processing of railway related materials: ancillary open storage areas, associated car parking, servicing yards, gantry crane, infrastructure and utilities, retention and use of existing infrastructure including rail head and sidings, site vehicular access, grid connection, electricity sub-station and reconfigured surface water drainage infrastructure.

95. This change was to accommodate Cemex as the potential operator for the rail distribution depot. They subsequently withdrew their interest in the site. Prior to the Inquiry no other operator came forward making a credible rail based case difficult to justify. As a result the nature of the proposal has changed again with the rail distribution depot reference removed. This has resulted in the position that essentially the proposal is wholly B2 use with ancillary open storage area and retention of the rail head and sidings[81]. The Inspector clarified in the Pre-Inquiry Note[82] that the Inquiry would proceed on the basis that essentially the proposal is wholly B2 use with ancillary open storage area and retention of the rail head and sidings.

96. However, at the Inquiry conditions were then promoted by the appellant company which would limit the use of the site to train manufacturing, repair and maintenance of rail stock and assets as well as the manufacture of rail, plant and equipment. This would have the effect of presenting a use which had not been the subject of consultation. The only evidence of a specific rail related user being interested in the site is a letter from Cemex[83]. This 11th hour letter was not the subject of cross-examination and so can be given little weight as an indication of a firm future user.

Development Plan

97. The CS is not out-of-date but is in accordance with the Framework and was found sound. Its spatial policies apply and it provides for development on a similar hierarchy to that in the 2006 Local Plan.

98. The Council accept some of the unmet housing needs of the city of Birmingham will need to be met in North Warwickshire and there is a commitment from the Council in this regard. An updated LP is the response to accommodating some 3,000 additional homes. There is also a recognised need within Warwickshire that some of the needs of Coventry will need to be meet elsewhere. This may well increase the amount of employment land required, but this is an unknown[84]. The emerging LP seeking to address these needs beyond the Borough boundary, should not be considered as a signal that the CS is out of date. It meets both the housing and employment needs of North Warwickshire.

99. Fundamental components of the CS are protecting the Green Belt, locating new development according to the settlement hierarchy and protecting the natural environment[85].

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[81] Deletion of the following from the description of development-*or part B2 (General Industry) and a rail distribution depot for the purposes of maintaining rail infrastructure comprising the stabling of trains and the storage, handling and processing of railway related materials.*
[82] Inquiry Doc 50.
[83] Inquiry Doc 37.
[84] For investigation through the local plan process.
[85] CS Policies NW1, NW2, NW3, NW10, NW12, NW13 & NW15.

100. The appeal site location does not feature in the settlement hierarchy[86] and large scale development should be focused on the main towns within the Borough. Such a rural location should only be considered for development necessary for agriculture, forestry or other uses requiring such a location. The proposed industrial estate does not require a rural location.

101. This proposal lies within the Green Belt and consequently is contrary to CS Policy NW3. As the CS policies are not out-of-date the presumption in favour of sustainable development does not apply particularly as the specific policies in the Framework indicate that development should be restricted[87].

102. Even, were the appeal site to be determined to be brownfield land, the inappropriate location of the new large scale industrial development would cause a tension with CS Policy NW10[88].

103. There is an emerging LP incorporating a draft Site Allocations Plan (to allocate sites for housing, employment and other land uses, and to identify these and other planning designations, such as open space, on the Proposals Map); and a draft Development Management Plan (which would include more detailed local policies for the management of development).

104. The LP was the subject of consultation in March 2017 and it is intended to submit it for examination by the end of the year. The production of this plan is driven by the need to address the housing development needs of the Cities of Birmingham and Coventry and they should not be a signal that the recently adopted CS is out-of-date. It is not out-of-date in terms of meeting the housing or employment needs of North Warwickshire. The emerging LP will seek to meet the needs of other parts of the West Midlands.

105. Those needs include the provision of employment land for the use of the wider region as part of its duty to cooperate. However, with Tamworth Borough Council being the only request for employment land provision, Daw Mill would not be well located for such employment land, there being other superior site elsewhere[89].

106. The Council presented position is that there is a supply, including 86 hectares as draft allocations, representing over 30 hectares above the current local requirement. This goes some way to meeting the wider regional needs.

107. The Council recognises the importance of delivering employment land[90]. Land has been allocated for B2 uses aligned to the northern technology and enterprise site[91]. In addition, Hams Hall, in the Green Belt, has been supported with an understanding of a rail-served site. However, it must be in a suitable location.

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[86] CS Policy NW2.
[87] Footnote 9 – Green Belt policy – a fundamental policy Supreme Court judgement Suffolk Coastal District Council v Hopkins Homes Ltd and another Richborough Estates Partnership LLP and another v Cheshire East Borough Council case - para 61 *[2016] EWCA Civ 168, [2015] EWHC 132 (Admin) and [2015] EWHC 410 (Admin)*-Inquiry Doc 49.
[88] Supports the use of brownfield land, but only in the context of appropriate locations.
[89] Inquiry Doc D.
[90] Prologis at Hams Hall.
[91] Aimed at research and development particularly in relation to the transport industry (greenfield).

Hams Hall is rail-served and on the strategic road network. The appeal site is in a rural location with poor road connectivity. Being rail-served is not, in itself, sufficient justification for a grant of planning permission.

108. The proposal would neither protect nor enhance the components of the natural environment undermining its quality, character, diversity and local distinctiveness[92]. Further, restoration of the landscape would not be achieved. The proposed huge industrial sheds, infrastructure and extensive outside storage[93] would be completely at odds with the landscape character of this area and habitats and features of importance for nature conservation would be damaged[94].

109. The made Arley NP has a clear objective of maintaining the rural character of the Parish[95]. The proposal would not respect the character of the area nor of individual settlements which are a sparse collection of villages and hamlets and isolated rural dwellings[96].

110. With the mine no longer in operation, the appeal site has a nil use and there is no fall-back position. Therefore, what is being proposed is a large scale industrial estate in an area the local development plan describes as "quiet, rural countryside".

111. The identified conflict with the Development Plan should be given considerable weight in the circumstances.

Green Belt harm

112. The appeal proposal is inappropriate development and, therefore, by definition is harmful to the Green Belt. It would harm the purposes of the Green Belt by failing to safeguard the countryside from encroachment. The openness and permanence of the Green Belt would also be harmed along with biodiversity, visual amenity and its beneficial use for recreational use would not be enhanced. It is the scale and location of what is proposed which is of even greater concern. This specifically relates to the harm to openness and harm to visual amenity.

113. Paragraph 89 of the Framework requires the decision-maker to assess the redevelopment of previously developed sites, whether redundant (as here) or in continuing use, by reference to whether they would have a greater impact on the openness of the Green Belt.

114. Some development in the Green Belt is permitted, but this would be carefully assessed against the volume of development that already exists against that which is proposed. The appeal site is largely devoid of built development[97]. What is being proposed are tall, long buildings, some around 100 metres in length with a 15 metre height. The existing buildings have a volume of 31,032

[92] CS Policy NW13.
[93] Large areas of outside storage proposed up to height of 15 metres.
[94] CS Policy NW15 would be offended with no net gain in biodiversity interest.
[95] NP Policy ANP1 - "This is our overriding goal. To retain the peaceful and quiet countryside of the Parish of Arley together with its diversity of agricultural businesses and woodland".
[96] Would be contrary to CS NW12 which seeks to safeguard the appearance and environmental quality of the area.
[97] Inquiry Doc 12.

cubic metres[98]. The proposal seeks permission for 24,652 square metres with a maximum height of 15 metres giving a volume of 369,780 cubic metres[99], a huge increase across the site.

115. Volumetric matters may be a material concern, but is not the only way to approach the issue of impact on openness[100]. In looking at the nature of what is proposed in terms of its impact the height, scale and continuous roof line of the proposed buildings would make this development unacceptable. Also the outside storage would be incongruous.

116. The location of the appeal site is also questionable being in quiet, rural countryside. A requirement of national policy is that planning policies and decisions should aim to identify and protect areas of tranquillity[101]. The evidence of Mr Bentley was that this is a tranquil area and that the passing of trains down a linear track through the area does not nullify that assessment.

117. The appellant company concedes that the road access to the site is poor[102]. The scheme now focuses on the rail facility, seeking to enforce rail only as the primary use, a wholly impractical approach. The concern about the road, the location and the use of inappropriate rural roads to serve a major industrial facility is part of the identified Green Belt harm.

118. The Council has recently granted planning permission for a development at Hams Hall, a site which is also in the Green Belt. The appellant company have cited this as justification for the appeal proposal. However, the two schemes are not comparable in that Hams Hall:

- is immediately adjacent to an existing major industrial park - that industrial park is one of the largest distribution and manufacturing parks and rail freight terminals in England;
- was previously in use as a Power Station, and part of the power generation that took place across the whole of the Hams Hall site;
- Coleshill Parkway adjoins the Hams Hall site with the northern part of Coleshill;
- is adjacent to the national motorway network;
- not in a location which could be said to be deeply rural;
- is a proposed employment allocation in the draft Local Plan; and
- it has been put forward for development for many years.

Very Special Circumstances

119. When the appeal site was being promoted by the appellant company for a rail distribution depot with a named end user, the Council worked positively with the appellant company. The named user then withdrew and consequently the proposal changed to open B2 use. This change undermines any claim of a

[98] Rolinson proof – Tables 1 & 2 page 14.
[99] Figures accepted by Mr Rolinson in XX.
[100] Turner v SSCLG and East Dorset DC [2015] EWCA Civ 466 – Folder D CD8.
[101] Para 123 of the Framework .
[102] Appellant company opening Inquiry Doc 4.

pressing need for the site for rail related use. No suitable end user has come forward with a firm commitment to take it on.

120. Further capacity exists at other employment sites in the region and the evidence of the appellant company has not considered PDL sites which exist next to railway lines[103]. Such sites would need to be discounted before a rural Green Belt location was considered to be the only option.

121. The evidence of need in this case is scant and the absence of a confirmed operator damages the appellant company's case. VSC do not exist.

The pressure to make efficient use of the site

122. Only 7% of the appeal site would be utilised for the buildings proposed. The Council consider it inevitable that there would be pressure for further future development. The appellant company accepted that were the appeal site to be developed to a similar extent as Hams Hall, which has a 42% level of site coverage, the percentage increase in volume over the present level of coverage would be 7000%. Once established as a location for an industrial estate, the pressure to make efficient use of the site and the pressure to expand the outside storage would become evident. That would add significantly to the Green Belt harm, albeit at some future date outwith this present proposal.

Impact on ecology

123. Paragraph 118 of the Framework sets out that when determining planning applications to conserve and enhance biodiversity decision makers should refuse planning permission if significant harm resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for. CS Policy NW15 requires that there should be a net gain of bio-diversity by avoiding adverse impacts in the first place and if this is not possible then by providing appropriate mitigation measures and seeking positive enhancements wherever possible.

124. The appellant company's predecessor company[104] accepted their obligation under the GPDO 1995 to produce a restoration scheme in return for the right to win and work coal at Daw Mill. That obligation is still enforceable against the appellant company. The baseline for assessing the level of harm caused by the proposal should be the restoration scheme.

125. The agreed restoration scheme prioritises the enhancement of the landscape for wildlife and biodiversity, including the reinstatement of 1.8km of the River Bourne (currently in a culvert under the site) and the creation of around 10ha of woodland and 28ha of grassland in an identified national habitat network for woodland. It would be an important natural asset for the community.

126. The reinstatement of the river would help achieve the aims of the Water Framework Directive by improving the water quality and the ecology of the River so that species, such as trout and kingfisher, could return to the site. It might further provide an option for natural flood management to prevent flooding

[103] They do not necessarily need to have a railway connection at present.
[104] RJB (UK).

downstream. The Environment Agency set out that reinstating the River would still provide 30.5ha of developable land and so could be achieved in balance with some development, just not at the proposed scale[105].

127. It would be theoretically possible to compensate for the loss of woodland and grassland habitats[106] but such a scheme has not been proposed.

128. The Council is also unable to fulfil its duty under the Habitats Regulations or the NERC Act 2006 in respect of assessing the impact of the proposal on bats as insufficient survey efforts have been made.

129. Therefore, overall the proposal would be contrary to both paragraphs 118 of the Framework as well as CS Policy NW15.

Noise from the development

130. The original noise assessment reports 2014 to 2015 used a baseline position of noise from a working colliery against which to compare noise from the proposed B1, B2 and B8 uses. The Colliery closed in 2013 and will not operate as a colliery again. This makes the baseline assessment unrealistic and technically flawed. In addition, these assessments did not consider tranquillity[107].

131. In 2017, as part of the proof of evidence of Mr Stephenson, a new RPS noise report was produced. However, it fails to consider all noise sources associated with the proposed development, in particular the noise from train movements on and off the sidings. Instead it models the train at a single point hundreds of metres from Daw Mill Cottage. Trains[108] could pull into the siding and the locomotive could get within approximately 120m of Daw Mill Cottage. A further loop of track would be all that is needed to allow the engine to then move around the carriages and back onto the main line rather than a trip to Washwood Heath Birmingham to turn around.

132. Noise levels from train movements in the sidings close to Daw Mill Cottage have not been properly assessed. Therefore, the noise impact of the proposal has not been appropriately evidenced and consequently it is not possible to know whether the promoted noise thresholds can be achieved for such a large scale industrial facility.

133. In addition, the RPS report makes no correction for tonality, impulsivity, intermittency or other characteristics drawing attention to the noise source[109]. Mr Stephenson's[110] evidence was that, from his own observations, trains did not exhibit any of these characteristics. Mr Metcalfe[111] had observed, assessed and reported upon the freight train movements at a similar distance to that of Daw Mill Cottage from the sidings on the appeal site[112].

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[105] EA letter dated 23 Dec 2014.
[106] Biodiversity Offsetting scheme.
[107] Para 123 of the Framework.
[108] Along with carriages.
[109] Assessment methodology contained in BS 4142:2014.
[110] The appellant company's noise witness.
[111] The Council's noise witness.
[112] Just outside Ely Station Cambridgeshire.

134. The Council consider that a rating level correction does need to be added for the characteristics of the noise emanating from trains and rail carriages which clatter and bang[113]. In doing so the impact of the noise on nearby residents would be significantly greater.

135. Further the RPS report fails to consider peak noise levels from the proposed development, in particular train movement on the sidings. In assessing night time noise impacts in relation to sleep disturbance this is essential.

136. Noise readings were also collected in locations which did not reflect the actual location of receptors. In doing so higher current noise levels were recorded than are actually experienced by residents who may be some distance from the recording locations. Thus the difference between the RPS predicted noise source level and background noise levels would be greater than the report indicated.

137. The appellant company is willing to accept the planning conditions proposed by Mr Metcalfe concerning noise. However, even as an outline proposal there is a need to demonstrate that certain noise levels can be achieved, and where huge investment would be required an ability to comply is essential. Therefore, a proper, robust noise assessment is required. The RPS report is not such an assessment which can be relied upon.

138. The ability to comply also potentially relies upon mitigation measures. These need to be known and assessed. No such measures have been identified nor assessed.

139. Were the proposal to go forward, even with the suggested conditions in place, with discrepancies in the noise levels in the RPS contradicting those within the conditions it is difficult to understand how the levels in the conditions would be achieved and how the Council could effectively monitor compliance with those levels in the long term. The appellant company, also denying the need for any rating level characteristics corrections, sets up a tension with their conditions which include a rating level to be applied. The likelihood of there being any agreement on how to assess the noise or then how to enforce the terms of the conditions which, based on the appellant company's evidence[114], are likely to be disputed, is anticipated to be problematic. Further the noise limit in the agreed conditions (40 dB L_{Aeq}) is far below that which RPS has suggested can be achieved. Such a noise limit in the condition is a concession by the appellant company but not one their evidence indicates they can achieve.

Tranquil area

140. The appellant company does not consider the issue of tranquillity[115], even though key features of the site and surroundings (as they currently exist) are likely to be considered to have fair to good tranquillity.

141. Paragraph 123 of the Framework sets out that planning policies and decisions should aim to identify and protect areas of tranquillity which have remained

[113] Metcalfe suggests a range between +3 and +7 dB (BS 4142) - para 3.33 of his rebuttal proof.
[114] At odds with Mr Stephenson's evidence.
[115] Para 123 of the Framework.

relatively undisturbed by noise and are prized for their recreational and amenity value.

142. The footpaths and surrounding area are considered important by local people, partly due to the quiet, rural environment. Local policy seeks to protect this character. The only assessment of tranquillity was undertaken by Mr Bentley[116]. The proposal would result in a reduction in tranquillity based on the appellant company's evidence. Were the restoration as a country park to be undertaken it would likely result in an improvement in tranquillity and an increase in site accessibility which would bring tangible health and well-being benefits.

143. The assessment of tranquillity is a new area of expertise. Mr Bentley explained his background research and methodology. He conducted survey work of the existing baseline tranquillity and the baseline should the restoration plan be achieved. His tranquillity scores concentrated on footpaths, gardens and Daw Mill Lane in the main. He concluded that the site and its immediate surroundings are likely to be considered to have fair or good tranquillity which would improve if the restoration proposals were achieved. The proposed development would not protect the tranquillity of the site and surroundings; it would result in a failure to take the opportunity to enhance the acoustic environment; and, it would fail to protect the environment of the existing rights of way network.

144. The appeal site is an inappropriate location for a major industrial facility in this quiet, rural countryside setting. If the restoration plan is set aside the appeal site as PDL makes no noise as it stands. It is the human activity which causes the noise. The coal mine has gone, not to return[117], and so is not a fall-back in this instance. So the site is silent, with no use on the site and no lawful use existing. Even without the restoration plan this position is the baseline against which any comparison must be made.

145. Even as a coal mine, most of the activity was underground. Residents tolerated the colliery activity on the basis that one day it would cease and in any event it was operating in the national interest. The establishing of a permanent large scale industrial estate is beyond expectations.

Restoration of the site

146. The operation of the mine for coal extraction was permitted under Permitted Development (PD) Rights, despite the absence of an express planning permission. The relevant PD right is set out in Part 20(a) in Schedule 2 of the TCP (General Permitted Development) Order 1995. The National Coal Board and RJB mining took the benefit of those PD rights for many years and mined what became the UK's largest underground coal mine. Those PD rights carried with them the need to submit and then adhere to a restoration plan for the site after mining ceased. The plan was approved by Warwickshire County Council in 1996.

147. The appellant company now claims that the mine operated outside of the PD rights and so the restoration is not required. This is a changed position from that accepted when the appellant company bought the site.

[116] Appendix A to Metcalfe Rebuttal proof.
[117] Cannot restart for operational reasons.

148. The key issue is whether the mine was operating before 1st July 1948. The County Council has made a series of formal determinations on this issue between 1973 and 2013. Each agreed that permitted development rights existed and, therefore, accepted that the mine was operating before 1st July 1948. What the evidence shows is that the shaft at Daw Mill was needed for ventilation in order to facilitate the southward progression of the Dexter mine. Therefore, the appellant company's desire to focus on the date the shaft was sunk at Daw Mill as the relevant date is the wrong approach. That first shaft was sunk for the purpose of serving the mine complex which had progressed from the north. The County Council accepted that was the intention of sinking the ventilation shaft at Daw Mill[118].

149. This continued intention to progress southwards is evidence by the 1958 application for planning permission, which confirms that the approximately 75-acre site was needed for the following purpose *"This is a new surface project to meet an extension of underground workings from Dexter Colliery"*[119].

150. The National Coal Board made clear in their letter of 24 December 1985[120] the following: *"the relevant history is that before 1 July 1948 there were in existence mine workings, the shafts, surface buildings and structures of which were situated at the Dexter Site near Hurley".* The letter concludes that *"the present situation has been in existence, to the knowledge of the County Council, for decades".*

151. The County Council accepted that *"had the underground works continued to have been operated from the Dexter surface buildings, then, I agree, that there would be permitted development rights"*[121].

152. In April 1996, RJB Mining (UK) Ltd stated in their letter to the County Council that *"it is clear from the planning history of Daw Mill Colliery that the mine was developed as an extension to Dexter and Kingsbury Collieries…"*[122].

153. All the parties, except the appellant company[123], involved over the long history of this mine, including the County Council, have accepted that Daw Mill was part of a pre-July 1948 mine. Such a conclusion would allow for the adoption of the restored site as the baseline. It is an accepted point that the proposal in these circumstances would give rise to greater landscape and visual harm. The appellant company accepts that would give rise to greater landscape and visual harm. It is also relevant to the issue of tranquility.

154. The lack of restoration to date is a concern for the Council. Enforcement action could take place for a period of up to 10 years after the failure to

[118] Inquiry Doc 30 - letter dated 8 November 1985, start of the third paragraph.
[119] English proof Appendix D.
[120] Inquiry Doc 30.
[121] Inquiry Doc 30.
[122] Inquiry Doc 11 – letter dated 9 April 1996.
[123] Who had a commercial reason for arguing otherwise.

implement the restoration as this is a breach of a planning condition. The County Council are the authority which would take that action. They are still in time to do so. One of the matters they would be entitled to consider would be the extent to which there has been an attempt to claim one thing for the purpose of coal mining and yet another for present purposes.

Overall Planning Balance

155. The CS is not out-of-date. Even if it were, the proposal is in the Green Belt so the last limb point in Paragraph 14 of the Framework would be engaged (Green Belt listed in footnote 9). The proposal does not benefit from the tilted balance test in paragraph 14 of the Framework[124]. Without the presumption in favour of sustainable development and the tilted balance, the correct approach in this case is to assess the proposal in accordance with Section 38(6) Planning and Compulsory Purchase Act 2004. The decision should be made in accordance with the Development Plan, unless material considerations indicate otherwise. The Supreme Court has made plain that the policies in a development plan retain their statutory force[125].

156. Even if the appellant company were right and that tilted balance test applied, the adverse impact of the appellant company's proposal would significantly and demonstrably outweigh the benefits assessed against the Framework as a whole. The benefits are modest, the harm very substantial.

The case for LAWRAG[126]

Impact on the Green Belt

157. To assess the effect on openness one must first consider how built up the Green Belt is now, and then how built up would it be if the development occurs.[127] The site is to a certain extent visually 'urbanised' in its current appearance, but these 'urbanising influences' do not affect the openness of the site[128]. The site as a whole is not particularly built up and has a predominant open character. Were the restored site to be considered as the baseline there would be no urban influences.

158. The extent of proposed built development across the site is not known but what is known is that any buildings and open storage located in Area 2[129] could be up to 15m high. The appellant company has accepted that these would be significantly larger in volume than the current buildings and so considerably more

[124] The Supreme Court judgment in the Suffolk case (Inquiry Doc 49) makes plain how the presumption in favour of sustainable development should work. The operation of para 14 of the Framework is explained by Lord Carnwath in paragraphs 54-56 of the Judgment, and again by Lord Gill in paragraph 85.
[125] Lord Gill para 85.
[126] Inquiry Doc 42
[127] Turner v SoS and East Dorset Council [2016] EWCA Civ 466.
[128] Pearce Evidence in Chief (see also Pearce Speaking Note Inquiry Doc 15).
[129] Site is broken up into areas which is a logical and helpful approach although only theoretical as the plans are for illustrative purposes only.

built-up than existing. With the restored site as the baseline the magnitude of the impact would be significantly greater.

159. Two of the five purposes (the third and fifth purposes, specifically to assist in safeguarding the countryside from encroachment and to assist in urban regeneration, by encouraging the recycling of derelict and other urban land) would be compromised by the proposal[130].

160. The appellant company claimed that the site is not 'countryside' because it is PDL[131]. LAWRAG consider that the appeal site, by virtue of it being located outside a defined settlement boundary, carries the (land use) definition of countryside even though it may be in part developed. Further, the site is not PDL because a valid restoration condition is in place and therefore the site falls outside the definition of PDL in Annex 2 of the Framework.

161. Whilst there may be some existing encroachment on openness across the site the proposed development would lead to significantly greater encroachment, in conflict with the third purpose which would be all the more so if the baseline is taken to be the restored site.

162. The appellant company also claimed that the appeal site is urban land and that the appeal proposals will regenerate this urban land, therefore positively satisfying the fifth purpose[132]. The fifth purpose is intended to encourage the regeneration of land in (sustainable) urban areas to assist those urban communities both physically and socially. At present whilst the appeal site may have development within it which has a visually urbanised appearance it is not land within an urban environment. Therefore, there is also a conflict with the fifth purpose of including land within the Green Belt. If the baseline is taken to be the restored site a clear conflict with this purpose is also maintained.

163. A development of the magnitude proposed would clearly have a significant negative visual impact on openness and would conflict with the third and fifth purposes of including land within the Green Belt.

Effect on the character and appearance of the area

164. Whilst there is no physical heritage asset which could be considered to constitute "the Forest of Arden", it is relevant to note the description of the Arden National Character Area (NCA) 97: *"There are strong cultural links with William Shakespeare and his 'Forest of Arden'"*[133]. The Warwickshire Landscape Guidelines 'Arden' states clearly that "*Internationally, Arden is famous for its historical and cultural associations as being 'Shakespeare's Arden'. The wooded character of the landscape also has direct historical links with the ancient Forest of Arden*"[134]. The NCA 97 profile cites as an "opportunity" the aim of "*capitalising on the links made in literature to the Arden landscape such as links with*

[130] Pearce Proof paragraphs 6.15 to 6.28 – Rail Zoning Plan RZP1.
[131] Rolinson proof paragraph 11.37.
[132] Rolinson proof paragraph 11.39.
[133] CD19, page 3, final line of 2nd paragraph.
[134] CD19, page 32, first non-italicized paragraph.

Shakespeare, using this as a tool to promote the conservation and enhancement of the landscape described"[135].

165. The NCA description makes it clear that the area is characterised by woodland[136]. The approved restoration scheme includes extensive woodland planting which would in due course mature to reflect this aspect of the landscape character[137].

166. Thus, taking the restored scheme as a baseline, the landscape has historic connotations which the relevant landscape guidance seeks to enhance. The proposed development would not be in accordance with these aims, taking the restored landscape, with its extensive woodland planting, as a baseline.

Effect on highways and the safe operation of the highway network

167. Mr Benison, the witness dealing with highway matters on behalf of LAWRAG, coincidentally was the officer dealing with the proposal in its early stages on behalf of the HA[138], negotiating with the appellant company on highway matters including mitigation.

168. Mr Benison's differences with the appellant company's transport assessment/consultant in respect of the following are set out in the Closing submissions of LAWRAG[139]:

- Trip generation figures[140];
- Road safety audit/further recommendations[141];
- Lack of modelling of the mitigation at the Green Man crossroads[142];
- Ratio of Flow over Capacity[143].

169. In essence the concerns of LAWRAG centre on errors made by the HA in their assessment and understanding of the transportation evidence where it existed. In respect of the Green Man crossroads, which is positioned in a congested part of the highway network, with a poor safety record, not a single piece of supporting transport modelling on which to assess the impact of the mitigating measures on network performance or highway safety was evidenced for what is a major employment development. The transport information that has been provided, Tamworth/Nuneaton Road, Furnace End and Fillongley, contains basic errors from inception to modelling, and little weight can be given to the results. Road Safety Audits although carried out, have not been followed up and many fundamental issues regarding delivery of these junctions remain unanswered[144].

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[135] CD19, page 14, final bullet point of SEO3.
[136] CD19, page 32, first non-italicized paragraph.
[137] For restoration scheme see Rolinson Appendix 6.
[138] He is no longer employed by the HA.
[139] References set out.
[140] Inquiry Doc 42 paras 23-26.
[141] Inquiry Doc 42 paras 27-31.
[142] ADC1085/007 Rev C and Rev D – a point conceded by the appellant company (Mr Cummins in XX and set out in full in LAWRAG closing Inquiry Doc 42 paras 32-40).
[143] Inquiry Doc 42 para 46-52.
[144] Headnote to ID14.

Mechanism for delivery

170. LAWRAG's evidence[145] was that the proposed mitigation works to the Fillongley and Furnace End Crossroads would require third party land[146], for instance in the latter case there are steps leading up to Jessima Cottages which would be affected by the proposed widening of the junction[147]. The north side of Nuneaton Road would be widened to two metres. This is less than the width of a single car. The west side of Coleshill Road cannot be widened due to a signal pole and with the west of Coleshill Road being a retaining wall, such widening would require the use of third party land, for the wall itself, and further behind, in order to install the footings behind the retaining wall.

171. Either owners of the third party land would need to be willing to sell or the HA would consider the matter to be of major public importance, sufficient to warrant seeking a compulsory purchase order and obtaining the land themselves.

172. It was an accepted point[148] that section 278 agreements cannot cover works on third party land[149]. So the HA's response that "*all plans submitted are preliminary designs…conditions [could] prevent the development commencing or being occupied until the improvements had been implemented and therefore securing (sic) technical approval under a S278 Agreement*…."[150] is unhelpful.

173. The Fillongley junction has an existing problem with congestion and the models predict that with the proposed development 82 vehicle-long queues would develop[151]. There are similar problems of retaining walls, as with the Furnace End junction, with the need to use third party land to widen it[152].

174. In this respect it is relevant to note that the use of third party land, when it was taken into account by the HA, was a showstopper for the proposed mitigation works at the Green Man Crossroads[153].

Ecology

175. It is common ground that areas of the appeal site have land which is potentially contaminated from previous mining activity and that the site sits above a principle aquifer[154]. Whilst this application is being progressed the remediation of the contaminated land on the site appears to have been put on hold with unsatisfactory implications for contamination of the potable water supply. The "precautionary principle" should be applied to the decision-making process with the sources of contamination and their routes to potential receptors

[145] Unchallenged.
[146] Inquiry Doc 14.
[147] Plan at Cummins App. 2 ADC1085/003 Rev E.
[148] By the appellant company.
[149] Cummins in XX.
[150] Inquiry Doc 10 email from Jasbir Kaur at WCC to NB dated 21 February 2017, 6th paragraph.
[151] Transport Assessment paragraphs 4.9 and 4.10.
[152] Plan at Cummins App 2 ADC1085/004 Rev C.
[153] Transport Assessment page 35 paragraph 8.13.
[154] Stirrop Proof of Evidence.

(River Bourne and the principle aquifer) being investigated and dealt with without further delay[155].

176. The approved restoration scheme[156] includes the de-culverting and opening up of the watercourses[157] which would improve water quality, biodiversity and aid ecology whilst easing flooding downstream[158].

Impact on the significance of heritage assets

177. The historic connection between Shakespeare's Forest of Arden and the landscape in which the appeal site is situated gives the landscape heritage value, rather than making it a heritage asset in its own right. The CS supports this stating that the entire landscape has "*intrinsic historic interest which contributes to the local sense of place and is valued by residents and visitors*"[159].

178. Over Whitacre House is a nearby Grade II listed building which has a high degree of inter-visibility between the listed house and the appeal site. It has high heritage significance[160]. The appeal site forms part of its setting and thus contributes to its significance[161]. The appeal proposal would have a significant negative effect, although the level of harm was not quantified by Mr Pearce, the Council's witness, as he is not a heritage expert[162].

179. The spires of the listed churches are deliberately elevated so that their spires are visible from the wider landscape, but the appellant company's point is that nothing turns on this point[163]. However, such a view does not take into account the competing lighting columns and buildings that the proposed development would give rise to. Harm could be caused by these competing visual elements within the landscape.

180. In addition, the traffic mitigation proposals at Coleshill, particularly the new pelican crossing, within the conservation area would cause irreversible harm.

181. The appellant company tried to argue that paragraph 134 of the Framework was not capable of being a 'footnote 9' policy[164]. This is incorrect. The effect of paragraph 134[165] is that the decision-maker is to carry out the balancing exercise and if the harm is not outweighed by the public benefits then it is a footnote 9

[155] Stirrop Evidence in Chief.
[156] Rolinson proof Appendix 6.
[157] Ballard Brook and River Bourne.
[158] Mr Stirrop Evidence-in-Chief and proof.
[159] CD2 Core Strategy page 41 policy NW14 reasoned justification paragraph 7.70.
[160] Kelly Proof of Evidence page 16, paragraph 5.9 & Kelly XX.
[161] Kelly XX, see also Kelly Proof of Evidence page 12 first bullet point (summary) and detail accepting site is within setting of Grade II* St Leonard (paragraph 5.4) , Grade II* St Cuthbert (paragraph 5.8) and Grade II Over Whitacre House (paragraph 5.9).
[162] The Council's conservation officer was not consulted on the proposed development, nor was Historic England.
[163] Kelly Proof of Evidence page 15, paragraph 5.5; Kelly XX.
[164] Of the Framework.
[165] Set out by Mr Justice Coulson in Forest of Dean District Council v Secretary of State for Communities and Local Government, Gladman Developments Ltd - [2016] EWHC 421 (Admin); confirmed by Holgate J in R (Leckhampton Green Land Action Group Limited) v Tewkesbury Borough Council and ors [2017] EWHC 198 (Admin) at paragraph 47.

policy. If the balance comes out the other way, the paragraph 134 balancing exercise is not restrictive of development, and thus is not a footnote 9 policy, and the developer is entitled to the benefit of the tilted balance contained in the first indent of paragraph 14, when the overall balance weighing all factors comes to be struck.

The restoration issue

182. The implementation of the restoration condition is the most important issue to the Rule 6 Party.

183. The shaft at Daw Mill was needed for ventilation in order to facilitate the southward progression of Dexter[166]. This intention to progress southwards was made manifest in the 1958 application for planning permission, which confirms that the approximately 75-acre site was needed for a "*new surface project to meet an extension of Underground workings from Dexter Colliery*"[167]. This was also the National Coal Board's Legal Department's view[168]. The County Council stated in their letter dated 18 February 1986 from J.W. Hayes to J.G. Tyrrell, first paragraph that "*had the underground works [at Daw Mill] continued to have been operated from the Dexter surface buildings, then, I agree, that there would be permitted development rights [as Daw Mill would be classified as a pre-1 July 1948 mine]"*[169]. The successor to the National Coal Board, RJB Mining (UK) Ltd, in response to the County Council's review of mineral permissions, considered that "*it is clear from the planning history of Daw Mill Colliery that the mine was developed as an extension to Dexter and Kingsbury Collieries…*"[170]. The appellant company also considered the site was a pre-1 July 1948 mine when negotiating the purchase price of a 44.25 hectare site for £5,000[171]. The sudden change to the appellant company's long-held and strongly expressed position in the present circumstances, when it suits it to do so, should be treated with caution.

184. Mr Blenkinsopp[172] confirmed that Daw Mill was an extension of Dexter. He said "*we were responsible for each other. It was one mine*"[173]. The two workings were connected above ground (Mr Blenkinsopp confirmed the men working at Daw Mill used the facilities at Dexter), and they were connected below ground (Mr Blenkinsopp confirmed that when working in the tunnels underground at Daw Mill he could have come across his father who worked at Dexter)[174]. Mr Barry

[166] Inquiry Doc 31 – Mrs Ludford's lease dated 29 September 1941 – intention to further southward progression.
[167] English proof Appendix D.
[168] Inquiry Doc 30 letter dated 24 December 1985 from J.G. Tyrrell, Solicitor at National Coal Board, to J.W. Hayes, Solicitor at Warwickshire County Council and Chief Executive.
[169] Inquiry Doc 30.
[170] Inquiry Doc 11 letter dated 9 April 1996 from A.R. Barnes Minerals Manager (South) at RJB Mining to K.E. Down, Senior Planner (Minerals and Waste), Warwickshire County Council.
[171] For site area see Stirrop proof Appendix 5 page 1 paragraph 1.2; for purchase price see Jones proof paragraph 5 (not disputed by Appellant); see also "buying with knowledge" email Jones proof Appendix 2 dated 14 November 2013; see also costings of restoration scheme at Inquiry Doc 32.
[172] Worked as a miner at Daw Mill Colliery.
[173] Mr Blenkinsopp in XX.
[174] Mr Blenkinsopp Evidence in chief and XX.

conceded that the former mine manager's statement which he relied on to demonstrate that "*there were no shared facilities between Daw Mill Colliery and Dexter Colliery which did not operate simultaneously at any point*" was wrong[175]. Thus, the only evidence before the inquiry which has withstood scrutiny is that until the connection between Dexter and Daw Mill was severed in the late 1960s, they were a single mine.

185. Further, Mr Blenkinsopp's factual evidence of the workings of the mines[176] is not affected by the mere administrative issue of when a mine manager was appointed. The facts all indicate Daw Mill was an extension of Dexter, and the relationship evolved from there. For these reasons, Daw Mill must be seen as an extension of a mine which started before 1 July 1948[177].

186. The law also points to Daw Mill being a pre-1948 mine. By section 10(1) of the Town and Country Planning Act 1947 "*..planning permission is required for any development of land which is carried out after the appointed day*…" Section 10(2) further provides that "'*development' means….mining or other operations under land*". Thus, planning permission was required for the winning and working of minerals at Daw Mill after 1 July 1948 (when the 1947 Act came into force).

187. There was winning and working of coal underground in a designated seam area at Daw Mill. If this work was not PD then planning permission was required. A list of all planning permissions and applications pertaining to the site[178] demonstrates that there is no planning permission which permits the winning and working of minerals as Daw Mill[179].

188. There is thus no specific planning permission to mine at Daw Mill. It follows that the right to mine had to arise under the GDO,[180] and so the restoration condition is enforceable.

Planning balance

189. There are conflicts with the Development Plan (specifically NWLP Policies ENV7, CS Policies NW2, NW10, NW1 (sustainable development), NW9 (employment), NW12 (historic environment) and NW13 (impact on landscape). As a whole the Development Plan is offended and planning permission should not be granted.

190. Further paragraph 14 of the Framework is not engaged as there are specific policies which clearly indicate that development should be restricted ie Green Belt and heritage policies[181].

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[175] For statement see Barry proof Appendix 9 page 4. Mr Barry conceded point in XX.
[176] Mr Blenkinsopp Evidence-in-chief and XX. See also unchallenged proof. Agreed by Mr Barry in XX.
[177] Jones proof Appendix 6 Legal Opinion dated 1 August 2016.
[178] Inquiry Doc 11 "Site History (Summary of Planning Applications)" table.
[179] Inquiry Doc 8, accepted by Mr Barry in XX – accepted by predecessor to appellant company in April 1996.
[180] GDO 1948 Class XX article 1 of First Schedule permits winning and working underground of coal for "*any mine commenced before the appointed day and any underground development incidental thereto*".
181 Suffolk Coastal District Council v Hopkins Homes Ltd and another and Richborough Estates Partnership LLP and another v Cheshire East Borough Council [2017] UKSC 37

191. The Appellant sought to get around this by arguing that VSC have been demonstrated so Green Belt policies are not restrictive of development. However, the appeal proposals significantly offend Green Belt policy in the following ways:

- There is clear conflict with two of the five purposes of including land within the Green Belt;
- The proposal does not fall within any of the exceptions in paragraph 89;
- It is common ground that the proposal represents inappropriate development;
- The magnitude of the appeal proposals clearly means that the current openness of the site would be substantially, permanently and irreversibly reduced;
- The visual impact of the appeal proposals in the Green Belt would be severe given its prominence in an open valley context.

192. As to any other harm, that harm to heritage assets weighs against the appeal proposals, along with harm to highway safety and harm to the landscape.

193. The Suffolk Coastal case in the Supreme Court confirmed that policy should be read in its proper context, which is provided by having regard to the over-riding objectives of the Development Plan and the specific objectives to which the policy in question is directed[182]. Here, both the over-riding objective of the Development Plan and the specific objective of the relevant policies in the Development Plan are clear, and consistent. The Green Belt is highly valued: "*the maintenance of the Green Belt is seen as a vital component in protecting and enhancing the Borough as an area of pleasant countryside*"[183] as set out in the saved Local Plan is repeated verbatim in the present CS[184] and again in the emerging Local Plan[185]. The consistency of this principle through three iterations of the Development Plan gives it additional weight. Further, the emerging LP acknowledges that the consistent vision of the area generally is one of a rural character:

> "The spatial vision and the strategic objectives set out in the CS 2014 and the NWLP emphasize that it is the rural character of North Warwickshire that distinguishes it from its neighbours. That character is to be retained by safeguarding that countryside and protecting its openness from encroachment"[186].

194. The Council's consistent vision of the area as distinctive rural countryside, and its consistent aim to keep it that way, is also reflected in how the community views its area and sets out its strategic goals. Hence the first policy in the NP (ANP1) is entitled "Maintain the Rural Character of the Parish"[187]. NP Policy ANP1

"*although the footnote refers in terms only to policies in the Framework itself, it is clear in my view that the list is to be read as including the related development plan policies*" (per Lord Carnwath JSC at paragraph 14).

[182] Per Lord Gill at paragraph 72.

[183] CD1 NWLP saved policies page 23 paragraph 3.30 reasoned justification for policy ENV2.

[184] CD2 CS page 22 paragraph 7.2 reasoned justification for Policy NW3.

[185] CD3 emerging LP page 25 paragraph 7.15 reasoned justification for policy LP3.

[186] CD3 emerging LP page 26 paragraph 7.19.

[187] CD5 Arley NP page 11.

confirms that the community's overriding goal is to retain the peaceful and quiet countryside of the Parish because "*our survey showed that it is that [patchwork of buildings and countryside] which makes Arley attractive to many of the residents and that it is that 'rural aspect' that they are most keen to protect*"[188].

195. This is a rural area that is important at both the community and district level, and the Development Plan, as a whole, seeks to protect that rural character whilst encouraging proportionate economic and residential development.

196. The redevelopment of former mineral workings for large scale economic uses does not fit into that vision: *"It is intended that mineral workings sites…be put back into appropriate Green Belt/rural uses as current operations and permissions cease*"[189].

197. It is clear from the above that the appeal proposals are contrary to the Development Plan. All the appellant company puts forward as countervailing considerations are the economic benefits that the development of the site will bring.

Conclusion

198. VSC have not been clearly demonstrated. The fact that a site is suitable for rail-related development is not on its own very special. There is nothing else which could equate to VSC, whereas the harm that would be caused is perfectly clear. The scheme is contrary to the Development Plan (both CS and the Arley NP), there would be harm to the landscape, the character and appearance of the area would be permanently changed from rural and attractive countryside (applying the restored site as a baseline) to a 24-hour urbanised industrial site.

199. There would be harm to the highway network, and there would be harm to heritage assets to an unknown degree. This panoply of harm is not clearly outweighed by the benefits of an opportunistic application for some sort of B2 use with no firm evidence of a confirmed end-user.

Third parties who addressed the Inquiry

Jackie Ludford resident of Daw Mill Cottage[190]

200. The noise created by the proposed development will impact on the enjoyment of neighbouring properties by their residents. Daw Mill Cottage has a good size garden, including a small field which runs alongside the railway close to the appeal site. Birds singing, the sound of the River, the wind in the trees and owls at night are all audible from the house and its environs. Day or night windows and doors can be left open to enjoy the peace and quiet of the countryside.

201. The suggested layouts for the possible uses, even with B2 uses moved further away from Daw Mill Cottage, will leave the loading and unloading of trains or the storage of aggregates possibly as close as 50-100 metres away. A test track for

[188] CD5 Arley NP page 10.
[189] CD2 CS page 41 paragraph 7.68 reasoned justification for Policy NW13.
[190] Inquiry Doc 19.

diesel locomotives may also be as close by. In any event continuous operation would be required, so noise and disturbance day and night would be likely.

202. This is an outline proposal and the final layout and general usage would be dependent on the end user of the site.

203. If the rail use is taken up[191]there would be shunting trains arriving, departing and left idling 24 hours a day, 7 days a week with 5 trains expected to leave each night. The nature of the noise of a train moving from a standstill, whether empty or loaded with aggregate is different to one already moving. Any use for rail maintenance or train manufacture would involve the existing parallel sidings being used as a test track for locomotives and wagons.

204. The appellant company suggest that using baseline noise measurements taken after the Colliery had closed, residents would not notice any significant difference in noise levels. This is incorrect. With all the activity and train movements which would occur on the site residents would have to keep windows and doors closed and stay inside to get any peace.

205. Noise levels could be identified as being similar but the nature of the sound creates a response. For example the noise from the vibrant local population of birds can be immense but it is a joy to hear, not so the sound of an idling train. This would be disturbing, disruptive and destroy the tranquility of the garden.

206. At present passing trains sound their horns at a distance to Daw Mill Cottage as there is a crossing close by. The tranquillity is disturbed and it can be some time before the train passes following the sounding of the horn[192]. If it were necessary to sound the horn for trains to use the sidings particularly at night this would cause further disruption. The passing passenger trains tend to be short, of two or three carriages. They are lighter and quieter and can come and go within seconds making any disruption short lived. The freight trains are the most disruptive.

207. The Colliery did cause noise but much of the loading was done under cover and there was no unloading of trains. It was rare for the trains to operate at weekends which, along with evenings, were quieter than the working day, although the lorries did not come to the site until after 6.00 hours. The Colliery did operate 24/7 but the noisier aspects of mining tended to be restricted to week days. This is the experience of residents who have lived alongside the working mine for many years. In addition, it was anticipated that the mine was not a permanent fixture and closed about 12 months before its anticipated date.

208. This is not a like for like proposal. Restrictions could be challenged later. The Restoration Plan should be pursued and implemented. The Arley NP looks to maintain the rural character of the Parish and to retain the peaceful and quiet countryside of the Parish. The proposal would destroy the tranquillity of the Parish against the wishes of residents.

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[191] And it is unclear whether even if provided the rail use could be imposed by the Council as the prevalent use.

[192] 2-3 minutes.

Peter Wheeler - local resident close to Furnace End Crossroads[193]

209. Over time the volume of traffic using the Furnace End junction has increased, along with the size and weight of vehicles, particularly HGVs. This has led to excessive noise of heavy braking, horns and particularly from 8 wheeled lorries scrubbing the road surface and juddering on turning. In addition, large articulated and rigid lorries are unable to negotiate turns without crossing into the path of oncoming traffic. Air pollution from extended periods of traffic queueing is a further impact which is already experienced by those residents living immediately adjacent to the junction[194].

210. Any increase in the volume of traffic at this junction will add to the misery. The proposed mitigation for the appeal proposals would be impossible to achieve, particularly as third party land would be required. The additional congestion would impact on emergency response timings.

211. The Colliery did cause noise and disturbance with the sound of loading carried by the wind along the valley and it was very sleep disturbing. For the last three years, since the Mine closed, overall heavy lorry traffic has reduced with improvements in night time disturbance. However, traffic hazards and noise persists at the crossroads.

212. Residents endured the hardships caused by the Mine as it was in the national interest. Residents thought that Daw Mill would be restored to quiet and tranquil countryside when mining ceased. The incorporating of improved public access, increased site footpaths and enhanced wild life habitat in the Restoration Plan is welcomed by residents. It would be wrong to exploit the tolerance of residents of the past industrial activities by re-introducing those hardships through the permitting of the appeal proposal.

Debra Starkey – Nether Whitacre Parish Council and Nether Whitacre Flood Protection Group[195] *& Stephen Powell - Nether Whitacre Flood Protection Group*[196]

213. The Flood Protection Group are a volunteer group working with the National Flood Forum, Government agencies, local wildlife groups and partnerships to alleviate flood risk in the Parish of Nether Whitacre. The improving of flood risks where the River Bourne approaches the River Tame is being examined. Upstream development might adversely affect this and would be of concern.

214. The Environment Agency's 'Slow the Flow' initiative makes the point that fast-flowing rivers can cause downstream flood risk being harmful to wildlife and the stability of the river banks. By de-culverting the River Bourne at Daw Mill a natural meander would be re-established, increasing the size of the floodplain which would have the benefit of slowing water flow downstream towards Whitacre. This could be done as part of the restoration scheme and should be considered in the interests of minimising flood risks.

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[193] Inquiry Doc 24.
[194] Some bedrooms within only 5 feet of the roadside.
[195] Inquiry Doc 26.
[196] Inquiry Doc 9.

215. Such improvements to the course of the River Bourne would improve the area for wildlife generating local interest and making the river more a feature and an amenity.

216. The surrounding area is very rural and valued by the community for its peace and tranquillity. Paragraph 123 of the Framework, which sets out that planning decisions should aim to protect areas of tranquillity that are prized for their recreational and amenity value, should be taken into account.

Gill Guy on behalf of the Parish Councils of Ansley, Arley, Corley, Fillongley, Maxstoke and Nether Whitacre[197]

217. The Parishes support the cases promoted by LAWRAG and the Council, but the following are highlighted points:

- The site lies within the Green Belt and the proposal amounts to inappropriate development within it. VSC have not been shown in this case and so the Restoration Plan, the requirements of which the appellant company was fully aware of when they purchased the site for £5000, a price which reflected the Plan's requirements, should now be implemented.
- Potential noise and light and light levels should not be compared to the past Colliery activity as this has now ceased. 24 hour operations, including vehicle movements, would significantly harm the well-being of local residents.
- Whilst the Arley NP seeks to support measures to increase employment choices for local residents[198] with empty units on the Arley Industrial Estate there is no demand for employment on the scale envisaged at Daw Mill.
- The location is unsuitable and unsustainable for the proposed development in respect of being contrary to paragraphs 120 and 121 of the Framework.
  Morning and evening peak congestion occurs in all the representative parishes. Lorries travelling along narrow country roads would cause congestion and delay as in some places it is not possible for two large vehicles to pass by each other and other road pinch points exist which would require widening or avoiding to allow HGVs to pass by.
- Some of these roads would take HGVs into the villages, close to schools where the safety of children is a concern as is their well-being due to raised levels of air pollution caused by increased levels of traffic.
- Increased levels of traffic from employees travelling to Daw Mill as well as the lorry traffic would be experienced in every parish and could make a bad situation intolerable.
- The highway mitigation measures proposed are unclear and not based on a sound Traffic Management Assessment.

[197] Inquiry Doc 17.
[198] NP Policy ANP 8 – CD5.

Cllr Adam Farrell – member of North Warwickshire Borough Council - Coleshill North[199]*and Cllr Peter Fowler – member of Warwickshire County Council for Coleshill which includes Maxstroke, Shustoke and the Packingtons*[200]

218. There has been an increase in the number of vehicles using our local road network over the last few years. Access to Daw Mill would be through Coleshill and the Green Man crossroads and along country lanes unsuitable for HGVs. Long queues exist at junctions on a daily basis with frequent accidents. The proposed mitigation will not change this. At the Green Man crossroads travelling in any direction is a time consuming exercise with drivers waiting for over 10 minutes to negotiate the junction. In addition, there is a pinch point on Birmingham Road outside of the Pub where it is almost impossible for HGVs to pass one another.

219. The proposed re-routing of traffic along Church Hill[201] would require the negotiation of a blind spot as a vehicle would emerge onto Blythe Road[202]. These mitigating measures are not in reality practical and would not have the desired effect. They also fail to take account of the impact on the roads used during the diversion, as well as the safety of the residents of Church Hill and those using the Church and Market Hall. Services at the Church, particularly weddings and funerals, have the potential to bring to a halt the traffic on Church Hill. The loss of existing well used car parking along Church Hill would place further pressure on the availability of limited parking in the town, particularly disabled spaces. Business in the town would suffer.

Craig Tracey MP[203]

220. Local residents in this area of Green Belt countryside have lived with coal mining on the site for many years. As a colliery Daw Mill generated large amounts of freight being transported on the local country lanes. At the time the operation of the mine was in the national interest and its impacts were endured by residents.

221. This proposal is inappropriate development in the Green Belt and VSC cannot be demonstrated.

222. The suggestion that as a mine began after 1948, the Restoration Plan is invalid, and that the previously developed despoiled nature of the appeal site means the full protection of the Green Belt should not be applied, cannot be substantiated. This site is not of lower value in the Green Belt. The protection of the Framework covers all Green Belt land equally[204].

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[199] Inquiry Doc 25.
[200] Inquiry Doc 27.
[201] The most historic road of the town being only lightly trafficked and giving access to homes and the Church. It includes a significant number of listed buildings, a Grade I Church and the War Memorial.
[202] Ambitious 85% diversion rate.
[203] Inquiry Doc 18.
[204] Gavin Barwell Housing Minister in answer to Mr Tracey's question.

223. The Government places considerable importance on both the policies of the Development Plan and Neighbourhood Planning. The CS was adopted in October 2014 and was found to be compliant with the Framework. The Arley NP is also of bearing on this case. The Government's localism agenda aims to give power to Councils to shape the future of their area.

224. The HA has raised no objection to the proposal and the appellant company claims the mitigation measures can be controlled by condition and Section 106 agreement. There are concerns that the proposed mitigation measures could exacerbate current traffic problems, particularly in Coleshill at the Green Man crossroads. The removal of the no-right turn sign from Church Hill would be dangerous causing risk to pedestrians and motorists alike. The loss of the parking spaces on Church Hill through road improvements would also have its own impacts on congestion, particularly in the High Street. The nature of Church Hill would be changed for the worse for its residents.

Written representations from interested parties

225. Representations were received at the time the planning application was considered by the Council. Further letters and consultation responses were then received in relation to this appeal. The following is the essence of the concerns raised over and above those raised by the representors who addressed the Inquiry, and the Council. Localised problems experienced on the local roads along with accidents involving vehicles at highway 'pinch points' and incidences of flooding on roads are all highlighted. Noise, lighting and dust impacts are raised as concerns. The ability of the Council to properly control a development on this site given the outline nature of proposal is a fear for some. There are considerable numbers of objections to specifically the proposed mitigation scheme for Green Man Coleshill Crossroads and the proposed alterations to Church Hill.

226. There was very limited support focusing on the benefits of the proposal for job creation and for the local and regional economy.

Conditions and Obligations

227. In the case that the SofS is minded to allow the appeal a schedule of conditions was submitted by the parties at the Inquiry[205]. Following discussion at the Inquiry some conditions have been amended and amalgamated for clarity, precision, elimination of duplication, and taking into account guidance in this regard. The conditions are set out at Annex A in respect of the rail related scheme and Annex B relating to the solely B2 use. The discussion below on conditions, in general, does not differentiate between the two schemes as many of the conditions apply equally to both. However, where conditions are specific these are highlighted.

228. Only conditions which are formally required to be discharged prior to works commencing on site have been promoted as pre-commencement conditions.

229. In respect of the rail-related use conditions restricting that use to specific aspects of B2 uses, on particular parts of the site, centred on the manufacture of

[205] Most of which had been agreed between the parties – Inquiry Doc 51.

trains, their maintenance and that of the lines and the manufacture of rail related materials. This would be to secure a general reliance on rail as the main means of transport to and from the site and to address a specific need for such uses. The reinstatement and maintenance in operational condition of the existing rail sidings is an essential part of the rail-related development. As the site is not suitable for the transportation of freight, a condition excluding this from the use of the site is necessary to ensure a satisfactory form of development in the context of residential amenity. The restriction of the outside storage to rail related uses would also be in the interests of visual amenity[206].

230. Should the SofS consider a general B2 industrial use is acceptable in the context of the changes to the original description of development a condition should be imposed to clarify the permitted use of the site for the avoidance of doubt.

231. Standard conditions are required on the approval of the reserved matters and on the commencement of development. The condition identifying the approved plans is reasonable and necessary for the avoidance of doubt and in the interests of proper planning. Taking into account the topography of the development site it is necessary to include, as part of the reserved matters, the need to secure details of the proposed and existing floor levels and the maximum heights for buildings, structures and outside storage heights.

232. Due to the sensitive location of the appeal site in the verdant, rural landscape setting, a condition relating to the submission of arboricultural details and assessment (Tree T1) are reasonable and necessary.

233. To limit the impact of the proposed general industrial use (whether rail related or not) on the wider highway network and on the character of the countryside the number of HGV and non-HGV vehicular movements into and out of the site are restricted. The number of HGV movements is disputed between the parties. I have erred on the side of caution and adopted 54 movements rather than the appellant company's promoted 78 figure. This would go some way to safeguard the wider locality from the impacts of heavy lorries within a rural road network and in the interests of highway safety. However, I have considerable concerns regarding the effectiveness of these conditions, how they would work in practice and whether they are enforceable. I have addressed these matters later in this report at paragraphs 343 and 344.

234. A condition relating to the submission and implementation of a full Travel Plan is necessary to provide sustainable transport objectives, giving people a real choice about how they travel. The implementation of the mitigating highway works at the identified junctions is also necessary in the interest of highway safety. However, I have considerable concerns regarding the effectiveness of the Travel Plan as set out at paragraph 339 of this report. The implementation of some of the mitigating road improvements is also in question and I address this at paragraphs 332 and 333 below.

[206] The Council's concern that, at a later date, permission to vary or remove such conditions could be applied for. However, permission may only have been given on the basis of the rail related use which the conditions secured. I understand their concern but this would be a matter for a future decision–maker were the situation to arise.

235. The appeal site's long history of industrial use for mining means it is important and reasonable to thoroughly investigate whether there is any contamination, and then take appropriate mitigating action. Therefore, conditions to that end are imposed.

236. The management/protection and long-term well-being of the natural elements of the ecology of the development site is important to safeguard for the reasons of amenity and biodiversity. The requirement for a Habitat and Biodiversity Management Plan is also required for the same reason.

237. The condition relating to the Construction Environment Management Plan is required in order to protect the amenities of nearby residents and general amenity.

238. A condition relating to the provision and future management of surface and foul water drainage is also necessary to ensure adequate arrangements are in place to respond to local concerns, particularly in relation to flooding and in the interests of environmental impact. The implementation of the recommendations of the Flood Risk Assessment goes to the same end.

239. The site's rural location, the nature of the general industrial use and the proximity of neighbouring residents, justifies the imposition of conditions relating to day and night time noise levels and the submission of noise management plans. My concerns regarding the implementation and effectiveness of these conditions, along with their enforceability are addressed at paragraphs 315 and 316.

240. Limitations on external lighting are necessary to minimise visual impacts and the character of the countryside.

241. The refurbishment of the Memorial Garden is presented as a benefit of the scheme. It is an important part of the history of the Daw Mill site and so a condition requiring the submission and approval and implementation of such details is necessary and reasonable.

Obligations[207]

242. The appellant company has submitted a signed and completed bilateral S106 agreement[208] relating to the provision of details of habitat creation, its implementation, long-term management, including maintenance, and an undertaking fund these works of habitat creation over-time. This promise, on the part of the appellant company, would have the effect of enhancing biodiversity and protecting nature conservation and the environment[209].

243. The second obligation deals with a contribution towards training and skills. Employment generation for local residents is a priority within the Council's strategic plans. Local job vacancies may require training and upskilling. This

[207] The Council has not adopted a Community Infrastructure Levy Charging Schedule.
[208] Inquiry Doc 41.
[209] CS Policies NW12, NW13 & NW15 are relevant.

promise will go towards providing the opportunity for local people to access new employment[210].

244. A summary schedule of justification of the obligations set out in the bilateral agreement was submitted[211]. The parties were in agreement that all of these provisions were reasonable and necessary to mitigate the impacts of the proposals. Based on the submitted justification I see no reason to disagree.

Inspector's Conclusions

245. The following conclusions are based on the submitted evidence, that given at the Inquiry, the written representations made and my inspection of the site and its surroundings. The numbers in square brackets [] and footnotes denote earlier paragraphs and evidence references in this report and in the evidence base from which these conclusions are drawn.

The appeal proposal for consideration

246. As already outlined above [5,16] the appellant company wishes, by the promotion of the terms of a condition[212] to restrict the use of the appeal site to B2 (general industrial) uses for any of the following uses:

a) the manufacturing of rails, sleepers, track, signalling, gantries and associated railway construction, operation and maintenance equipment;
b) train and rail rolling stock maintenance and repair including ancillary stabling of such trains and stock;
c) train and rail rolling stock manufacturing facility.

247. Being bound by the terms of the condition would confine the use of the site to a primarily railway based usage. The appellant company promotes the change on the basis that it would bring the site back into beneficial use and would respond to a pressing demand, both locally and nationally, for a particular and specialised type of need [89].

248. The issues on the acceptability of the impact of the promoted condition are twofold. Firstly, whether the impact would be significantly different from that which was considered by the Council in coming to a view on the original planning application.

249. Secondly, whether there was an opportunity to comment on the appeal proposal with the rail restrictions in place, thereby not prejudicing the interests of anyone who might reasonably have expected to be consulted.

250. The appellant company originally included a part B2 (general industry) and/or a rail distribution depot to accommodate a specific operator for the depot [5,95]. The loss of the end-user was the trigger to remove the reference to purposes of maintaining rail infrastructure [5]. This was after the Council had considered the proposal and refused planning permission. The further change, now promoted,

[210] CS Policies NW17 & NW22 are relevant.
[211] Inquiry Doc 40.
[212] Annex A to this report – Condition 1.

brings the proposal back to rail related uses, although the terms of the condition would be more restrictive limiting uses to B2 uses only within the a), b) and c) criteria set out above[213].

251. In my view the imposition of the condition would limit the use of the site to primarily rail related usage. This, to some extent, would be a return to the proposal at the time the Council determined the planning application. Indeed it would be more restrictive of the use of the site by removing the general industrial use unless it was rail related[214].

252. Therefore, it seems to me that the Council and any third party ought to have been aware of the potential rail related use of the site at the time when the planning application was considered. All the representations submitted then were copied over as part of the Council's Questionaire submission to this appeal.

253. The appeal proposal with the restrictive condition in place would be a similar, and even a lesser scheme, than that considered by the Council and upon which interested parties provided their views with the effect of the condition deleting the general B2 use. Therefore, in these circumstances, it seems to me that no one has been deprived of an opportunity to comment on the appeal proposal with the promoted rail use restriction in place. Consequently I shall proceed within this report on the basis that the proposed change of use and associated development would be restricted to rail related usage were planning permission to be permitted. In coming to this view I have taken account of the Wheatcroft Principles [215] as well as the active and well informed manner in which the Parish Council, LAWRAG and local residents have taken part in the appeal process.

254. That all said within the commentary that follows, I shall also deal with the scheme were the condition on the restriction to rail related uses not to be considered appropriate to be imposed by the SofS.

255. I am aware of a concern for the Council and third parties that were planning permission to be granted any conditions imposed regarding the use or other restrictions such as noise or vehicle movements could be subsequently challenged [208]. However, this would be done under a separate planning procedure and the impacts of such a proposal would be assessed against relevant material considerations. Such a change would be for the consideration of a future decision-maker. The decision-maker in this current case must deal with the proposal before him.

Whether the appeal site constitutes Previously Developed Land (PDL)

256. I have heard and read submissions from the parties[216] on the above point. The reason for its conclusive importance on whether Daw Mill is PDL or not rests initially within paragraph 89 of the Framework. Here the construction of new buildings can be considered appropriate in the Green Belt if development amounts to the partial or complete redevelopment of previously developed sites (brownfield land)[217], which would not have a greater impact on the openness of

[213] Annex A Condition 1.
[214] Within a), b) and c).
[215] Bernard Wheatcroft Ltd v SSE.
[216] Jones proof Appendices 6 & 8.
[217] Whether redundant or in continuing use.

the Green Belt and the purpose of including land within it than the existing development. Annex 2 to the Framework then defines PDL, but excludes land that has been developed for mineral extraction or waste disposal by landfill purposes, where provision for restoration has been made through development control procedures. Whether there is a valid restoration plan in place is key to the determination of whether the site is PDL or not.

257. There is a Restoration Plan[218] but a difference of opinion between the parties as to whether the appeal site is PDL or not.

258. The point turns on whether Daw Mill was a mine which started before 1 July 1948[219] consisting of:

- The winning and working underground of coal or coal-related minerals in a designated seam area; or
- The carrying out of development underground which is required in order to gain access to and work coal or coal related minerals in a designated seam area[220].

259. Within the main definitions section of Article 1(2) of the General Permitted Development Order 1995, the term mine is defined as 'any site on which mining operations are carried out'. Mining operations are defined as being 'the winning and working of minerals in, on or under land, whether by surface or underground working'.

260. All activities at the Colliery appear to have been regarded as being authorised to be carried out pursuant to permitted development rights[221]. This was the position of all parties until the consideration of this appeal. Such a position is based on the conclusion that Daw Mill Colliery was part of a mine started before 1 July 1948 [40].

261. The appellant company now contends that Daw Mill was not a mine started before 1 July 1948. They contend it did not come into existence until 1965 when they say actual production began[222]. The importance of this point is that in the case of a mine started before 1948 it was necessary to apply to the Minerals Planning Authority for the approval in writing for a restoration scheme before the 31 December 1995[223]. If such a restoration plan was approved then a site could not be considered PDL under the terms of the definition of PDL in Annex 2 of the Framework.

262. The Daw Mill Colliery was part of the Warwickshire Thick coal seam[224]. To access part of this seam in the early 1900s coal was mined via a shaft at

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[218] Rolinson proof Appendix 6.
[219] Class A of Part 20 to Schedule 3 of the General Permitted Development Order 1995.
[220] This matter turns upon the meaning of the provisions of the General Permitted Development Order 1995 which deal with the grant of planning permission for, and the requirement for restoration schemes concerning, coal mining operations.
[221] In respect of the required production and adherence to a restoration plan.
[222] Mr Frazer-Urquhart QC's opinion for the appellant company - Jones proof Appendix 8
[223] Class A of Part 20 to Schedule 3 of the General Permitted Development Order 1995.
[224] Coal does not exist in isolated blocks or packages, but instead as seams which spread over extensive areas – Inquiry Plan A Seam Plan.

Kingsbury[225] and a horizontal tunnel extending to the south. In 1927 a second vertical ventilation shaft was dug at Dexter as the workings expanded underground from Kingsbury Colliery. Sometime, probably in the 1930s the shaft at Dexter was equipped to wind coal. By 1955 the Dexter workings had extended some 5 miles south of the Kingsbury Colliery and consequently required an additional ventilation shaft[226]. So in September 1955 approval was granted for the erection of a shaft and buildings for the purpose of ventilating the underground coal mine from Kingsbury and Dexter Colliery workings and use land at Daw Mill for the development of a colliery[33,148]. Subsequently, in 1958 approval was given for the layout of the pithead buildings, offices, baths and other ancillary buildings [149].

263. When the Daw Mill shaft was complete in 1959/1960 a roadway tunnel was driven through towards the Dexter workings and a connection made in 1960. In 1961 approval was given for the construction of a pithead winding gear headframe at Daw Mill. This would be the super structure for winding the extracted coal up from the coal face below. In 1965 the first coal was sent up the Daw Mill shaft. Soon after part of the underground conveying systems from Dexter were reconfigured to divert coal to the Daw Mill shaft which was nearer the coal face[227].

264. At the Inquiry only Mr Blenkinsopp was able to give first-hand experience of actually working underground [184,185]. He explained that the underground workings of Dexter and Daw Mill were continuous and that Dexter ran into Kingsbury. The underground roadways then connected from Dexter through to Daw Mill. He offered anecdotal evidence of working with his father who entered the mine at the Dexter shaft whilst Mr Blenkinsopp accessed via Daw Mill [184]. Initially coal mined from Daw Mill was transported on the continuous haulage system through to Dexter for extraction to the surface. Dexter could not operate without the ventilation down from Daw Mill. Miners had to be bussed back to Dexter from Daw Mill to use showers etc, sharing surface infrastructure until the associated facilities of the pithead at Daw Mill were established. Men from Daw Mill also worked in the workshops at the Dexter pit-head when necessary.

265. A second ventilation shaft was sunk at Daw Mill in 1969/1970. From Daw Mill some of the previously worked Dexter faces were re-worked to extract further coal using new technology. Although still physically connected to Dexter, it was around this point in time that Daw Mill could function independently[228]. Dexter mine closed in 1974, Kingsbury Colliery having closed in 1968.

266. The appellant company put emphasis on whether a Colliery had its own manager as an indication as to whether it was a separate mine or not[229]. Dexter appears to have been separately managed from 1957[230]. This date

[225] About 5 miles from Daw Mill – opened in 1897.
[226] A mine requires 2 ventilation shafts - air enters via one, circulates around the mine and is exhausted via the other.
[227] Blenkinsopp proof and Mr Blenkinsopp evidence in chief.
[228] Having its own second ventilation shaft.
[229] This stems from the Mines and Quarries Act 1954 which sets out that no mine shall be worked unless there is a sole manager.
[230] From Kingsbury.

coincides with the date that work was on-going on the Daw Mill ventilation shaft, although approval for the shaft was given in 1955 when Dexter and Kingsbury were managed as one. In 1964 it would seem that both Dexter and Daw Mill were managed by one colliery manager. It is likely that around 1965 Daw Mill gained its own colliery manager [33].

267. Following the privatisation of the coal mining industry in 1994 RJB Mining (UK) Ltd[231] submitted the Restoration Plan to Warwickshire County Council, as the Minerals Planning Authority, in January 1996, an acknowledgement of the necessity to do so in the circumstances of Daw Mill. By implication up until this appeal all parties accepted Daw Mill to be a mine started before 1 July 1948. The previous owner/operator of Daw Mill had taken all the advantage offered by permitted development rights until its closure[232].

268. However, this change in position on the status of Daw Mill is part of the appellant company's case [40]. I heard and read submissions and evidence from both parties in relation to whether Daw Mill Colliery could be considered to be a mine started before 1 July 1948[233]. The factual evidence in respect of when and why shafts were sunk and the chronology of the development of Daw Mill were very similar between the cases.

269. I have considered the appellant company's point that the definition of the term mine[234] refers to an area 'on which' mining operations take place, directing attention to the surface manifestations of mining operations[235][36]. However, taking a common sense approach the definition of mining operations 'the winning and working of minerals in, on or under land' seems to me to set up a tension with a premise that a mine can only be defined by what can be seen above ground. This seems to be a matter of semantics. Mining operations include below ground works which would be dependent on above ground works, such as a ventilation shaft. The two are symbiotic in a broad sense.

270. The Mines and Quarries Act 1954 defines the term mine as meaning an excavation or system of excavations, including all such excavations to which a common system of ventilation is provided, made for the purposes of, or in connection with, the getting, wholly or substantially by means involving the employment of persons below ground, of minerals (whether in their natural state or in solution or suspension or products of minerals)[236]. Daw Mill and Dexter were dependant on each other with a common system of ventilation until 1969/1970.

271. Taking all of these aspects into account I am of the view that on the balance of the evidence, in all likelihood Daw Mill, in its first origins, was part of Dexter Colliery which had sprung from Kingsbury Colliery. The interconnectivity of the

[231] Who acquired the site. In 2001 RJB Mining (UK) Ltd changed its name to UK Coal plc. Harworth Estates (the appellant company) are a successor company to UK Coal plc following corporate restructuring.
[232] Closed in 2013.
[233] Jones proof Appendix 6 & 8.
[234] Definition with Article 1 (2) of the GPDO 1995.
[235] Mr Frazer-Urquhart QC's opinion for the appellant company, para 17 - Jones proof Appendix 8.
[236] Jones proof para 15 & 16.1-16.3.

underground tunnels/roadways, the working of the continuing Warwickshire Thick Seam[237], the sharing of work force, the dependence of Daw Mill upon Dexter to transport and raise coal in its early days, and the interdependence of Dexter and Daw Mill to secure the necessary ventilation to the network of branching tunnels to address the coal face, to secure the life giving flow of air to the miners working deep below ground, are all factors which lead me to the view that Daw Mill was a mine started before 1 July 1948. Therefore, the Restoration Plan was appropriately submitted and then was approved by the Minerals Planning Authority.

272. I have found particularly persuasive the evidence of the one person addressing the Inquiry who has experienced working at Daw Mill, Mr Blenkinsopp[238]. He worked at Daw Mill for over 30 years. Mr Blenkinsopp likened his working experience of Dexter and Daw Mill to Kingsbury being the Mother Pit and Dexter was the daughter. This would logically extend to Daw Mill being the grand-daughter.

273. As a result of the conclusions on this matter the appeal site cannot be considered to be PDL.

Baseline against which the impacts of the proposed scheme should be considered

274. The determination of Daw Mill as a mine started before 1948 is also importantly relevant as to whether the approved Restoration Plan was firstly necessary to be submitted and approved, and then whether it can be enforced against in the case that the plan has not been implemented.

275. From the conclusion above [271] it is clear that the Restoration Plan was required to be submitted and approved, as was the case. It was approved in principle under Part 20 (Coal Mining Development by the Coal Authority and Licensed Operators) Class A, Condition A.1 (a) (i) of the Town and Country Planning (General Permitted Development) Order 1995 subject to two conditions. The first is most relevant to this case and sets out that no later than 6 months prior to the complete cessation of the mining operations, a comprehensive scheme for the restoration of the colliery 'surface authorized site' area shall be required to be submitted for the approval of the County Planning Authority [46]. Following approval the scheme shall be implemented accordingly.

276. The Restoration Plan was submitted and granted on 26 November 1996[239]. A planned closure of the Colliery under the terms of the condition would have involved the submission and approval of a comprehensive scheme for restoration submitted 6 months prior to the cessation of operations[240]. However, the ferocious underground fire in 2013 represented an abrupt end to mining operations from the site. As Daw Mill was not to have been anticipated

[237] Seam plan 22 September 1993 – Inquiry Plan A
[238] Worked at Daw Mill April 1968–Nov 1972 and then March 1982-April 2010.
[239] Jones proof - Appendix 3 & Rolinson proof Appendix 6.
[240] The plan itself was granted some 20+ years before the Colliery's anticipated end of life. It was considered sensible to approve the scheme subject to a final scheme being submitted 6 months prior to the cessation of operations – Rolinson proof Appendix 6.

to close until 2014/2015 the required detailed Restoration Plan was understandably not in place at the time Daw Mill prematurely closed.

277. The key matter seems to be the enforcement of the 'in principle' Restoration Plan by the County Council[241].

278. To date the County Council as Minerals Planning Authority have taken no action to seek to enforce, initially the submission of a detailed Restoration Plan, and then its implementation within an agreed timescale. LAWRAG had received comment from them that it was not expedient to take action in a situation of legal uncertainty as to whether the Restoration Plan was required or not, and in the face of the consideration of this appeal[242]. The enforcement of the Restoration Plan is obviously a matter for the Minerals Planning Authority.

279. However, nearly 5 years has passed since Daw Mill Colliery closed. Whilst I understand the reasons why the Minerals Planning Authority has not progressed the securing of the detailed Restoration Plan and its implementation, I am also conscious that the appellant company has been clear in their position that there is no reasonable prospect of the appeal site's restoration by any means[243][42-44]. However, this has not been tested and no persuasive evidence has been put to substantiate this case[244]. It also flies in the face of the company's previous position as set out in an email from their current Chief Executive in November 2013, which acknowledges that they are fully aware of the site conditions and is 'buying with knowledge[245]' and understands the legal obligation to comply with the restoration obligations if the mineral planning consent is enforced by the Mineral Planning Authority[246].

280. So what then is the baseline scenario against which the impacts of the appeal proposal should be measured? Daw Mill Colliery closed in 2013. There is no prospect of the mine reopening due to the fire damage below ground and the fact the site has been essentially stripped back to a cleared site with little remnants of its past usage, and the mine sealed [8]. Should it be as the site currently exists, a large area of disused derelict industrial land in the heart of the Green Belt [15]?

281. Harworth Estates Chief Executive in his email of 14 November 2013 acknowledges the restoration of the appeal site to a green field status should Warwickshire County Council enforce the terms of the condition, as being the baseline scenario[247]. I agree with the Chief Executive. It seems to me that in the absence of convincing evidence to the contrary there is a chance of the site's return to a green field, in accordance with the Restoration Plan, coming to

[241] Warwickshire County Council has confirmed they consider that the Restoration Plan is enforceable – Brown proof – Appendix 13.
[242] Jones proof paras 7 & 8 – although letter within Brown proof Appendix 13 indicates that the County Council do consider the Restoration Plan legally required and enforceable.
[243] Inquiry Doc 44 – Appellant company closing para 3.
[244] Inquiry Doc 32 did set out an initial order of cost estimates but these were historic and the costs of the restoration scheme has not been up dated in any detail.
[245] The appellant company paid £5000 for the appeal site – Inquiry Doc 43 – Council's closing para 7.
[246] Jones proof – Appendix 2.
[247] Jones proof – Appendix 2.

fruition making it a material consideration. In reaching this view I have taken into account the evidence of Mr Rolinson regarding what works would be required to achieve the restoration proposal[248]. He estimates it would take some 1.5 years to complete, affecting the whole site and involve considerable traffic movements on the local network. Obviously such a scheme would result in disruption locally, but this would be short lived in respect of the longer term re-establishment of a green field site in this rural landscape. Therefore, based on the appeal evidence it is against the future green field nature of the restored site which the appeal proposal should be measured[249].

282. The tardy nature of the enforcing of the Restoration Plan does reduce the weight that can be given to the plan as only limited details are available, but the fact that on a common sense interpretation of the evidence a more detailed Restoration Plan could come forward, is sufficient to confirm the baseline comparative scenario as a green field site[250].

Green Belt

283. As already established the appeal site lies within the Green Belt. So put simply, the main issue to be considered in this case is whether the proposal represents an inappropriate form of development in the Green Belt and, if so, whether there are any other considerations sufficient to clearly outweigh the harm by reason of inappropriateness, and any other harm, by which VSC would exist[251].

284. The Framework notes at paragraph 87 that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in VSC. Framework paragraph 88 is clear that when considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. Framework paragraph 89 also sets out that a local planning authority should regard the construction of new buildings as inappropriate in the Green Belt subject to certain exceptions which include the partial or complete redevelopment of PDL, whether redundant or in continuing use which would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development.

285. It has already been established above [256-273] that the appeal proposal is not PDL. Accordingly the proposal would be inappropriate development in the Green Belt and so harmful by definition to the Green Belt with substantial weight being ascribed to that harm.

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[248] Rolinson proof paras 13.4-13.15.

[249] The Restoration Plan whilst in principle does give an indication of what is proposed with the proposed contouring of the site, woodland planting, meadow/amenity grassland, waterbodies, agricultural grassland, footpath system. It has also been taken into account that planting in such a scheme could take some considerable time to mature (Mr Grimshaw proof para 3.20 assumes 10 years in place) – Jones proof Appendix 6 – Plan and summary of pithead restoration proposals.

[250] All the reasoning in the above section equally applies to a development scenario of solely B2 (General Industry) use.

[251] Paras 87 & 88 of the Framework.

286. Paragraph 79 of the Framework sets out that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belt are their openness and their permanence.

287. The main elements of the appeal proposal would comprise some 24,652 square metres of built floor space[252][114] along with open storage up to a maximum height of 15 metres [158] and associated car parking. Using the green field restored site as the baseline for comparative consideration in this case, the appeal proposal would clearly have a greater impact on openness introducing an expansive industrial spread of development across the site. This would be in sharp contrast with the open, verdant character of the wider surrounding Green Belt.

288. In the case of a comparison with the site as existing, the cleared nature of the appeal site, other than a few buildings/structures as remnants of the Colliery, are industrial in their character and visually obvious in the Green Belt. In general most of the appeal site is perceived as being largely free of substantive above ground development. As result the scale and nature of the proposal would introduce an industrial, urbanising character of built form which would present a significantly greater spread of development across the site than currently exists[253].

289. In either case the proposal would have a greater impact on the openness of the Green Belt than the baseline comparative or the nature of the existing site. Both the openness and permanence of the Green Belt would be eroded.

290. In respect of the impact on the purposes of the Green Belt, the development would be identified as an industrial urban form increasing the sprawl of such built-up development across the site in the context of the wider open Green Belt setting. Encroachment on the countryside is not just about a physical presence. The visual impact of the sprawling development would impinge on the character and nature of the Green Belt significantly diminishing the quality of its openness.

291. I have taken into account that the submitted illustrative parameter plan[254] shows the existence of mature boundary planting along all boundaries, other than the southern boundary adjacent to the railway line. It also shows enhancement to these existing tree belts through proposed tree planting. However, whilst offering some transition between the proposed built development and the surrounding open Green Belt it would not diminish the impact of the proposals on openness and on the identified purposes of the Green Belt.

292. Therefore, the construction of the new industrial buildings and associated development/uses would have a greater impact on the openness of the Green

[252] Buildings up to 15 meters high – have taken into account some colliery buildings are proposed for retention.
[253] Proposed buildings = 24,652 square metres – Existing buildings on site = 3,215 square metres. An increase of 21,437 square metres. 13% of the development applied for comprises the existing building footprint on site.
[254] LBPP1.

Belt and the purpose of including land within it[255] than either, the restored site, or the existing development[256]. This identified harm to the Green Belt should be given substantial weight in the balance of this decision. Consequently, the appeal proposal is inappropriate development in the Green Belt and it should not be approved except in Very Special Circumstances.

Any other harm

- *Landscape*

293. The appeal site surroundings are of a distinctive valley landscape, with rounded valley slopes enclosing some views. Woodland and mature hedgerows create a sense of enclosure of mainly agricultural land in active use. Dispersed farmsteads, scattered dwellings and small villages provide the settled development within the landscape. Overall the landscape is intricate and small scale in character.

294. The linear nature of the traversing railway line is perceptible in the landscape, particularly where it is embanked. However, other than when trains momentarily advance along its course, this urban feature, benefits from a familiarity within a rural context which reduces its impact on the character of the landscape. The now cleared Colliery does include wooded site boundaries which enclose the site, but does not screen or soften the harsh industrial appearance of the hardstandings, lighting columns and remaining buildings, which have prominence in the immediate landscape. This prominence is experienced particularly from the public footpaths which pass close to the appeal site[257] or provide more distant views from the country lanes which spread out through the landscape. As I experienced at my site visit, the prominence of the appeal site is mainly confined to views from the footpath which runs parallel to the railway line, from Daw Mill Lane as it climbs/descends the valley slope and from Shawbury Lane. These viewpoints are all concentrated to the south and south west of the site. More distant views from higher points on the valley sides at Over Whitacre, Church End and Tamworth Road and Nuneaton Road are filtered through the tree cover, which will vary in places with the seasons. These wider viewpoints do not afford the appeal site such visual prominence, views being limited and glimpsed.

295. The baseline restored landscape would not present a derelict appearance to this part of the valley landscape. It would appear more consistent with the surrounding landscape[258].

296. This pleasant verdant landscape is not covered by any designation relating to landscape quality [46]. This situation would be unlikely to change even if the site were to be restored. However, it is identified within the relevant landscape character assessments, which Mr Grimshaw sets out in his proof at paragraphs

[255] As set out above.
[256] Albeit that the appeal proposal when measured against the existing state of the site would have the benefit to the visual amenity of the Green Belt of removing extensive hardstanding areas and the recycling of derelict land.
[257] Grimshaw Appendix 1 Figure 5.
[258] North Warwickshire Landscape Character Assessment 2010 (CD21) - Landscape Character Area 7 – landscape and management strategies states that the Restoration Plan for Daw Mill should be in keeping with the area's unique character.

5.53-5.70. The North Warwickshire Landscape Character Assessment 2010 recommends that to conserve and restore the typical rural 'Arden' landscape character of this area, the following approaches should be taken: conserve rural character by restricting changes in the use of rural land; maintain the quiet, peaceful character of the area; and only encourage informal recreation.

297. Paragraph 109 of the Framework states that the planning system should contribute to and enhance the natural and local environment by (amongst other matters) protecting and enhancing valued landscapes, although the term 'valued landscapes' is not defined. Whilst the landscape here is clearly valued by local people [216], it does not include specific attributes or landscape features which would take it out of the ordinary sufficient for it to amount to a 'valued landscape' in terms of the Framework.

298. That said landscape is about the relationship between people and place. It provides the setting for our day-to-day lives. This is a landscape in which people spend their leisure time. They experience it both up-close and at a distance.

299. Assessed against the baseline restored site the appeal proposal would introduce new buildings, associated hardstandings and access roads requiring the removal of a verdant green field site, including water courses. Security fencing and completed rail sidings along with a gantry crane and a conveyor would be constructed. Whilst there are some large agricultural buildings in the wider landscape these are scattered around the valley. The large industrial buildings at the scale, mass and concentration proposed would bear little resemblance to agricultural buildings commonly viewed in the landscape. 24 hour a day, 7 day a week working would only heighten the visual impact of the proposal in the landscape by reason of the external lighting of the site[259], along with the general activities and movement within the site boundaries which would be in sharp contrast with the general stillness of the restored site. This would equally apply to the introduction of increased traffic movements onto the network of B roads and country lanes which would change the character of this rural environment[260].

300. The impacts set out above, in the main, equally apply to the site as it exists today, in that it has a visual prominence, but it is still and does not draw attention to itself due to its redundancy. The appeal proposal would involve a much greater degree of coverage of buildings on the site and introduce areas of outside storage with car parking as well as standing trains, along with vehicle movements.

301. Whilst I appreciate discernible views of the proposed development would be limited to viewpoints to the south and south-west with good boundary tree cover,[261] along with topographical advantage from the rising valley slopes to the north and east, would make for only limited, if not glimpsed views, from these

[259] Have taken into account technological improvements to external floodlighting, but nonetheless the lights themselves, as well as their directed light spread would be visible in the night time environment.
[260] See paragraph 342 of this report.
[261] Proposed to be enhanced as part of the scheme.

directions, the appeal proposal as new development would not integrate into the landscape.

302. One of the main objectives of the CS is to promote high quality development at all times. Quality development relies on a combination of factors, including aesthetics of the buildings; how water is dealt with and how development fits within the rural landscape. This objective broadly reflects national policy which recognises the intrinsic character and beauty of the countryside, the need to establish a strong sense of place, the overall quality of an area and respond to local character reflecting the identity of local surroundings[262].

303. I consider this valley landscape sensitive to change. Its capacity to absorb development is limited particularly when measured against the baseline comparator[263]. As a result the appeal proposal would not respect its local context and would neither conserve nor enhance local landscape character. As a result it cannot fail but to seriously harm the character and appearance of the countryside setting[264]. As a result CS Policies NW12, NW13 and NP Policy ANP1 would be offended.

- *Noise*

304. This section is prefaced with the acknowledgement for many years Daw Mill was an active colliery producing a significant amount of coal which fuelled industry and warmed the Nation. I heard from local residents and LAWRAG that there was considerable environmental impact caused by the up-top workings of the mine through, amongst other things, lorry movements, loading of the coal trains, train shunting in and out of the site, and light pollution from the lighting columns which facilitated 24 hour a day working [207, 211, 220]. All of this amounted to noise and disturbance for locals persisting over the years. However, they reluctantly learned to live with it, firstly, in the knowledge that it would not be forever, as the mine would close over time, but also because the production of coal was in the national interest for the betterment of the wider population.

305. Daw Mill as a colliery has gone and it is an accepted point that it will not re-open as a working mine. So since 2013, other than noise and disturbance caused by the demolition and removal of the structures and spoil from the site, the countryside is now described by local residents as peaceful, tranquil and quiet. The North Warwickshire Landscape Character Assessment 2010 seeks to maintain the quiet, peaceful character of the area, whilst the Arley NP looks to maintain the rural character of the Parish and to retain the peaceful and quiet countryside of the Parish.

306. The background noise environment in the area, as I experienced it, at the site visit was mainly influenced by the noise of local and distant road traffic, trains

[262] Paragraphs 17, 57 & 58 of the Framework.
[263] The North Warwickshire Landscape Character Assessment (Church End to Corley – Arden Hills and Valleys Area – Brown Appendix 6 – Daw Mill Colliery is referred to has having little influence on the wider landscape – however, the Colliery has gone and my assessment is made firstly against the baseline comparator being the restored site and secondly, in the instance that the SofS does not agree with me on the relevance of the restored site, against the site as it exists at present.
[264] This is equally pertinent to both the restored site and that at present.

both freight and passenger on the railway line, planes flying into and out of Birmingham airport, agricultural machinery and the sounds of the fauna of the countryside, particularly dogs barking and bird song.

307. I do acknowledge that the purpose of policy relating to noise is not to prevent any residents from hearing or being disturbed by sound from a development but to ensure that significant adverse noise effects are mitigated against and reduced to a minimum in the interests of health and quality of life[265][47].

308. The appellant company undertook an environmental acoustics assessment[266]. This is the only assessment undertaken as the Council's case rests on a critique of the assessment. The assessment is prefaced with the acknowledgement that the proposal is for B2 use but the exact use, design and layout has yet to be decided, as this would depend upon the exact requirements of the operator once permission is granted. The assessments were therefore based on the three most likely uses identified being rail related - rail construction and maintenance facility; train manufacturing facility; and train maintenance facility. 24 hour a day, 7 days per week working was considered, but with no handling, unloading or loading of goods between 23:00 and 7:00 hours[267]. Worst case examples of site designs which would exhibit maximum adverse noise impacts without mitigation being in place were considered.

309. In respect of the assessment I have the following concerns. The noise assessment does not cover in any detail a general B2 use of the appeal site in the circumstances that the SofS does not agree with me in respect of the limiting of the B2 use to only rail related uses[268]. This leaves drawing conclusions on the impact of noise generated by general B2 uses somewhat uninformed.

310. Secondly, the assessment mentions several times that the historic context for the area was previously a major colliery which would have been a significant source of noise and viewed by local residents as an inherent aspect of the local background noise environment[269]. Mr Stephenson's conclusions in his proof and at paragraph 9.1 of his summary proof specifically weighs the historic context into his judgement that no significant impact is predicted to occur. He judges that noise from the proposed development, with or without mitigation measures in place, is also likely to be of a similar character but lower in level than when the colliery was in operation[270].

311. Since the Daw Mill Colliery closed in 2013 the nature of the environment experienced by residents and those enjoying the valley has changed significantly. As already indicated above it is against this rural countryside setting which the proposal should be assessed [281].

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[265] Framework para 123.
[266] Contained in the proof of Mr Stephenson – RPS 2017 Report.
[267] Stephenson summary proof paras 2.2 & 2.3.
[268] There was an earlier version of the noise assessment 2014 & 2015 reports. These sought to compare noise from the proposed B1, B2 and B8 uses (all relevant at the time) with the noise from a working colliery. A flawed approach.
[269] Stephenson summary proof paras 5.1 and 6.5.
[270] Stephenson summary proof para 9.3.

312. Concern for the Council and third parties centre on a number of disputed elements of the assessments, including assumptions made on the working practices of the rail related units, such as whether a train would pull into the sidings placing it much closer to Daw Mill Cottage than if it shunted in, the locations of the data collection points measuring background noise levels, and lack of corrections being made in the RPS model for tonality, impulsivity, intermittency[271].

313. These matters come down to a difference in expert judgement. The relevant model, fuelled by collected actual data, relies upon the expert interpretation and anticipation of the type and extent of sound generated by the future activities on the appeal site. Both Mr Stephenson and Mr Clarke[272] have had experience on the ground of, what they consider to be similar sites, such as Eastleigh Works[273]. They both applied their experience and judgement as to what would be the likely day-to-day working activity. I have no reason to doubt their predictive scenarios on potential working practices. The locations of the collection points of the background noise survey[274] were reasonably placed taking into account that the appellant company had no right to position them on privately owned land. The distance from the survey point to, for instance, Daw Mill Cottage was minimal and I don't consider would have made a significant difference to the overall reading outcomes.

314. However, the characteristics of a specific sound depend, to some degree, on the sensitivity of the receptor[275]. Train noise is part of the valley environment as passenger trains speed through and freight trains, which from my observations, can be of some length, pass-by in a more lumberous way. However, in my experience[276] trains pulling or shunting wagons at slow speeds, either coming to a halt or pulling away, assuming a diesel locomotive, would include sounds of a tonal and intermittent nature. In addition, there may be other sounds generated by the associated B2 uses[277] which may fall into these groups. It is difficult to say at this stage in the absence of a firm end user and with the possibility of a combination of uses and users within the rail related purposes promoted by the appellant company[278].

315. The appellant company has promoted mitigating measures through the terms of planning conditions [29 & 30 Annex A , 23 & 24 Annex B] to seek to reduce

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[271] Mr Stephenson relies on his professional judgement as to whether correction is required. He considers noise from trains is not characterised by any of these aspects.
[272] Who advised on logistics and the likely pattern of work and vehicle movements in connection with the proposed future rail related uses.
[273] A locomotive, carriage and wagon building and repair facility –Stephenson& Clark evidence-in-chief.
[274] Inquiry Plan F.
[275] Mr Stephenson evidence-in-chief.
[276] I observed freight trains in idle, shunting and pulling out onto track as well as passing through at speed and slowing for the Station at Ely in Cambridgeshire. I have also lived for many years lived close to a busy freight line and have observed passing freight trains at close quarters and at a distance on many occasions.
[277] Particularly in the case of a general industry B2 use across the site.
[278] The promoted conditions No 29 & 30 (Annex A) an 23 & 24 (Annex B) includes a specific sound level with an adjustment for characteristic features of tonality, impulsivity, and intermittency. This does set up a tension with the appellant company's promoted position.

noise emissions from the proposed development[279]. Essentially the effect of these conditions would be that every time a new occupier seeks to move to the site an assessment of day and night time noise associated with all activities associated with all of the operators on the site , including the new operator, would need to be submitted to and approved in writing by the Council. Predicted daytime and night time noise levels are identified which must not be breached. However, I am not convinced that the conditions will do the job they are intended for. To achieve a site wide assessment of noise levels/practices of each user, taking into account that there may be a number of companies operating from the site, and the development would be phased over an unknown timescale, every time a new operator moved to the site it would be impractical and may be unachievable as it relies on the co-operation of all parties who occupy the site. Without such co-operation any new occupier would be unable to comply with the terms of the condition. Even if it were possible to produce the day and night time assessments, who would arbitrate over whether a particular individual user was unacceptably contributing to noise levels? It may require the isolation of one particular operation on the site. This may be possible with one overall user in control, but I am not convinced that would be the case in this instance, and there is no mechanism in place to give me assurance in this regard. Compliance with the conditions would be left to the goodwill of the occupiers of the site, playing ball with new occupiers and the monitoring and enforcement would be left to the Council, possibly in a situation where breaches were occurring, but responsibility for those breaches were not obvious[280].

316. I heard from the appellant company that it was likely that there would be a management company who would co-ordinate users across the site in this regard. However, in these circumstances no mechanism has been offered to secure such an approach. I consider these conditions would be impractical for each individual company to try to provide the required assessment of all activities across the site, including their own. The Council would be in difficulties if there were breaches in identifying where the offending noise was coming from and if it was cumulative. Then, who do you then try to enforce against? All users? Last user in?

317. The appellant company has also made play of the fact that there are few residents in the immediate rural locality which may be affected by new industrial development on the site. Paragraph 123 of the Framework does not specify a threshold for the particular number of residents required to be affected. It focuses on health and quality of life. I heard from residents that the valley is well used by walkers, cyclists and riders and it is reasonable to take into account their experience of the countryside.

[279] Stephenson summary proof para 7.1.

[280] I have taken into account that conditions 31 Annex A & 25 Annex B would require the submission of a noise management plan from each occupier of the site to cover its operations. However, over time working practices can change and it would require each user to notify and seek approval from the Council of any change which might impact noise emissions. This then could upset the balance of other users approved practices and management resulting in cumulative noise level breaches.

318. In my view the appellant company's conclusion that the noise generated by the proposal would not give rise to significant adverse impacts has been placed in the context of the residents previously having been exposed to the long term noise generated by the Colliery [51 c)]. This gives me pause to question the overall weighing of the elements in the balance of the noise assessment's overall conclusions, which is vested in expert judgement. The noise assessment judgements as to whether the proposed development would not result in a significant or unacceptable impact due to noise, I consider tainted by the alluded context of the historic use of the site as a colliery.

319. I have raised concerns relating to the practical implementation and monitoring of mitigation measures across the breath of the appeal site taking into account the phasing of the proposal and the number of separate users which could be accommodated [139,315].

320. These factors along with the lack of modelling on general industrial uses across the site do not persuade me that the impact of noise from the proposed development can be discounted as having anything less than a significant adverse impact.

- *Tranquillity*

321. Paragraph 123 of the Framework sets out that planning decisions should aim to identify and protect areas of tranquillity which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason. The North Warwickshire Landscape Character Assessment 2010 describes the area as being deeply rural and tranquil. Arley NP looks to maintain the rural character of the Parish and to retain the peaceful and quiet countryside of the Parish.

322. The Council were concerned that the appellant company had not considered the impact of the proposal on the quiet character of the area and in particular the footpaths in relation to tranquillity[281].

323. There is no settled definition of tranquillity. There is some general tranquillity mapping produced by CPRE. It is essentially a state of mind, a judgement by an individual.

324. Mr Bentley's method of assessment of tranquillity was based on a guide which he intends to publish. His methodology had not been peer reviewed and whilst he has an agreement for a University to take the research forward as a collaborative partner it has not progressed to a point of wider industry acknowledgement. He recognises that his assessment has been less detailed and less complete than would be ideal and that he has not had access to sufficient data about the proposals to enable a detailed consideration of their impact on tranquillity[282].

325. The locality of the appeal site, other than a reference within Landscape Character Assessment to the area being tranquil, has not been identified or afforded protection as an area of tranquillity relatively undisturbed by noise and

[281] Presented as a sub-set of the Council's case on noise. Metcalfe Rebuttal proof – Appendix A - proof of Mr Bentley.
[282] Metcalfe Rebuttal proof – Appendix A para 7.1.

prized for its recreational and amenity value because of its tranquillity[283] by the Council or any other appropriate body. My experience of the area was of moments of tranquillity, which does not mean silence, but of an enjoyment and appreciation of being out in countryside, serenaded by bird song and the wind in the trees, but with the hum of the M6 and other local road noise, as well as agricultural machinery, and the rush of the trains continuing as a reminder of the wider urban context. However, this in no way diminishes the quality of the tranquillity, but it is not an area relatively undisturbed by noise. Therefore, in the infancy and untested nature of Mr Bentley's model I give it little weight in the consideration of noise and rely on my own assessment of how tranquil the locality is as I experienced it.

326. This would be a large scale industrial site with significant financial investment required. In a context of the actual nature of the end user and its associated employment uses not being know, this uncertainty gives me no surety that the noise from the rail related uses, both during the day and at night-time, would not give rise to significant adverse impacts on the long term health and quality of life of residents and those who enjoy the countryside[284]. In this way the CS Policy NW12 would be compromised which seeks improvement to the environmental quality of the area.

- *Highways*

327. The HA has raised no objection to the development proposal, concluding that based on the Transport Assessment (TA) and the HA's in depth review of the proposal, considering information which has been submitted by all parties, and having assessed the development proposal in accordance with Government guidance, there would be no detrimental impact on the safe and efficient operation of the highway network, as suitable mitigation has been identified[285].

328. LAWRAG consider that the HA has made an error in their assessment and understanding of the transportation evidence [169]. Mr Benison, having been the responsible HA officer in the early negotiations with the appellant company, undertook some of the ground work which would have underpinned the later assessments of the HA after Mr Benison's departure from the HA. However, he was not then a party to the later examination of the TA, associated evidence/ meetings and final conclusion of the HA. I appreciate he alleges some technical issues with such aspects of the TA as trip generation, road safety audit and ratio flow over capacity, but the responsible public body (HA), much as Mr Benison had done, had applied their professional understanding and responsibility to ensure compliance with national guidance in this matter. I consider it reasonable to give the HA's expressed views on the TA and its outcomes considerable weight alongside[286] the promoted impacts of the mitigating works. Nonetheless, there are some more fundamental issues raised in relation to the highway mitigation works which need to be considered.

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[283] Framework para 123.
[284] This would include some impact on tranquillity but this in itself would not tip the balance against the proposal on the matter of noise alone.
[285] Cummins proof paras 2.4, 2.5 – Appendix 3.
[286] I have also noted that the TA ignored the historic traffic flows of HGVs and cars generated by the previous colliery use and assessed the impact of the proposal against the appeal site being a green field site.

329. The Council and LAWRAG have concerns about whether the mitigation proposed has a reasonable prospect of being implemented. This, in the main, relates to, in the cases of Fillongley Crossroads[287] and Furnace End Crossroads, the possible reliance on unavailable third party land.

330. Both junctions are priority controlled crossroads, both operating at over capacity[288]. Again in both cases without the appeal proposal, in the coming years, traffic growth will exacerbate the problems of congestion at peak times at each junction[289]. Even without any traffic from the proposed development the junctions will become very congested.

331. At Fillongley Crossroads it is the evening peak which is of particular concern in respect of congestion. The proposed mitigation includes the installation of traffic signal controls. This would allow the junction to operate below capacity even with the development traffic, thus reducing congestion and accidents. Having visited and observed the junction at peak hours I do not doubt the concerns of LAWRAG regarding the increase in congestion, but it seems to me that in the main it would be possible to implement the mitigating highways works[290] without straying over third party land.

332. My observations at the Furnace End junction were not conclusive. This is a busy through route with much traffic heading to Coleshill and the strategic road network beyond. The Coleshill Road slopes up towards the junction. It is limited in width by terraced houses to the east and a bank and retaining wall of a corner property to the west. The mitigation scheme includes traffic light controls, as well as the insertion of a right hand turn lane alongside the left hand turn lane approaching the junction on Coleshill Road, with a similar arrangement on Nuneaton Road. This would be to reduce queuing times. In theory there is merit in this proposal. However, as I observed at my site visit in the evening peak, HGVs, coaches, fire engines and large vans all struggled to negotiate a right turn without straying across the oncoming path of traffic from the other conjoining roads at the junction. The proposal is to widen the lanes entering the junction and reconfigure the various lanes exiting it. This does seem to rely on maximising the use of highway land. In places it is unclear where the highway ends and private land begins. Drawing no ADC1085/003 RevE which shows the Furnace End junction improvements has plotted upon it the highway boundary. It seems to include part of the front of the terraced houses which, although probably dating back to the turn of the century, seem to straddle the highway boundary, as do the wall and hedge of the two corner properties on Atherstone Road/ Tamworth Road and Coleshill and Tamworth Road (this is a retaining wall with a bank and hedge above). The ownership of this land is strongly disputed by third parties [170]. I am aware that the HA has powers to secure whatever land is required to achieved road improvements

[287] In respect of a routing pattern for development traffic, all traffic routing to and from the east would pass through the Fillongley Crossroads.

[288] Cummins proof - Due to the over-capacity working of the junctions at Fillongley and Furnace End (along with a requirement to improve the safety of the junction at Furnace End), without traffic from the new development added in, the HA requested that the then applicants identify suitable mitigation schemes for the junctions – Cummins Appendix 3.

[289] I heard anecdotal evidence from residents who live at or close by these junctions of the current problems of peak time congestion, particularly with HGV traffic at furnace End.

[290] Set out dwg no ADC1085/004 Rev C – Condition 25 Annex A & 20 Annex B.

[66]. The junction improvements would be a distinct benefit for traffic flows for road users and residents alike, as queuing times would reduce and traffic noise and standing traffic would be reduced, if the improvements were to go ahead. In this instance taking into account the restricted nature of the junction which, at face value, appears to be confined by land uses, if not land ownership, a greater sense of the actual practicality of achieving this road junction improvement would have given more confidence when considering its mitigating effects[291].

333. Turning then to the Green Man Crossroads at Coleshill. This is a priority controlled junction (crossroads). The dominant flow is along the High Street (B4117) with traffic from crossing B4114 Blythe Road/Birmingham Road controlled by stop lines. At peak times, as I observed, the junction operates significantly overcapacity with delays and queuing. It works on a tidal basis with AM peak queuing along Blythe Road as traffic heads towards Birmingham and the wider strategic network and the reverse in the PM peak. However, due to the location of Daw Mill most trips, which would be attracted to the site from the West Midlands Conurbation, would move in the opposite direction to the existing movements at the junction during peak hours.

334. The proposed mitigation deals with a means by which traffic can be reallocated on the highway network away from the junction. It is acknowledged that motorists will make use of alternative routes and will choose the route that provides the greatest time saving and least resistance.

335. Church Hill is proposed to provide such an alternative route from High Street to Blythe Road avoiding the Green Man Crossroads. This involves the improvement of Church Hill to make it more attractive to drivers wanting to access Blythe Road from High Street. At present drivers tend to remain on High Street turning right onto Blythe Road at the Green Man Crossroads, as Church Hill is restricted in width by on-street parking, and access onto Blythe Road is problematic with limited visibility and opportunities to exit when traffic is queuing back from the main junction. This increases queuing times for those waiting to cross High Street at the junction. The re-modelling of the on-street parking[292] and addition of a yellow box marking across the junction of Church Hill and Blythe Road would improve the attractiveness of Church Hill as an alternative route[293].

336. Amendments to the restrictions on parking on Church Hill would require a Traffic Regulation Order such as the removal of the disabled parking bays. This would be subject to public consultation[294]. HGVs currently make little use of Church Hill, other than access, due to a TRO on High Street which could be extended to cover Church Hill as part of the mitigating measures.

337. The Green Man Crossroads is a point of significant congestion within the town centre of Coleshill at peak times. The queuing affects all of the intersecting

[291] Works to the highway would be subject to a detailed design process and implemented through a Section 278 agreement under the Highways Act 1980.
[292] Which would result in a reduction in the number of spaces.
[293] Dwg no ADC1085/007 RevD. The mitigation would include the introduction of a Traffic Road Order (TRO) to restrict access to Church Hill to vehicles over 7.5t except for loading.
[294] Cummins proof paras 10.26, 10.27 & 10.28.

routes and traffic backs up along the High Street, Birmingham Road and Blythe Road with waiting times being significant. These are likely to increase as traffic levels increase. The proposed Church Hill diversion route is likely to be more attractive to drivers as congestion increases. This would have the effect of removing significant levels of traffic from the crossroads itself to a point where the crossroads would be no worse with the development than without[295].

338. The appellant company accept that taking into account the isolated rural location of Daw Mill, with a modest population within walking or cycling distance it is unlikely that workers would arrive on foot or by cycle[296]. There is no rural bus service within easy walking distance to service Daw Mill[297].

339. The TA does allude to an initial Travel Plan, which is reasonable, as at this stage end-users are not known. In a situation where the appellant company is presenting the proposals as promoting sustainable modes of transport, the Travel Plan is a key element in the suite of means of achieving this status for the development. Conditions 27 in Annex A and 22 in Annex B requires the submission and approval of a detailed Travel Plan which, having been implemented, would remain in force throughout the lifetime of the particular phase of the development to which it relates. On a development of this scale I would be concerned that any Travel Plan would need to be co-ordinated between phases, that there were co-ordinated targets, ring fenced resources to fund the initiatives, particularly as the Travel Plan may apply across a number of businesses, would need to be administered by a managing body, and that there was a responsible person to co-ordinate the Travel Plan initiatives across the site[298]. It cannot be assumed that the development would be operated by a single company. Even in the rail related scenario a number of companies could be involved on the site which might be associated by the usage of their end products, but not necessarily by their ownership. The terms of the proposed condition would not be sufficient to secure all of these implementing aspects of this mitigating measure seeking to reduce the dependence on car usage[299].

340. There was also mention of the provision of a bus service. The appellant company seems reliant on such provision being at the behest of the bus operator who would alter their services to accommodate a work force. However, there is no indication as to whether any meaningful discussion has been had with the operators or, taking into account that this would be a phased development, at what point the buses would be provided along with their frequency etc bearing in mind that the works would be working on a 24 hour a day shift pattern.

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[295] I have taken into account concerns that increased traffic could conflict with activities at the Parish Church such as funerals and weddings. However, these are unlikely to occur during peak hour road use, so I do not find particular harm in this regard.
[296] Cummins proof para 5.2.
[297] Cummins proof para 5.3.
[298] This is particularly important as it is suggested by the appellant company that travel demand would be managed through communication and marketing techniques as well car sharing schemes. This would require a clear overall strategy and a responsible managing body to ensure compliance over the phases and into the future.
[299] Para 32 of the Framework.

341. No mechanism has been provided to secure the future requirements of the Travel Plan or the bus service. Therefore, I can afford them little weight in the package of mitigation measures promoted to address the increase in traffic which may be generated by the proposal, and to secure access to sustainable modes of transport[300]. These are not matters which can be put off to a reserved matters stage when considerable weight is being asked to be placed on them in the face of impacts within the highway network[301].

342. The appellant company also sets out that in respect of HGVs, with B2 occupiers being currently unknown, trips in all directions are likely to be generated[302]. The site's rural location is at a distance to the wider strategic road network, including the M42 (to the west), the A5 (to the north), the M69 to the east) and the M6 (to the south) [6]. In all cases vehicles (both HGVs and cars) would need to negotiate both the network of B roads, which provide routes to surrounding villages, as well as narrow country lanes, such as Daw Mill Lane, which I drove at evening peak time and encountered a considerable number of vehicles passing along it in the absence of conveniently placed passing bays. I also heard anecdotal evidence from third parties of pinch points in the local highway network, where passing oncoming HGVs would prove difficult, resulting in the interruption in the free flow of traffic [209, 218]. Whilst I appreciate routing plans may assist in directing HGVs along more suitable routes to the wider strategic highway network, shift workers[303] may not be so likely to be constrained by a routing plan.

343. Conditions 12 in Annex A and 8 in Annex B set out that there would be no more than 54 HGV movements into and out of the site on any one day, and no more than 1400 other traffic movements into and out of the site on any one day (Conditions 13 Annex A and 9 in Annex B). This would be monitored by means of a daily log of all vehicles entering and leaving the site. It would be made available for the Council to inspect. Firstly, 1400 non-HGV movements[304] would be a lot of vehicle movements to be accommodated within the immediate country road network. Whilst the junctions may have been shown to have capacity[305], the character of the B road network and country lanes would change with the introduction of this additional traffic flow[306], particularly taking into account it would be likely to be based on a shift pattern for workers where a concentration of vehicle movements would be at particular times of day and evening as shifts change.

344. In respect of whether it would be practical to enforce the terms of the conditions I have reservations. In the absence of knowledge of an end-user or the mix of associated uses in the case of rail-related use or mix of B2 uses, it would be necessary to plan across the site on a daily basis which businesses had HGV deliveries or pick-ups. Otherwise in theory once 54 HGV movements had occurred into and out of the site HGVs would then need to be refused entry or

[300] Para 32 of the Framework.
[301] This applies equally to both solely B2 use and rail related use.
[302] Cummins proof para 6.21.
[303] The site could employ between 50 and 500 workers.
[304] That would be potentially 700 vehicles per day in to and out of the site + plus 27 HGVs.
[305] With mitigation.
[306] I am mindful that the TA assessment is based on the site as a green field site which would generate next to no traffic in itself.

exit. This would result in the potential for HGVs queuing on the B4098 outside the site access[307], or vehicles left confined to the appeal site until the following day. This equally applies to non-HGV vehicle movements. I do appreciate that the appellant company suggest only 500 workers would be employed at the site and that HGV movements would be limited and certainly below the 54 promoted in the condition. However, in the absence of an end user and in the promotion of rail related uses, which could include considerable manufacturing activities requiring a significant labour force, I am not persuaded that the condition would be workable. The fact there is no secured overall management of the site adds to my unease in this regard, as the responsibility for the co-ordination across the site of vehicle movements on a daily basis is not clear, and an audit trail for the enforcement of the terms of the conditions would be problematic for the Council. This equally applies to the general B2 use of the appeal site.

345. In the absence of a clear understanding of the end-user, whether that be a rail related or other B2 uses, the appeal proposal, from a starting point of a green field site at Daw Mill[308], would generate significant amounts of traffic movement into a countryside network of rural roads[309]. Opportunities for sustainable transport modes have not been secured. Even given the mitigating works proposed, where they are practical, and taking into account the shortcomings of the promoted conditions to limit traffic flows within the immediate road network, on the balance of the evidence before me, I consider the residual cumulative impacts of the development would be severe. In this way the terms of paragraph 32 of the Framework would be offended and CS Policies NW10, in so far as it encourages sustainable forms of transport, would be compromised.

- *Historic heritage*

346. Sections 16(2) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 require that special regard shall be had to the desirability of preserving listed buildings or their settings or any features of special architectural or historic interest which they possess. Case law has established that the duties described should be given considerable importance and weight[310]. LAWRAG raised the point that the appeal proposal could affect the setting and therefore significance of, firstly Over Whitacre House, a Grade II listed building, secondly St Leonard at Over Whitacre and St Cuthbert at Church End, both Grade II listed churches, and thirdly the conservation areas and any listed buildings at Fillongley and Coleshill[311][177-181] .

347. Over Whitacre House stands on a high point of the valley slope off to the north of the appeal site. As a small country house its setting and part of its significance is its surrounding gardens, with banks of trees and the open fields in the wider countryside setting, including some individual specimen parkland trees, which continue to reflect the character of its associated parkland. The

[307] Site access would be via the existing colliery access with some minor visibility splays achievable within the highway.
[308] The same would equally apply to a starting point of the site as existing.
[309] This is a large scale development site for general industry remotely located from the strategic highway network.
[310] Barnwell Manor Wind Energy Limited v East Northamptonshire District Council, English Heritage, National Trust, SSCLG [2014] EWCA Civ 137 – CD Folder D3.
[311] I shall return to the matter of the Forest of Arden.

restored landscape would enhance the wider setting. However, taking into account that much of the appeal proposal would be at a distance to the house itself, which would be in an elevated position in the landscape, the extent and height of the intervening belt of trees along the northern boundary of the site[312], the distinct slope down from the house to the site and the valley bottom and the disconnecting nature of the Tamworth Road, the listed building could still be experienced in its parkland setting.

348. The two listed village churches are both to the north-west and west of the appeal site. The sloping nature of the topography, intervening woodland and buildings in the wider landscape, along with the distances between the listed buildings and the appeal site, all serve to limit impacts on the views of the churches with their spires, punctuating the skyline continuing to be experienced from the wider landscape. In both cases their setting and significance is firmly based in their relationship with the community which they were built to serve. They serve as landmarks in the countryside identifying the village locations. In both cases they stand on high ground on the valley slopes well above the valley bottom based appeal site. Once again the restored site would enhance the setting of the listed churches, but the proposed development would not detract from the importance of the church spires in the landscape nor compete with them as prominent and recognisable features in the landscape.

349. Nonetheless, whilst the impact of the proposal on the settings of the listed buildings in the immediate locality would be limited, overall the scale, extent of the site coverage, buildings and activity of the development in this rural context would be such so as not to preserve the settings of the listed buildings.

350. In considering the impact of the proposal on the conservation areas of Fillongley and Coleshill, this relates to the mitigating highway works as set out above [331, 333-227].

351. The Fillongley crossroads is at the northern extremity of the conservation area, the significance of which centres on the historic village core, including the church, with the scheduled castle site beyond. The proposed junction improvements would be concentrated in the immediate vicinity of the road intersection. New road signage and traffic controls would have an impact on the appearance of the conservation area, but any improvements to the free-flow of traffic through the junction, by reasons of the mitigation scheme, would serve to reduce the overall level of harm[313] as the concentration of queueing traffic would be reduced. Consequently, there would be limited harm to significance.

352. In respect of Coleshill, Church Hill is an important characterising feature of the conservation area. It includes a number of listed buildings, which serve as a gateway to the Parish Church, located at the high point bend in the road. Off-set angled parking spaces make parked cars particularly dominant elements in the street scene. The mitigation works include a reduction in the number of car parking spaces which would be set parallel to the pavement. This would be a positive improvement to the current concentration of on-street parking, particularly in respect of the immediate setting of the listed buildings which is essentially Church Hill itself.

[312] Limits the inter-visibility between Over Whitacre House and the appeal site.
[313] By reason of both visual and environmental effects.

353. The proposal is to divert vehicles up Church Hill, to by-pass the Green Man Crossroads which would increase traffic flows at peak times[314]. This could mean at peak times an additional 106 cars would use Church Hill (roughly one car every 34 seconds – more than the time it takes to drive from one end of Church Hill to the other at 30mph). Church Hill is already used by vehicles accessing the houses, the Church, using the on-street parking and linking through from Blythe Road to High Street. Traffic passing, manoeuvring and lingering on Church Hill is already a feature of the setting of the listed buildings and conservation area. As part of a busy town centre this is not unexpected[315]. However, the impact of the mitigation measures, which would include street furniture and signage and the increase in traffic flows along Church Hill, would impact negatively on the character and, to some extent, the appearance of the conservation area and listed building settings. This harm needs to be balanced against the potential improvements which the Church Hill diversion would bring in the High Street part of the conservation area. The diversion would reduce the queuing of traffic at peak times along the High Street which includes a number of listed buildings. This would result in an enhancement to the character and appearance of the High Street element of the conservation area and to the setting of those listed buildings therein by reducing the concentration of traffic, having both visual and environmental impacts. As a result the proposal would not preserve the character and appearance of the conservation area as a whole but that harm has been reduced in weight taking into account the localised enhancing effect.

354. CS Policy NW14 seeks to conserve and enhance the quality, character and local distinctiveness of the historic environment protecting and enhancing commensurate to the significance of the asset. The appeal proposal would introduce additional traffic into both Fillongley and Coleshill conservation areas, along with associated highway re-modelling, including street furniture and signage. This, along with the impact of the development on the settings of the listed buildings close by to the appeal site would result in harm to the significance of designated heritage assets. However, this would be less than substantial harm[316] which must be weighed against the public benefits of the proposal[317]. The public benefits of the proposal, as promoted by the appellant company, are addressed later in this report. So I shall return to the Framework paragraph 134 balance[318] later in the report [395].

355. Reference has been made by LAWRAG to part of the surrounding landscape of the appeal site being included within the Forest of Arden, which they consider to be a heritage asset [164, 165]. The CS identifies that the entire landscape of North Warwickshire has intrinsic historic interest which contribute to the local sense of place and is valued by residents and visitors. Forest of Arden is the setting for Shakespeare's 'As you like it'. There are historical references to the forest and the area retains a woodland character, but any sense of a forest has become fragmented. Whether the Forest of Arden can be defined and

[314] There is no intention of routing HGVs along Church Hill. High Street is already subject to a ban on vehicles greater than 7.5 tonnes except for access – Cummins proof para10.18.
[315] The overall historic road pattern of the town centre would not be altered.
[316] Para 134 of the Framework.
[317] Less than substantial harm does not amount to a less than substantial planning objection.
[318] A flat rather than a tilted balance (as in paragraph 14 of the Framework).

delignated seems in doubt and whilst part of the folk lore of North Warwickshire, the evidence I heard did not convince me that there was a discernible Forest of Arden which could be considered a non-designated heritage asset.

- *Ecology*

356. The proposed Restoration Plan would create some 10 hectares of broadleaved woodland, 8 hectares of grassland, 20 hectares of amenity grassland and 1.8 km of open water habitat, associated pools and wet grasslands. This would create an area of ecological value, particularly for species such as birds, bats and river species, including otters and fish. The reinstatement of the above-ground course of the River Bourne would be of particular importance. As already established this is the baseline against which the appeal proposal should be considered [281]. I have taken into account that the restored landscape would not be at full maturity but would be developing year on year with species colonising the developing landscape and water course over time.

357. Consequently, the proposed development would damage habitats and features of importance for nature conservation. The appeal proposal would be in essence to remove a large area of green field land, including developing woodlands and a meandering river and brook, and replace it with a B2 industrial development predominantly of hardsurfaced areas, buildings and open storage up to 15 metres high [158]. Whilst the restored site may not strictly be covered by the wording of paragraph 118 of the Framework as development being resisted when it would result in the loss or deterioration of irreplaceable habitats, the general thrust of the Framework is to conserve and enhance biodiversity. Paragraph 143 of the Framework recognises (bullet 8) the importance of ensuring that worked land (to facilitate the sustainable use of minerals) is reclaimed at the earliest opportunity and that high quality restoration and aftercare of mineral sites takes place. The proposal would bring no net gain of biodiversity and no positive enhancements when measured against the restored site. With significant adverse impacts, no mitigation measures are secured for the site or for the wider ecological network in the Borough[319]. In this way CS Policy NW15, which is the Council's response to the national objective of halting the loss of biodiversity by providing robust protection for biodiversity assets that have a significant role and function in the Borough's existing ecological network and by seeking enhancements and gains where deficiencies are identified, would be offended.

358. In the situation where the Restoration Plan is not considered the baseline, the appeal proposal does offer some improvements to the biodiversity of the appeal site by reason of the enhancement of perimeter woodlands and wetlands and the introduction of new public access through perimeter footpaths[320]. This

[319] The appellant company does make mention of a contribution to an appropriate compensatory scheme in order to ensure no net loss of biodiversity. However, this would be put back to the reserved matters stage when a detailed scheme could be drawn up. There is no mechanism in place to secure the delivery of such a scheme and in such circumstances such a contribution can be given little weight.

[320] All through a Habitat Management Plan - Secured by the terms of the S106 agreement – Inquiry Doc 41. Bats are more likely to forage over the appeal site but this is a matter which can be resolved by means of further survey work and details of mitigation to be submitted under the terms of a conditions 18 in Annex A & 13 in Annex B.

would have considerable weight in favour of the proposal in the overall balance of the decision.

- *Flooding*

359. The majority of the appeal site lies within Flood Zone 1 classification[321][14]. There is no historical evidence of flooding at the site, and surface water flooding is negligible to low susceptibility. The proposed development with the restored site as the baseline would result in a 100% increase in the low permeability cover. Surface runoff would therefore need to be controlled. However, the detailed design of the Sustainable Urban Drainage (SUD) scheme would accommodate this in ponds/attenuation storage lagoons.

360. Using the existing site as the baseline the situation would not be greatly different. The permeability cover would be 32.6% and would similarly be controlled by a suitably designed SUD scheme, including attenuation storage lagoons.

361. As a result there are no significant impacts of the proposed development in respect of flood risk or drainage. The terms of the Flood Risk Assessment are required to be implemented under the terms of conditions 15, 16 and 19 in Annex A and 10, 11 and 14 in Annex B.

Other considerations

- *General Need*

362. The general aim of the Development Plan is to support economic development, support regeneration opportunities, to maximise the benefits of rail connections and to ensure that the rural character of the Borough is maintained, in the context of recognition of the importance of sustainability. The legacy from extensive coal mining is also acknowledged [110].

363. CS Policy NW2 springs from the spatial strategy as a key component for delivering a sustainable way of living and working and considering the appropriate distribution for development. Most development would be steered towards the main towns with very little development towards the countryside, the constant aim being to provide development in the most sustainable way, without it stimulating pressure on the countryside, in particular the Green Belt. It sets out a clear hierarchy of settlements to which development should be directed.

364. Employment is limited to the top categories of settlements (as appropriate to its place in the hierarchy or has been identified through a NP or similar). Category 5 covers land outside of settlements within the defined hierarchy. The appeal site lies in such an area[322], isolated from any larger scale settlement. Therefore, essentially development will be limited to that necessary for agriculture, forestry or other uses that can be shown to require a rural location.

[321] It has a low probability of flooding from fluvial sources.
[322] Without a development boundary.

365. However, CS Policy NW2 and consequently NW3 and NW10 all come with a health warning in that it is clear that the need of neighbouring authorities through the duty to co-operate has not been factored into the Development Plan policy response which purely focuses on local need for housing and employment [98]. Whilst the Council has responded speedily[323] and proactively[324], and the Employment Land Review of 2016 has provided a comparatively up-to-date source of data, the lack of policy response to additional housing and employment provision, particularly from Birmingham and Tamworth, places the CS policies in a vulnerable position[325]. Nonetheless, the securing of a sustainable pattern of development reflecting the character of the Borough is an aim brought forward from the CS.

366. The emerging LP would almost certainly result in a requirement for land for both housing and employment land beyond current development boundaries, including Green Belt land. Whilst taking forward the concept of the settlement hierarchy[326] from the CS, some re-appraisal and likely amendments will be required to deliver the wider growth agenda.

367. The appellant company accept that the proposed development does not comply with the precise wording of CS Policy NW2. Daw Mill as a colliery was still working at the time that the CS was prepared and the appellant company suggest this is the reason that Daw Mill was not specifically addressed in the CS. There is no evidence for this. Daw Mill was anticipated to close in 2014/2015 and with a Restoration Plan in place upon which the Council placed reliance, there would seem to be no necessity to deal with Daw Mill as a specific re-development site outside of the hierarchy set out in CS Policy NW2[327].

368. CS Policy NW9 deals with employment. Between 2011 and 2029 a minimum of 60 hectares of local employment land will be provided[328]. It will be directed towards settlements appropriate to their size and position in the hierarchy and will only occur if the appropriate infrastructure is available. The requirement set out in CS Policy NW9 was to address local employment need which was to be identified through a Site Allocations Plan (SAP). Taking into account completions, permissions and allocations[329], of the 60 hectares only some 27 hectares remained as the relevant employment land requirement. The draft SAP allocated a total of 25.65 hectares of employment land with the shortfall meet by 1.5 hectares through an expansion of Birch Coppice Business Park or through rural employment development via farm diversification, changes of use or small employment proposals brought forward through NPs. Reasonable

[323] An early review of the LP.
[324] Birmingham & North Warwickshire Memorandum of Understanding – Barratt proof Appendix D.
[325] Consideration under paragraph 14 of the Framework.
[326] Currently expressed through CS Policy NW2
[327] Daw Mill is remote from any settlement. It position as being outside of any of the settlements within the settlement hierarchy within CS Policy NW2 is unlikely to change within the emerging LP. In addition, the Council anticipated the site would be restored.
[328] The Inspector's Report into the examination of the CS acknowledged that this figure only related to 'local' employment.
[329] Including the retention of 2 hectares at Spring Hill industrial Estate – Employment Land Review 2013.

alternative sites were also identified in 2014, but the appeal site was not one of them.

369. When the CS was adopted the Council recognised that in addition to delivering North Warwickshire's development needs there was a potential requirement to consider the needs of adjoining authorities, in particular Birmingham and Tamworth. These needs were unclear at the time and an early review of the CS was the means by which changing needs in the Borough could be accommodated[330][73]. The Council has been proactive in recognising and committing to the need to co-operate with neighbouring authorities in strategic planning matters, in particular housing and employment shortfalls [98].

370. As emerging figures of the requirements from neighbouring authorities became clearer, in 2015 it was decided to carry out an early review and produce a new local plan. This recognises the pressure for growth from all around and that a thriving rural economy is important, but that a balance needs to be struck between allowing development that is appropriate in terms of scale and character, whilst protecting and emphasising the rural context of the Borough.

371. In 2016 the Employment Land Review[331] found there was a need to bring forward additional land to meet demand in the medium term[332]. Tamworth Local Plan has identified a need for 14 hectares of employment land to be provided outside of its Borough. North Warwickshire has responded by offering 8.5 hectares which has been allocated in the draft LP to the west of junction 10 of the M42. However, the Council has not been tardy in moving this requirement forward. This site now has planning permission with one occupier on site and construction in progress.

372. The Council has recognised the need for employment land to meet wider than local needs[333]. It has been active in working with neighbouring authorities and very responsive to accepting and then promoting that need through actual provision. This is how the duty to co-operate should work.

373. The Council has recognised that the emerging LP will need to gear up for between 58 and 91 hectares of employment land up to 2031in order to meet the growth aspirations of the region[334].

374. I have noted that since 2011 38.3 hectares of employment land have been completed at Hams Hall and 76.8 hectares at Birch Coppice, with a further 24.31 hectares of land with planning permission at these sites[335]. This provision was considered to meet the wider regional need and so the Council did not count this towards the 58 hectare CS target. However, factoring in completions to February 2017 and extant planning permissions and promoted allocations within the emerging LP, there appears to be an oversupply against the CS target and against the 91 hectares, including regional growth[336].

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[330] CD 2 - CS para 1.9.
[331] Part of evidence base of emerging LP.
[332] To ensure there was a balance of housing provision to employment land provision.
[333] Over and above the CS requirement of 58 hectares, were North Warwickshire to take on a percentage of Birmingham's housing.
[334] Barratt proof – Appendix G – Media Release.
[335] Barratt proof – Appendices H and I amended by Inquiry Doc 7.
[336] Barratt proof Table (i) page 22 – up-dated by Inquiry Doc 7 – figures to February 2017.

375. Some of the draft allocations have already been moved forward by the Council through the granting of planning permissions, in particular 20 hectares at Hams Hall. However, whilst the Council consider the sites proposed for allocation are suitable and deliverable, the emerging LP has yet to progress to examination and adoption [104]. Therefore, in accordance with paragraph 216 of the Framework I can give only limited weight to the potential allocations even if they are promoted as better alternatives to the appeal site. However, I have placed my consideration of the assessment of need for employment land in the context of the Council's history of proactivity in seeking to meet identified need and resolve to embrace their responsibility to consider and respond to the wider employment needs of their neighbouring authorities.

376. This response, however, would almost certainly result in a requirement for land for both housing and employment land beyond current development boundaries, including Green Belt land. The emerging LP, whilst taking forward the concept of the settlement hierarchy[337] from the CS, some re-appraisal and likely amendments will be required to deliver the wider growth agenda. Therefore, I consider that CS Policies NW2, NW3 and NW10, in-so-far as they rely upon development boundaries or defined areas on the Proposals Map, in the absence of an adopted LP are out-of-date. That said this does not mean that no weight should be given to the terms of those policies but they come with a 'health warning' which results in limited weight being ascribed to them.

377. Nonetheless, the appeal site would go some way to meeting the need for employment land, creating jobs and benefiting the local and national economy. As a result it would weigh heavily in favour of the proposal in the overall planning balance.

- *Rail related need*

378. Nationally there is a recognition that as rail passenger numbers grow the train fleet will need to grow to meet demand. Refurbishments will also be necessary. Rail connected sites to be able to facilitate this process will be required. Sites suitable for construction and/or maintenance of both rail infrastructure and rolling stock are also being sought particularly in the context of HS2 [25].

379. Mr Clarke set out a robust case for rail related demand for employment sites nationally with a specific local dimension. Such a need carries considerable weight in the balance of the decision.

380. Daw Mill is centrally located to have the potential to serve five rail passenger franchises and five freight operating companies. It benefits from an existing live and signalled direct link to the national rail network and would be capable of providing construction materials as well as ongoing maintenance of the route [25].

381. The past closure of both a rail manufacturing and a car manufacturing plant in the wider regional locality would have the potential for a suitable work force to be within reasonable commuting distance[338] and the proposal could generate

[337] Currently expressed through CS Policy NW2.
[338] Within a 30 mins drive – Rolinson proof para 11.104

between 50 and 500 jobs which carries some weight in the economic dimension of the balancing of the decision [89].

382. North Warwickshire includes the rail freight terminals of Hams Hall and Birch Coppice. Both of these have been promoted by the Council for rail related employment uses [107]. What sets these sites apart from Daw Mill is that for such large scale rail served sites there will be a requirement of being on or close to the strategic road network. No matter how much rail transport would be relied upon or promoted for use, part of the associated journey would be via road[339]. Daw Mill's remote location, accessed by a rural network of roads significantly reduces the weight to be given to Daw Mill as a contributor to the need for rail related sites.

383. In reaching this view I have taken into account that the appellant company has already adjusted the terms of the uses applied for to initially remove the rail related uses, as Network Rail no longer wished to pursue the site. It was then once again relied upon by the terms of promoted conditions but with no end-user in the frame, hence the three options for rail related uses set out in condition 1 of Annex A. However, towards the end of the Inquiry a letter was produced from Cemex[340] expressing a potential interest. However, this was on the basis of unsecured contracts and as yet unexplored viability of the site as a realistic option. Therefore, this expression of interest is given very little weight[341].

The balancing exercise

384. As already established the proposal would represent inappropriate development of a significant size in the Green Belt[342]. It would permanently reduce openness, the essential characteristic of Green Belts, and conflict with some of the purposes of designation. As paragraph 88 of the Framework sets out, these harmful impacts on the Green Belt must attract substantial weight.

385. On top of that there would be a significant amount of harm to the landscape and the intrinsic character and beauty of the countryside, the need to establish a strong sense of place, the overall quality of the area and respond to local character reflecting the identity of the area[343], considerations that cumulatively all attract great weight[344].

386. In considering the baseline as the restored site, the appeal proposal would result in the loss of a green field site, including maturing woodland, watercourses and re-establishing flora and fauna, characteristic of the wider countryside landscape. Its loss would diminish the quality of the countryside and harm the biodiversity of the locality attracting significant weight against the proposal.

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[339] The appellant company recognise that the potential work force would be within 30 mins drive.
[340] Inquiry Doc 37.
[341] This letter was produced very late in proceedings and so was not the subject of cross-examination. However, LAWRAG did submit a rebuttal to the letter Inquiry Doc 38.
[342] Whether considered as PDL or not.
[343] Framework paras 17, 57 & 58.
[344] Considered in respect of the development of site ie erection of buildings, structures, hardsurfaced areas and lighting.

387. The site's remote location from the strategic road network relying upon a rural network of roads for access, in the case of a wholly B2 use[345] would present a level of harm which alone would be sufficient to tip the balance against the proposal. The limitation of the use of the site to rail related uses constrained by means of a series of planning conditions would reduce dependency on road transport as the primary accessing means. However, the issues around the delivery of the mitigating measures at associated highway junctions, the shortcomings of the promoted conditions to limit daily road vehicle movements, the lack of a mechanism to secure the Travel Plan or the bus service (sustainable modes of transport) and the impact of the vehicle movements on the character of the country road network are all factors that, even in the face of no objection from the HA, are sufficient to generate considerable harm to be weighed into the balance.

388. The harm to the well-being of local residents through noise generated by the both the B2 use and rail related uses would be significant, once again in circumstances of uncertainty of end user practices and the shortcomings of the promoted controlling conditions.

389. The combined identified harms amount to a weighty scale to tip in the balance of the decision.

390. When considering the site to be PDL the Framework paragraph 17 encourages the effective use of brownfield land like the appeal site, which is not itself of high environmental value. The proposal would bring this derelict previously developed site back into active use. The development of this visually prominent, uncharacteristic, urbanising expanse of the vestiges of a past industrial age in this countryside setting, does weigh considerably in the positive side of the balance in favour of the scheme[346]. Currently, problems of the vandalism of the site would be solved by the development, but would equally be resolved by the implementation of the Restoration Plan. I do not, therefore, consider this adds to the weighting in this instance.

391. The proposed development would contribute to the provision of general employment land, along with rail related sites, both locally and regionally. Between 50 and 500 jobs would be provided and in relation to the rail related uses these jobs could provide employment for workers made redundant from similar industries within the Midlands. This would weigh heavily in the positive side of the balance. However, I am conscious that the shortcomings of the appeal site in respect of its location and environmental impacts would significantly diminish the initial weight to be ascribed to its contribution to employment provision[347].

392. The proffered highway works at the Fillongley junction and the Green Man Crossroads, whilst mitigating the impacts of the proposed development to some degree would provide a wider benefit to other road users as queuing would decrease and so delays reduce. It is reasonable then to weigh these

[345] Without rail related elements and in the absence of convincing evidence to the contrary.
[346] Were the SofS to dismiss the appeal the implementation of the Restoration Plan would be a matter for the responsible authority.
[347] This is not a double counting of the weighing to be given to the negative elements mentioned in the overall balance.

improvements into the positive side of the balance as benefits of some weight[348].

393. Were the proposal to be considered PDL then the enhancements of the existing boundary woodlands and the works proposed in the area of the attenuation ponds would all be positive elements of some weight improving the biodiversity of the appeal site.

394. In both cases[349] as part of the proposed scheme the existing Memorial Garden, which commemorates the miners who died during Daw Mill's life as a working colliery, would be enhanced and maintained. This would be a limited benefit of the scheme but for those who worked and lived close to the colliery it is of some importance.

Balance conclusion

395. In respect of the identified less than substantial harm to heritage assets, this needs to be weighed against the public benefits under the terms of paragraph 134 of the Framework[350]. In respect of the less than substantial harm to the Coleshill Conservation Area, the settings of the listed buildings along Church Hill, to the Fillongley Conservation Area and the settings of the listed buildings in the immediate vicinity of the appeal site [346-355], this would be outweighed by the identified public benefits the development of this site would bring[351]. Paragraph 134 of the Framework would not then be offended in this instance[352].

396. Nonetheless, it is clear that there is identified conflict with the Development Plan as a whole resulting in consequential harm to which substantial weight should be ascribed. The proposal has also been assessed against the Framework as a whole and when specifically assessed against paragraph 14-bullet point 4, footnote 9, it is found in the balance of the decision that specific policies in the Framework indicate development should be restricted[353], a finding which similarly weighs significantly against the proposal.

397. Having considered and weighed the matters in this case against this policy background, the identified other considerations do not clearly outweigh the harm to the Green Belt and any other harm[354] I have identified. Consequently, the Very Special Circumstances necessary to justify the development do not exist[355].

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[348] The Furnace End junction proposed mitigating works have not weighed into the balance for the reasons set out at para 332 of this report.
[349] PDL or not.
[350] Public benefits set out above.
[351] Including junction and traffic flow improvements and provision of employment.
[352] However, harm still exists to significance which has to be weighed into the final balance of harms v other considerations.
[353] The reference to specific policies in the Framework cannot mean only policies originating in the Framework itself. It must also mean the development plan policies to which the Framework refers - *Suffolk Coastal DC V Hopkins Homes and others [2017] UKSC 37* – para 85.
[354] Including to the significance of heritage assets (limited harm).
[355] Framework para 88.

Recommendation

398. Consequently, I recommend that the appeal be dismissed[356].

Frances Mahoney

Inspector

[356] In either the case of a general B2 use or the rail-related B2 use.

Annex A – Schedule of recommended conditions

1. This permission is granted under the provisions of Article 5 (1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 in outline, with approval of, access for the development of the site for a maximum of 24,652m^2 (measured by gross internal area) of built floorspace for employment uses comprising B2 (general industrial) development for any of the following purposes:

   a) the manufacturing of rails, sleepers, track, signalling, gantries and associated railway construction, operation and maintenance equipment;
   b) train and rail rolling stock maintenance and repair including ancillary stabling of such trains and stock;
   c) train and rail rolling stock manufacturing facility,

   ancillary open storage areas, associated car parking, servicing goods, gantry crane, infrastructure and abilities, retention and use of existing infrastructure, including rail head and sidings, site vehicular access, grid connection, electricity sub-station and reconfigured surface water drainage infrastructure.

2. Details of the appearance, landscaping, layout and scale (hereinafter called 'the reserved matters') shall be submitted to and approved in writing by the Local Planning Authority of any agreed phase of the development before any development is commenced on that particular phase. The development shall be carried out in accordance with the approved details.

3. No applications for Reserved Matters approval shall be submitted until a phasing scheme for the development of the whole site to which this permission relates, has first been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the agreed phasing scheme.

4. In the case of the reserved matters specified above, application for written approval accompanied by all detailed drawings and particulars must be made to the Local Planning Authority not later than the expiration of three years beginning with the date of this permission.

5. The development to which this permission relates must be begun not later than the expiration of two years from the final approval of all reserved matters.

6. As part of the reserved matters submission for every phase of the development, details of existing site levels and proposed site levels; finished floor levels and building heights shall be submitted to and approved in writing by the Local Planning Authority. For the avoidance of doubt the maximum ridge height of any building shall be 15 metres; the maximum height of any silo, gantry, or other structure including plant and equipment shall be 20 metres and the maximum height of all outside storage shall be 15 metres. All of these measurements shall be taken from the existing site levels. Only the approved details then approved in writing shall be implemented on site. The maximum amount of open storage on site shall be 10 hectares.

7. The reserved matters as defined in conditions 2 & 6 shall be in general accordance with the following plans which are approved for the purposes of the planning permission:

   a) The Site Location Plan - redline plan numbered NK18083-SK010
   b) The Landscape/Biodiversity Parameter Plan numbered LBPP1
   c) The Rail Zoning Plan numbered RZP1
   d) The Proposed Access Junction Layout numbered ADC1085/001A

8. Any reserved matters submission shall include a scheme for the retention and protection of the tree numbered T1 shown as target note 13 on the AES *Extended Phase 1 Habitat Survey and Preliminary Ecological Appraisal Report* (May 2014). The scheme shall include a timetable for the implementation of the agreed measures which shall be fully implemented in accordance with the agreed timetable.

9. The rail sidings shown on Rail Zone Plan RZP1 shall be fully reinstated and retained and maintained in an operational condition for the lifetime of the development.

10. The rail sidings so retained shall not be used at any time for an inter-modal freight interchange.

11. Zone 1 as shown on the Rail Zone Plan RZP1 shall only be used for purposes falling within condition 1 (a), b), c)) which maximise the use of the rail sidings as the primary means of despatch and delivery of goods and materials defined by the following corresponding criteria:

   (a) steel, rails and aggregates to be used in the manufacture of railway equipment shall arrive by rail;
   (b) trains and rail rolling stock to be repaired and/or maintained shall arrive by rail and leave by rail once repaired and maintenance is complete; and
   (c) completed trains and rail rolling stock manufactured at the site shall leave the site by rail.

12. No more than 54 HGV movements into and out of the site shall be permitted on any one day. For the avoidance of doubt 54 movements is the total number of movements both into and out of the site in any one day. A daily log of all HGV movements entering and leaving the site shall be kept and retained on site. This shall be made available to the Local Planning Authority upon request.

13. No more than 1400 other traffic movements into and out of the site shall be permitted on any one day. For the avoidance of doubt 1400 movements is the total number of non-HGV movements into and out of the site in any one day. A daily log of all non-HGV movements entering and leaving the site shall be kept and retained on site. This shall be made available to the Local Planning Authority upon request.

14. Outside storage uses within Zone 2 of the Rail Zone Plan RZP1 shall be wholly ancillary to and directly required for the essential operation of one of the uses defined in condition 1. This shall be demonstrated in writing to the written

satisfaction of the Local Planning Authority prior to the first and any subsequent occupation of any building or any external part of the area covered by Zone 2.

15. The development hereby permitted shall only be carried out in accordance with the RPS Flood Risk Assessment for Daw Mill Colliery (Ref: JER6247-Daw Mill Colliery _ Rev1 Final of October 2014) and the following mitigation measures detailed within the Assessment:

a) Built development shall not be located closer than 8 metres from the banks of the River Bourne and Ballard Brook;
b) Surface water attenuation shall be provided by the existing ponds to the north of the site;
c) Surface water runoff rates from the developed site shall be limited to 180.9l/s representing a restriction to the existing 1 in 1 year site runoff rate, for all critical duration rainfall return periods up to the 1 in 100 year rainfall event (with a 30% increase in peak rainfall intensity to account for the potential impacts of climate change).

The mitigation measures as approved shall be fully implemented prior to the first occupation of any phase of the development hereby approved for business purposes.

16. No infiltration of surface water drainage into the ground beneath the site is permitted in those parts of the site where it has been demonstrated that there is potential for resultant unacceptable risk to controlled waters. Any such drainage shall only be carried out in accordance with the approved measures.

17. There shall be no commencement of any phase of the development hereby approved, including any works of demolition, until such time as a Construction Environment Management Plan for that phase (which shall include a Construction Phasing Plan to match the phasing details submitted in condition 3) has first been submitted to and approved in writing by the Local Planning Authority. The required Plan shall for each phase of the development provide for:

a) The parking of vehicles of site operatives, deliveries and visitors;
b) The routing of vehicles accessing the site associated with the construction of the development and signage to identify the route;
c) The manoeuvring of vehicles within the site;
d) Loading and unloading of plant and materials used in constructing the development, including top soil;
e) The location of site compounds, storage of plant and materials;
f) The erection and maintenance of security fencing;
g) Wheel washing facilities;
h) Dust suppression measures;
i) Measures to control and mitigate disturbance from noise;
j) A scheme for the recycling/disposal of waste resulting from the development;
k) Any on site lighting required during the construction period;

l) Measures to protect existing trees and hedgerows proposed for retention;
m) Delivery, demolition and construction working hours;
n) Pollution prevention measures;
o) Fencing and measures to protect mobile species and reasonable avoidance measures to prevent ecological harm;
p) The means by which the terms of this Plan are to be monitored; details of an on-site contact person and the procedure for reporting and resolving complaints.

The Plan as approved in writing by the Local Planning Authority shall be adhered to at all times throughout the construction period of the development.

18. No development shall commence on site, including the demolition of the existing weighbridge building identified as building 35 on the AES *Extended Phase 1 Habitat Survey and Preliminary Ecological Appraisal Report* (May 2014), until an updated bat survey has been carried out. The scope of this survey shall be agreed in writing by the Local Planning Authority, but should follow national good practice and be appropriate for these habitats and species. If bats are found or if adverse impacts are identified on roosting bats, then no work shall take place, including the demolition of buildings, until mitigation measures are first approved in writing by the Local Planning Authority. The approved mitigation measures shall then be implemented in full.

19. No development whatsoever shall commence on site until such time as a scheme for the disposal of foul and surface water (including oil and petrol interceptors) has first been submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of proposals to direct surface and foul water away from the railway. Only the approved measures shall then be implemented on site.

20. No development whatsoever shall commence on any phase of the development hereby approved (or any subsequent phasing that might be agreed) until a scheme that includes the following components to deal with the risks associated with contamination of the site has been submitted to and approved in writing by the Local Planning Authority:

a) A preliminary risk assessment which has identified all previous uses; potential contaminants associated with those uses, a conceptual model of the site indicating sources, pathways and receptors and potentially unacceptable risks arising from contamination at the site.
b) A site investigation scheme based on (a) above to provide information for a detailed assessment of risk to all receptors that may be affected including those off-site.
c) The results of the site investigation and detailed risk assessment referred to in (b) and based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.

d) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (c) are complete and identify any requirements for longer term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

Any changes to these components will require the written approval of the Local Planning Authority. Only the approved scheme shall be implemented on-site.

21. There shall be no occupation of any phase of the development hereby approved for business purposes until a verification report demonstrating completion of the works set out in the remediation strategy approved under condition 2 above and the effectiveness of the remediation, has been submitted to and approved in writing by the Local Planning Authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include a longer term management plan for monitoring pollutant linkages, maintenance and arrangements for contingency action as identified in the verification plan. The longer term management plan shall be adhered to at all times.

22. No development whatsoever shall commence on site, including demolitions, until a Habitat and Biodiversity Management Plan for the whole of the Landscape and Bio-Diversity areas as shown on the plan approved under Condition 7 has first been submitted to and approved in writing by the Local Planning Authority. This Plan shall include:

a) A description and evaluation of the features to be managed
b) Any ecological trends and constraints on site that might influence management
c) The aims and objectives of management
d) The options for achieving these objectives
e) Prescriptions for management actions
f) Preparation of a work schedule including an annual work plan
g) Details of the body or organisation responsible for the implementation of the Plan
h) A timetable for implementation and ongoing monitoring and remedial measures
i) It shall also set out how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the bio-diversity objectives of the originally approved plan
j) Only the approved Plan shall be implemented on site

23. There shall be no occupation of any phase of the development hereby permitted until a scheme of works in general accordance with the identified highway junction improvements at the B4098 Tamworth Road/B4114 Nuneaton Road Priority Junction as set out in plan number ADC1085/005RevA has been submitted to and approved in writing by the Local Planning Authority and the approved works have been fully completed to the written satisfaction of the Local Planning Authority.

24. There shall be no occupation of any phase of the development hereby permitted for business purposes until a scheme of works in general accordance with the identified highway junction improvements at the Furnace End crossroads as set out in plan number ADC1085/003RevE, has been submitted to and approved in writing by the Local Planning Authority and the approved works have been fully completed to the written satisfaction of the Local Planning Authority.

25. There shall be no occupation of any phase of the development hereby permitted for business purposes until a scheme of works in general accordance with the identified highway junction improvements at the Fillongley crossroads as set out in plan number ADC1085/004RevC has been submitted to and approved in writing by the Local Planning Authority and the approved works have been fully completed to the written satisfaction of the Local Planning Authority.

26. There shall be no occupation of any phase of the development hereby permitted for business purposes until a scheme of works in general accordance with the identified highway junction improvements at the Coleshill crossroads junction as set out in plan number ADC1085/007RevD has been submitted to and approved in writing by the Local Planning Authority and the approved works have been fully implemented to the written satisfaction of the Local Planning Authority.

27. No later than six months after the first occupation of any phase of the development hereby approved for business purposes, a Travel Plan for that phase, in general accordance with the Initial Travel Plan referenced ADC1085_D, shall be submitted to the Local Planning Authority. The Travel Plan when approved in writing by the Authority shall then be implemented and remain in force throughout the lifetime of that phase.

28. There shall be no occupation of any phase of the development hereby approved for business purposes until a Rail Operating and Management Plan has first been submitted to and approved in writing by the Local Planning Authority. The Plan shall include details of monitoring the levels of rail and HGV traffic arriving at and leaving that phase and proposals to show how the rail sidings are maximised to be the primary means of despatch and delivery of goods and materials for that phase. The development of that phase shall then only operate in full accordance with the approved plan. For the avoidance of doubt all subsequent occupiers of any phase will also be required to submit such a Plan and have it approved in writing by the Local Planning Authority prior to their occupation.

29. Prior to commencement of operation of each occupier of the site (and before any new operators commence operations) an assessment of daytime noise associated with all activities associated with all of the operators, including the new operator, shall be submitted to and approved in writing by the Local Planning Authority. For the avoidance of doubt this process is to be repeated for any new occupier.

The overall (cumulative) predicted daytime (0700 to 2300 hours) rating level of noise (as defined in BS 4142:2014) shall not exceed 40 dB $L_{Ar, Tr}$[357] at each identified receptor (residential premises) below:

- Daw Mill Cottages;
- Slowley Green Farm, Tamworth Road;
- Acorn Farm, Devitts Green Lane;
- Sadler's Meadow
- Quarry Cottage
- 1 & 2 Overbarns Cottage;
- Pemberton House;
- Wagstaff Farm.

30. Prior to commencement of operation of each occupier of the site (and before any new operators commence operations) an assessment of night-time noise associated with all activities proposed by all of the operators, including the new operator, shall be submitted to and approved in writing by the Local Planning Authority. For the avoidance of doubt this process is to be repeated for every new occupier.

    The predicted night time (2300-0700 hour) noise level from the operation of the site shall not exceed 42 dB $L_{Aeq\ 8\ hours}$ and 57 dB L_{Amax} (free field) at a position of each identified residential receptor building below:

    - Daw Mill Cottages
    - Slowley Green Farm, Tamworth Road
    - Acorn Farm, Devitts Green Lane
    - Sadler's Meadow
    - Quarry Cottage
    - 1 and 2 Overbarns Cottage
    - Pemberton House
    - Wagstaff Farm

31. Prior to the commencement of operation by each occupier of the site, a noise management plan for its operations shall be submitted to and approved in writing by the local planning authority. Once approved, the noise management plan shall then be implemented in full and remain operational for the duration of that use.

    The noise management plan should include, but not be limited to, the following measures for each occupier at the site where appropriate (and be updated,

[357] Lar Tr is the rating level of noise. The rating level is the specific sound level plus an adjustment for characteristic features. Characteristic features, as defined by BS 4142:2014, can be made for a specific sound that has one of the following characteristic features: tonality, impulsivity, intermittency and other characteristics (that are neither tonal nor impulsive) that are readily distinctive.

submitted to and approved in writing by the Local Planning Authority should an occupier change).

- Details of the noise sources on site, their sound levels and characteristics and their impact on noise sensitive receivers;
- Procedure for selection of inherently low noise plant and equipment;
- Details of noise control measures, including: engineering noise control such as silencers, enclosures, acoustic absorption, acoustic barriers/screening, building location, layout and orientation;
- Technological / procedural control measures such as set down velocity control, white noise alarms, automatic closing doors;
- Management control measures such as door closures, site speed limits, use of noisy tools / activities indoors, avoiding noisy activities during the night, maintenance of equipment;
- Training and supervision of site personnel about environmental noise and how to minimise its impact;
- Noise emission monitoring (including monitoring at noise sensitive receptors and demonstrating compliance with the planning noise limits) and maintaining an up-to-date noise model of the site;
- Noise contingency measures including complaints handling and investigation procedure and actions to be taken in case of an identified exceedance of the planning noise limit;
- Reporting noise reduction measures; and
- Management responsibilities and periodic (bi-annually or as agreed with the local authority) review of noise management plan.

32. There shall be no occupation by any occupier of the development hereby approved for business purposes until details of the external lighting have first been submitted to and approved in writing by the Local Planning Authority. The submitted scheme shall be accompanied by a full lighting study and take account of the obtrusive limitations of sky glow; lighting to windows, sourcing intensity, building luminance and surface reflection. It shall include specifications for the luminaries, lux levels and the times and days of use. The relevant part of the approved scheme shall be brought into use as agreed by the Local Planning Authority and shall be retained for the lifetime of the development. No other external lighting shall be installed on the development without the written approval of the Local Planning Authority. No alterations to the lighting as approved shall take place without the written agreement of the Local Planning Authority for subsequent occupiers.

33. There shall be no occupation of any phase of the development hereby approved for business purposes until details of the Memorial Garden have first been submitted to and approved in writing by the Local Planning Authority. The details shall include the layout of the Garden, landscaping provision and the means of maintenance over the lifetime of the development. The Garden shall be laid out, managed and maintained at all times in accordance with the approved details.

34. There shall be no vibro-impact works undertaken anywhere on the site unless full details have first been submitted to and approved in writing by the Local Planning

Authority. These details shall include a risk assessment and a method statement. Only the approved scheme shall then be implemented on site.

Annex B – Schedule of recommended conditions

1. Details of the appearance, landscaping, layout and scale (hereinafter called 'the reserved matters') shall be submitted to and approved in writing by the Local Planning Authority of any agreed phase of the development before any development is commenced on that particular phase. The development shall be carried out in accordance with the approved details.

2. No applications for Reserved Matters approval shall be submitted until a phasing scheme for the development of the whole site to which this permission relates, has first been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the agreed phasing scheme.

3. In the case of the reserved matters specified above, application for written approval accompanied by all detailed drawings and particulars must be made to the Local Planning Authority not later than the expiration of three years beginning with the date of this permission.

4. The development to which this permission relates must be begun not later than the expiration of two years from the final approval of all reserved matters.

5. As part of the reserved matters submission for every phase of the development, details of existing site levels and proposed site levels; finished floor levels and building heights shall be submitted to and approved in writing by the Local Planning Authority. For the avoidance of doubt the maximum ridge height of any building shall be 15 metres; the maximum height of any silo, gantry, or other structure including plant and equipment shall be 20 metres and the maximum height of all outside storage shall be 15 metres. All of these measurements shall be taken from the existing site levels. Only the approved details then approved in writing shall be implemented on site. The maximum amount of open storage on site shall be 10 hectares.

6. The reserved matters as defined in condition 1 & 5 shall be in general accordance with the following plans which are approved for the purposes of the planning permission:

   a) The Site Location Plan - redline plan numbered NK18083-SK010
   b) The Landscape/Biodiversity Parameter Plan numbered LBPP1
   c) The Proposed Access Junction Layout numbered ADC1085/001A

7. Any reserved matters submission shall include a scheme for the retention and protection of the tree numbered T1 shown as target note 13 on the AES *Extended Phase 1 Habitat Survey and Preliminary Ecological Appraisal Report* (May 2014). The scheme shall include a timetable for the implementation of the agreed measures which shall be fully implemented in accordance with the agreed timetable.

8. No more than 54 HGV movements into and out of the site shall be permitted on any one day. For the avoidance of doubt 54 movements is the total number of movements both into and out of the site in any one day. A daily log of all HGV movements entering and leaving the site shall be kept and retained on site. This shall be made available to the Local Planning Authority upon request.

9. No more than 1400 other traffic movements into and out of the site shall be permitted on any one day. For the avoidance of doubt 1400 movements is the total number of non-HGV movements into and out of the site in any one day. A daily log of all non-HGV movements entering and leaving the site shall be kept and retained on site. This shall be made available to the Local Planning Authority upon request.

10. The development hereby permitted shall only be carried out in accordance with the RPS Flood Risk Assessment for Daw Mill Colliery (Ref: JER6247-Daw Mill Colliery _ Rev1 Final of October 2014) and the following mitigation measures detailed within the Assessment:

    a) Built development shall not be located closer than 8 metres from the banks of the River Bourne and Ballard Brook;
    b) Surface water attenuation shall be provided by the existing ponds to the north of the site;
    c) Surface water runoff rates from the developed site shall be limited to 180.9l/s representing a restriction to the existing 1 in 1 year site runoff rate, for all critical duration rainfall return periods up to the 1 in 100 year rainfall event (with a 30% increase in peak rainfall intensity to account for the potential impacts of climate change).

    The mitigation measures as approved shall be fully implemented prior to the first occupation of any phase of the development hereby approved for business purposes.

11. No infiltration of surface water drainage into the ground beneath the site is permitted in those parts of the site where it has been demonstrated that there is potential for resultant unacceptable risk to controlled waters. Any such drainage shall only be carried out in accordance with the approved measures.

12. There shall be no commencement of any phase of the development hereby approved, including any works of demolition, until such time as a Construction Environment Management Plan for that phase (which shall include a Construction Phasing Plan to match the phasing details submitted in condition 2) has first been submitted to and approved in writing by the Local Planning Authority. The required Plan shall for each phase of the development provide for:

    a) The parking of vehicles of site operatives, deliveries and visitors;
    b) The routing of vehicles accessing the site associated with the construction of the development and signage to identify the route;
    c) The manoeuvring of vehicles within the site;
    d) Loading and unloading of plant and materials used in constructing the development, including top soil;
    e) The location of site compounds, storage of plant and materials;

f) The erection and maintenance of security fencing;
g) Wheel washing facilities;
h) Dust suppression measures;
i) Measures to control and mitigate disturbance from noise;
j) A scheme for the recycling/disposal of waste resulting from the development;
k) Any on-site lighting required during the construction period;
l) Measures to protect existing trees and hedgerows proposed for retention;
m) Delivery, demolition and construction working hours;
n) Pollution prevention measures;
o) Fencing and measures to protect mobile species and reasonable avoidance measures to prevent ecological harm;
p) The means by which the terms of this Plan are to be monitored; details of an on-site contact person and the procedure for reporting and resolving complaints.

The Plan as approved in writing by the Local Planning Authority shall be adhered to at all times throughout the construction period of the development.

13. No development shall commence on site, including the demolition of the existing weighbridge building identified as building 35 on the AES *Extended Phase 1 Habitat Survey and Preliminary Ecological Appraisal Report* (May 2014), until an updated bat survey has been carried out. The scope of this survey shall be agreed in writing by the Local Planning Authority, but should follow national good practice and be appropriate for these habitats and species. If bats are found or if adverse impacts are identified on roosting bats, then no work shall take place, including the demolition of buildings, until mitigation measures are first approved in writing by the Local Planning Authority. The approved mitigation measures shall then be implemented in full.

14. No development whatsoever shall commence on site until such time as a scheme for the disposal of foul and surface water (including oil and petrol interceptors) has first been submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of proposals to direct surface and foul water away from the railway. Only the approved measures shall then be implemented on site.

15. No development whatsoever shall commence on any phase of the development hereby approved (or any subsequent phasing that might be agreed) until a scheme that includes the following components to deal with the risks associated with contamination of the site has been submitted to and approved in writing by the Local Planning Authority:

a) A preliminary risk assessment which has identified all previous uses; potential contaminants associated with those uses, a conceptual model of the site indicating sources, pathways and receptors and potentially unacceptable risks arising from contamination at the site.

b) A site investigation scheme based on (a) above to provide information for a detailed assessment of risk to all receptors that may be affected including those off-site.

c) The results of the site investigation and detailed risk assessment referred to in (b) and based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.

d) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (c) are complete and identify any requirements for longer term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

Any changes to these components will require the written approval of the Local Planning Authority. Only the approved scheme shall be implemented on-site.

16. There shall be no occupation of any phase of the development hereby approved for business purposes until a verification report demonstrating completion of the works set out in the remediation strategy approved under condition 15 above and the effectiveness of the remediation, has been submitted to and approved in writing by the Local Planning Authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include a longer term management plan for monitoring pollutant linkages, maintenance and arrangements for contingency action as identified in the verification plan. The longer term management plan shall be adhered to at all times.

17. Habitat and Biodiversity Management Plan for the whole of the Landscape and Bio-Diversity areas as shown on the plan approved under condition 6 has first been submitted to and approved in writing by the Local Planning Authority. This Plan shall include:

a) A description and evaluation of the features to be managed
b) Any ecological trends and constraints on site that might influence management
c) The aims and objectives of management
d) The options for achieving these objectives
e) Prescriptions for management actions
f) Preparation of a work schedule including an annual work plan
g) Details of the body or organisation responsible for the implementation of the Plan
h) A timetable for implementation and ongoing monitoring and remedial measures
i) It shall also set out how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the bio-diversity objectives of the originally approved plan
j) Only the approved Plan shall be implemented on site

18. There shall be no occupation of any phase of the development hereby permitted until a scheme of works in general accordance with the identified highway junction improvements at the B4098 Tamworth Road/B4114 Nuneaton Road Priority Junction as set out in plan number ADC1085/005RevA has been submitted to and approved in writing by the Local Planning Authority and the approved works have been fully completed to the written satisfaction of the Local Planning Authority.

19. There shall be no occupation of any phase of the development hereby permitted for business purposes until a scheme of works in general accordance with the identified highway junction improvements at the Furnace End crossroads as set out in plan number ADC1085/003RevE, has been submitted to and approved in writing by the Local Planning Authority and the approved works have been fully completed to the written satisfaction of the Local Planning Authority.

20. There shall be no occupation of any phase of the development hereby permitted for business purposes until a scheme of works in general accordance with the identified highway junction improvements at the Fillongley crossroads as set out in plan number ADC1085/004RevC has been submitted to and approved in writing by the Local Planning Authority and the approved works have been fully completed to the written satisfaction of the Local Planning Authority.

21. There shall be no occupation of any phase of the development hereby permitted for business purposes until a scheme of works in general accordance with the identified highway junction improvements at the Coleshill crossroads junction as set out in plan number ADC1085/007RevD has been submitted to and approved in writing by the Local Planning Authority and the approved works have been fully implemented to the written satisfaction of the Local Planning Authority.

22. No later than six months after the first occupation of any phase of the development hereby approved for business purposes, a Travel Plan for that phase, in general accordance with the Initial Travel Plan referenced ADC1085_D, shall be submitted to the Local Planning Authority. The Travel Plan when approved in writing by the Authority shall then be implemented and remain in force throughout the lifetime of that phase.

23. Prior to commencement of operation of each occupier of the site (and before any new operators commence operations) an assessment of daytime noise associated with all activities associated with all of the operators, including the new operator, shall be submitted to and approved in writing by the Local Planning Authority. For the avoidance of doubt this process is to be repeated for any new occupier.

    The overall (cumulative) predicted daytime (0700 to 2300 hours) rating level of noise (as defined in BS 4142:2014) shall not exceed 40 dB $L_{Ar,\ Tr}$[358] at each identified receptor (residential premises) below:

[358] Lar Tr is the rating level of noise. The rating level is the specific sound level plus an adjustment for characteristic features. Characteristic features, as defined by BS 4142:2014, can be made for a specific sound that has one of the following characteristic features: tonality, impulsivity, intermittency and other characteristics (that are neither tonal nor impulsive) that are readily distinctive.

- Daw Mill Cottages;
- Slowley Green Farm, Tamworth Road;
- Acorn Farm, Devitts Green Lane;
- Sadler's Meadow
- Quarry Cottage
- 1 & 2 Overbarns Cottage;
- Pemberton House;
- Wagstaff Farm.

24. Prior to commencement of operation of each occupier of the site (and before any new operators commence operations) an assessment of night-time noise associated with all activities proposed by all of the operators, including the new operator, shall be submitted to and approved in writing by the Local Planning Authority. For the avoidance of doubt this process is to be repeated for every new occupier.

    The predicted night time (2300-0700 hour) noise level from the operation of the site shall not exceed 42 dB $L_{Aeq\ 8\ hours}$ and 57 dB L_{Amax} (free field) at a position of each identified residential receptor building below:

    - Daw Mill Cottages
    - Slowley Green Farm, Tamworth Road
    - Acorn Farm, Devitts Green Lane
    - Sadler's Meadow
    - Quarry Cottage
    - 1 and 2 Overbarns Cottage
    - Pemberton House
    - Wagstaff Farm

25. Prior to the commencement of operation by each occupier of the site, a noise management plan for its operations shall be submitted to and approved in writing by the local planning authority. Once approved, the noise management plan shall then be implemented in full and remain operational for the duration of that use.

    The noise management plan should include, but not be limited to, the following measures for each occupier at the site where appropriate (and be updated, submitted to and approved in writing by the Local Planning Authority should an occupier change).

    - Details of the noise sources on site, their sound levels and characteristics and their impact on noise sensitive receivers;
    - Procedure for selection of inherently low noise plant and equipment;

- Details of noise control measures, including: engineering noise control such as silencers, enclosures, acoustic absorption, acoustic barriers/screening, building location, layout and orientation;
- Technological / procedural control measures such as set down velocity control, white noise alarms, automatic closing doors;
- Management control measures such as door closures, site speed limits, use of noisy tools / activities indoors, avoiding noisy activities during the night, maintenance of equipment;
- Training and supervision of site personnel about environmental noise and how to minimise its impact;
- Noise emission monitoring (including monitoring at noise sensitive receptors and demonstrating compliance with the planning noise limits) and maintaining an up-to-date noise model of the site;
- Noise contingency measures including complaints handling and investigation procedure and actions to be taken in case of an identified exceedance of the planning noise limit;
- Reporting noise reduction measures; and
- Management responsibilities and periodic (bi-annually or as agreed with the local authority) review of noise management plan.

26. There shall be no occupation by any occupier of the development hereby approved for business purposes until details of the external lighting have first been submitted to and approved in writing by the Local Planning Authority. The submitted scheme shall be accompanied by a full lighting study and take account of the obtrusive limitations of sky glow; lighting to windows, sourcing intensity, building luminance and surface reflection. It shall include specifications for the luminaries, lux levels and the times and days of use. The relevant part of the approved scheme shall be brought into use as agreed by the Local Planning Authority and shall be retained for the lifetime of the development. No other external lighting shall be installed on the development without the written approval of the Local Planning Authority. No alterations to the lighting as approved shall take place without the written agreement of the Local Planning Authority for subsequent occupiers.

27. There shall be no occupation of any phase of the development hereby approved for business purposes until details of the Memorial Garden have first been submitted to and approved in writing by the Local Planning Authority. The details shall include the layout of the Garden, landscaping provision and the means of maintenance over the lifetime of the development. The Garden shall be laid out, managed and maintained at all times in accordance with the approved details.

28. There shall be no vibro-impact works undertaken anywhere on the site unless full details have first been submitted to and approved in writing by the Local Planning Authority. These details shall include a risk assessment and a method statement. Only the approved scheme shall then be implemented on site.

29. This permission is granted under the provisions of Article 5 (1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 in outline, with approval of, access for the development of the site for a maximum

of 24,652m^2 (measured by gross internal area) of built floorspace for employment uses comprising B2 (general industrial) development, ancillary open storage areas, associated car parking, servicing yards, gantry crane, infrastructure and utilities, retention and use of existing infrastructure including rail head and sidings, site vehicular access, grid connection, electricity sub-station and reconfigured surface water drainage infrastructure.

30. The rail sidings so retained shall not be used at any time for an inter-modal freight interchange.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Christopher Young Of Counsel assisted by Howard Leithead	Instructed by Steve Maxey Assistant Chief Executive and Solicitor to the Council
He called	
Dorothy Barratt	Forward Planning & Economic Strategy Manager
Keith Metcalfe	Director Sharps Redmore – Acoustic Consultant
Clive Bentley	Associate Acoustic Consultant Sharps Redmore
Annie English	Planning & Biodiversity Officer Warwickshire Wildlife Trust
Jeffery Brown	Development Control Manager

FOR OVER WHITACRE PARISH COUNCIL & THE LEYS & WHITACRE RESIDENTS'S ACTION GROUP (LAWRAG) – RULE 6 PARTY:

Nina Pindhan Of Counsel	Instructed by Cllr Philip Mason, Ross Jones and Edward Stirrop
She called	
Neil Benison	Highways
Edward Stirrop	Ecology
Ross Jones	Restoration
Bob Blenkinsopp	Site History
Neil Pearce	Planning
Cllr Philip Mason	Chair of the Over Whitacre Parish Council

FOR THE APPELLANT:

Andrew Fraser-Urquhart QC	Instructed by Andrew Piatt Partner & Head of National Planning Team, Gateley PLC
He called	
Stephen Barry	Site history
Geoff Clarke	Logistics
Ian Grimshaw	LVIA

Helena Kelly	Heritage
Francis Hesketh	Ecology
Simon Stephenson	Noise
David Cummins	Transport
David Rolinson	Planning
Not called:	
Richard Chalmers	Flooding

INTERESTED PERSONS:

Peter Wheeler	Windrush Valley Protection Group
Cllr Adam Farrell	Member of North Warwickshire Borough Council – Coleshill North
Cllr Peter Fowler	Warwickshire County Council
Gill Guy	Member Over Whitacre Parish Council
Steve Powell	Whitacre Flood Group
Debra Starkey	Whitacre Flood Group & Nether Whitacre Parish Council
Jackie Ludford	Local Resident
Victoria Stapleton	Read a statement on behalf of Craig Tracey MP

Inquiry Documents

ID1	Statement of Common Ground
ID2	Council Opening Statement
ID3	Rule 6 Party Opening Statement of the Rule 6 Party
ID4	Appellant Opening Statement
ID5	Inspector's Report into North Warwickshire Local Plan: Core Strategy 24 September 2014
ID6	Local Development Scheme for North Warwickshire, September 2016
ID7	Dorothy Barratt Supplementary Employment Land Statistics
ID8	Neil Benison Rebuttal Document
ID9	Stephen Powell Statement
ID10	David Cummins email 21 February 2017
ID11	Correspondence concerning Environment Act 1995
ID12	Advocacy Document
ID13	Philip Mason Statement
ID14	Neil Benison Speaking Notes
ID15	Neil Pearce Speaking Notes
1D16	Graham Stirrop Addendum
ID17	Mrs Gillian Guy Statement
ID18	Craig Tracey MP Statement

ID19	Jackie Ludford Statements
ID20	Tranquillity Table
ID21	G Purchase Application Decision Notice
ID22	CW Young Ltd Application Report
ID23	Draft Local Plan Timeline
ID24	Peter Wheeler Statement
ID25	Cllr Adam Farrell Statement
ID26	Debra Starkey Statement
ID27	Cllr Peter Fowler Statement
ID28	The Five Basic Conditions for Neighbourhood Plans
ID29	Town and Country Planning (General Permitted Development) Order 1995 (Extract).
ID30	J G Tyrell Correspondence
ID31	Daw Mill Lease
ID32	Rule 6 Party Restoration Scheme Cost Estimate
ID33	Council Heritage Consultations Statement
ID34	Simon Stephenson Container Impact Model Location
ID35	Keith Metcalfe Location of Train Observations
ID36	*Bloor Homes East Midlands Ltd v Secretary of State for Communities and Local Government* [2014] EWHC 754 (Admin)
ID37	Letter from CEMEX to Appellants dated 8 May 2017 ("the CEMEX letter")
ID38	Rule 6 Party response to the CEMEX letter
ID39	Goodman Logistics Developments (UK) Ltd v Secretary of State for Communities and Local Government [2017] EWHC 947 (Admin) and Goodman Judgment and the related Decision Letter by the Secretary of State dated 12 July 2016
ID40	Statement of Compliance with CIL Regulations May 2017
ID41	Signed S106 agreement
ID42	Closing Submissions LAWRAG
ID43	Closing Submissions North Warwickshire Borough Council
ID44	Closing Submissions of Harworth Estates
ID45	Costs Application on behalf of Council
ID46	Costs application on behalf of LAWRAG
ID47	Response of appellant company to cost applications
ID48	Direction letter dated 6 June 2016
ID49	Suffolk Coastal District Council v Hopkins Homes Ltd and another Richborough Estates Partnership LLP and another v Cheshire East Borough Council case - para 61 *[2016] EWCA Civ 168, [2015] EWHC 132 (Admin) and [2015] EWHC 410 (Admin)*
ID50	Pre-Inquiry Note
ID51	Schedule of agreed Conditions

Inquiry Plans

Plan A	Seam Plan
Plan B	North Warwickshire Parishes Map
Plan C	Driving Route of Employment Sites and Maps

Plan D	Strategic Logistics & Employment Sites
Plan E	North Warwickshire Borough Council Proposals Map July 2006
Plan F	Noise Measurement Locations
Plan G	Retained Buildings
Plan H	Building Use Strategic Plan

Core Documents

Folder A		
1	CD 1	North Warwickshire Local Plan, Saved Policies, 2006
2	CD 2	North Warwickshire Core Strategy 2014
3	CD 3	Draft Local Plan for North Warwickshire – August 2016
4	CD 4	North Warwickshire Site Allocations Plan – Draft Pre-Submission – June 2014
5	CD 5	The Arley Neighbourhood Plan 2016
6	CD 6	Historic Environment Good Practice Advice in Planning 3 (GPA3): The Setting of Heritage Assets, Historic England, 2015
7	CD 7	Extract from Conservation Principles; Policy and Guidance for the Sustainable Management of the Historic Environment, English Heritage 2008 - pages 25-32
8	CD 8	Biodiversity Impact Assessment calculator and guidance document, Warwickshire County Council
Folder B		
9	CD 9	Guide for the Design and Lighting Schemes, North Warwickshire Council, 2003
10	CD 10	Signed Memorandum of Understanding relating to the delivery of a proportion of the projected unmet housing need arising from Greater Birmingham & Black Country Housing Market Area in Birmingham City Council and North Warwickshire Borough Council (21st September 2016)
11	CD 11	North Warwickshire Local Development Sub-Committee agenda and minutes (29th February 2016) – Deleted CIL Agenda Item
12	CD 12	North Warwickshire Local Development Sub-Committee agenda and minutes (25th April 2016)
13	CD 13	National Policy Statement for National Networks – December 2014

14	CD 14	Addendum to 2013 Employment Land Review (April 2016)
15	CD 15	North Warwickshire Local Development Sub-Committee agenda and minutes (26th September 2016) - Deleted Infrastructure Delivery Plan agenda item
16	CD 16	Coventry and Warwickshire Joint Green Belt Study: Stage 2 Final Report for North Warwickshire Borough Council and Stratford-on-Avon District Council (April 2016) – report and Broad Area 10 site assessment
17	CD 17	DfT, Rail Freight Strategy, (2016)
18	CD 18	Extract from Warwickshire County Council (2011) Local Transport Plan 2011-2026 pages 249-250
19	CD 19	Natural England National Character Area 97, Arden, December 2014
20	CD 20	Warwickshire Landscape Guidelines: Arden, November 1993
Folder C		
21	CD 21	Extract from Warwickshire Landscape Character Assessment, August 2010
22	CD 22	British Standards Institution. British Standard 4142:2014. Methods for rating and assessing industrial and commercial sound.
23	CD 23	British Standards Institution. British Standard 8233:2014 Guidance on Sound Insulation and Noise Reduction for Buildings
24	CD 24	Noise Policy Statement for England (NPSE) March 2010 (DEFRA)
25	CD 25	European Centre for Environment and Health. Night Noise Guidelines (NNGL) for Europe. World Health Organisation. 2009.
26	CD 26	Berglund, B. et al. Guidelines for Community Noise. World Health Organisation 2000.
27	CD 27	Daw Mill Colliery Abandonment Report, April 2014
28	CD 28	1996 Restoration Plan and the accompanying Notice
29	CD 29	West Midlands Land Commission report extract
Folder D - Case Law		
1		Morge v Hampshire CC [2011] UKSC 2
2		Mordue v Jones [2015] EWCA Civ 1243

3		Barnwell v East Northamptonshire DC 2014 [2014] EWCA Civ 137 [2014]
4		Tiviot Way Investments Ltd v Secretary of State for Communities and Local Government, Stockton-on-Tees Borough Council [2015] EWHC 2489 (Admin)
5		Turner v Secretary of State for Communities and Local Government, East Dorset District Council [2015] EWHC 2728 (Admin)
6		Bernard Wheatcroft Ltd v Secretary of State for the Environment and another 1980
7		Cheshire East Borough Council and the Secretary of State for Communities and Local Government and Renew Land Development Ltd [2016] EWHC 571 (Admin)
8		Turner v Secretary of State for Communities and local Government and East Dorset Council [2016] EWCA Civ 466 (Court of Appeal)
9		Doncaster MBC v Secretary of State for Environment, Transport and the Regions Doncaster Council [2002] EWHC 808 (Admin)

Ministry of Housing, Communities & Local Government

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.