

## **General Development Applications**

### **(2) Application No PAP/2010/0102**

**PA 2010/0102**

**Land to the South East of Birch Coppice Business Park, Dordon**

**Outline application for the development of 49.9 hectares of land to the south east of Birch Coppice Business Park to create 186,000 square metres of built floor space for storage and distribution uses within Use Class B8, as an extension to Birch Coppice Business Park Phase One. Details relevant to access, layout and landscaping are submitted for consideration now, with matters of the appearance of buildings reserved for consideration in subsequent planning applications. Details submitted now include the layout of proposed site roads and vehicle accesses, site drainage infrastructure works, construction of site roads, site levels for building development plateaux and proposed site boundary landscaping. Details of the layout, scale and appearance of buildings are included now for illustrative purposes only, for**

**IM Properties (Dordon) Ltd**

#### **Introduction**

The receipt of this application was reported to Members at their April meeting and a copy of that report is attached at Appendix A. Additionally, a second report was brought to the May meeting, and this discussed the content of the draft Section 106 Agreement that accompanied the application. That report is attached at Appendix B.

Since these two meetings, a number of matters need to be updated. The report will first identify these, before exploring the central issues at the heart of the proposal.

Members attended a site visit in May, and a note of that visit is attached at Appendix C.

#### **Additional Matters**

There are several matters that need to be brought to the Board's attention

Firstly, Members will recall that the former Secretary of State had not yet published Proposed Modifications to the Preferred Option for Phase Three of the RSSS at the time of the submission of this planning application. The current Government has now revoked Regional Strategies all together with effect from 6 July 2010. As a consequence the 2008 Regional Spatial Strategy is no longer part of the Development Plan, and the Preferred Option is no longer a material planning consideration. This is a significant change, and particularly so for development proposals promoting Regional Logistics Sites.

The decision on this application is to be made in accordance with the Development Plan, unless material considerations indicate otherwise. The current Development Plan now comprises the saved policies from the Warwickshire Structure Plan 1996-2011 (“Structure Plan”) and the North Warwickshire Local Plan 2006 (“Local Plan”).

A complication in this application is that the Local Plan makes express reference to the RSS review. However, it is important to appreciate that the RSS review has never been part of the Development Plan, because it had still to be considered by the Secretary of State. The key implication for this application of the revocation of Regional Strategies, is that the RSS review is no longer emerging policy and so does not attract the weight to be attached to emerging policy, which in this case was at quite an advanced stage of its statutory process. The supporting Technical Studies and their findings, are however, still material to the consideration of this application.

Secondly, in light of these changed circumstances, this application is now a departure from the Development Plan. As the proposal is for a major development, the final determination of the case should be made by Council, following a recommendation from this Board.

Thirdly, the April report at Appendix A, indicated that in the event of the Council being minded to support the proposal, then the case would need referral to the Secretary of State for a decision about a potential “call-in”. Government Office has indicated quite firmly that any referral would have to be made under the current Government Direction relating to such referrals. Planning and legal officers can confirm that the Council itself can grant a planning permission, without referral, if it is so minded. For completeness, the relevant documentation is Circular 2/2009 - “The Town and Country Planning (Consultation) (England) Direction 2009”.

Fourthly, following the May meeting, officers were asked to look into the draft Section 106 Agreement accompanying the application in more detail. This has been followed through with further discussions between the applicant and the County Council. It is considered that progress has been made in answering the issues raised by Board at the May meeting – see Appendix B.

### **The Development Plan**

For the avoidance of doubt it is considered important to clearly set out those policies of the Development Plan that are now relevant to consideration of this application, as these will have changed from that set out in Appendix A.

Saved Policies from the Structure Plan – I2 (Industrial Land Provision)

Saved Policies from the Local Plan – Core Policies CP1 (Social and Economic Regeneration), CP2 (Development Distribution), CP3 (Natural and Historic Environment), CP11 (Quality of Development) and CP12 (Implementation), together with policies ENV1 (Protection and Enhancement of the Natural Landscape), ENV4 (Trees and Hedgerows), ENV6 (Land Resources), ENV7 (Development of Existing Employment Land Outside Development Boundaries), ENV8 (Water Resources), ENV9 (Air Quality), ENV10 (Energy Generation and Conservation), ENV11 (Neighbour Amenities), ENV12 (Urban Design), ENV13 (Building Design), ENV14

(Access Design), ECON1 (Industrial Sites), TPT1 (Transport Considerations), TPT3 (Access and Sustainable Development), TPT5 (Promoting Sustainable Freight Movements) and TPT 6 (Vehicle Parking)

### **Other Material Planning Considerations**

Similarly here, it is considered important to up date the content of the previous report.

Government Planning Policy Statements – PPS1 (Delivering Sustainable Development), PPS4 (Planning for Sustainable Economic Growth), PPS5 (Planning for the Historic Environment), PPS7 (Sustainable Development in Rural Areas), PPS9 (Planning for Bio-Diversity and Geological Conservation), PPS23 (Planning and Pollution Control) and PPS25 (Development and Flood Risk)

Government Planning Policy Guidance Notes - PPG 13 (Transport)

Government Circulars - Circular 11/1995 (The Use of Conditions in Planning Permissions); 05/2005 (Planning Obligations) and 2/2009 (Consultation Direction)

The Regional Logistics Sites Studies – Stages 1 (2004) and 2 (2005), and the Update Report of 2009

West Midlands RSS Phase Two Revisions - Report of the Panel following the Examination in Public (September 2009) - Recommendations in respect of Logistics Sites.

### **Consultations**

All of the following responses were received prior to the Secretary of State's announcement about Regional Strategies on 6 July. The impact of this decision, is referred to where relevant. The consultation responses dealing with technical matters are not affected by the change in status of the RSS.

**West Midlands Leaders Board** – “This proposal does not prejudice the policies and principles of the Regional Strategy and therefore in principle it would seem to be in general conformity with the approved Strategy and the emerging Phase Two Revision”. In view of the update set out above, this response has little weight.

**Advantage West Midlands** – “Whilst the RSS Phase Two revision is yet to be finalised, the Agency supports this planning application in that it provides the early delivery of an RLS as envisaged by the proposed amendments to RSS Policy PA9. The Agency welcomes the expansion of the existing Birch Coppice site for predominantly B8 use and the potential to create up to 1750 new jobs. This proposal will add choice to the West Midlands logistics market and create new job opportunities for North Warwickshire and the surrounding area”. This response still carries weight in that it supports the economic development outcomes of the proposal.

**Tamworth Borough Council** – “No objection, but would like to see improvements to the sustainable transport links between the site and Tamworth, and would also like to see prospective employees being encouraged to forge closer links with the local skills and training infrastructure so that local people can obtain the necessary skills sets to access the employment opportunities”. This response is still relevant.

**Highways Agency** – The Agency has issued a holding Direction, requiring the Council not to grant planning permission because insufficient information has been provided in support of the planning application. Further discussions reveal that this is not an objection in principle, but a request for greater clarity on the methods used by the applicant to calculate anticipated traffic levels. Both parties have been exchanging details over the past few weeks, and the Agency expects to issue a final response next week. Officers will therefore have to report verbally to Members at the meeting.

The Council can not grant a planning permission until this holding Direction is removed by the Agency.

**Department of Food and Rural Affairs** – DEFRA was consulted in view of the potential loss of agricultural land with 83% of the site being grade 2 or 3a. No response has yet been received.

**Network Rail** – Supports the development as it is linked to an established rail freight terminal, but draws attention to the capacity of the existing Kingsbury branch line.

**Environment Agency** – The Agency has no objection subject to two conditions. The first would require the development’s flood risk and drainage measures to be completed in line with the details as submitted. The second would require remediation of any contamination found on the site prior to occupation of the units. The civil engineering enabling works can thus continue.

**Severn Trent Water Ltd** – No objection subject to a standard condition requiring full details of drainage measures.

**Warwickshire Wildlife Trust** – Objection on the grounds that the information submitted in respect of ecological data does not enable a comprehensive evaluation of the proposals on the area’s biodiversity to be made, and thus it is not possible to assess whether there will be a net loss of bio-diversity contrary to Government advice in PPS9. The applicant and the Trust have been in discussion concerning these matters, and progress will be provided at the meeting.

**Warwickshire Museum** – Objection on the grounds that there is insufficient information submitted on which to assess the archaeological implications of the development proposed. The applicant is aware of this response and is in discussion with the Museum’s officers. Archaeological investigations are currently in progress at the site, and interim conclusions are expected prior to the Board meeting.

**Environmental Health Officers** – Additional information is required in respect of the mitigation of any residual gas emissions arising from the former colliery and details are required of a dust management plan during the construction phase. Detailed consideration will need to be given to lighting impacts and to any impacts that might arise due to renewable energy measures to be incorporated into the future buildings. These matters can be dealt with by conditions, with the first point covered by the Environment Agency's response.

**Birmingham International Airport** – There is no objection in terms of safeguarding issues affecting the airport.

**Fire Services Authority** – No objection subject to a condition reserving details of fire fighting measures throughout the site.

**Warwickshire Police (Safer Communities Team)** – No objection at this stage but would wish to be involved in the design of the units.

## **Representations**

**The Council for the Preservation of Rural England (Warwickshire Branch)** - Objects to the loss of open countryside and agricultural land as the site is not designated for development by the 2006 Local Plan. The existing site has changed the character of the countryside hereabouts and had a highly detrimental impact on the setting of Baddesley. This would worsen if the second phase goes ahead. The RSS position is effectively now "on hold" and thus can not be relied on to justify the proposals. This response carries weight given the changed circumstance concerning the RSS.

**Letters** - Five letters of objection have been received from local residents. The grounds of objection include increased traffic on the A5 and increased noise pollution arising from that traffic; loss of agricultural land and open countryside, brown field land should be used instead, retention of the waste transfer station in the plans despite local objections to this, noise and light pollution from Phase 2 and from additional use of the rail freight terminal, together with the loss of natural habitat.

A letter of support has been received from the former MP for North Warwickshire.

## **Observations**

### **a) Introduction**

The determination of any planning application must be made in accordance with the Development Plan, unless material considerations indicate otherwise. The main issue for the Board is thus to identify what the Development Plan says, and then to identify whether there are any material considerations, and give them such weight as appropriate. The following section will thus follow this approach, reaching a conclusion based on the balance between Development Plan policy and the weight attributed to any material considerations.

The May Board considered a report on the Draft Section 106 Agreement for the Phase Two proposals. This will need further consideration as a consequence of the comments made by that Board, and from further discussions with the applicant and the Agencies involved.

The report will conclude by looking at a number of technical matters to see if there are any adverse impacts arising from the proposals. Members will need to examine the use of conditions to see if such impacts can be reasonably mitigated or compensated, or failing that, if there are impacts that can not be dealt with in this way, to come to view as to whether these “residual” impacts are of such harm, as to warrant a refusal, notwithstanding any benefits that might be identified from the proposals.

## **b) The Development Plan**

The Development Plan comprises the saved policies of the Structure Plan, and the saved policies of the Local Plan. The key policies in respect of this proposal are summarised below.

Structure Plan Policy I2 provides a target of industrial land provision in North Warwickshire of 279 hectares in its plan period up to 2011. No further allocations are required to satisfy this requirement, as this has been achieved.

Local Plan Core Policy 1 says that the Council will, through the Local Plan, support the economic and social regeneration of the area, by, amongst other things, seeking to ensure access to a range of high quality employment. The justification for the policy draws attention to the fact that redevelopment of the former Birch Coppice colliery has provided employment development of regional significance because of its location on road and rail transport routes and its proximity to urban areas. This is recognised in Policy ECON1, which says that Birch Coppice is a regionally significant employment site. It continues by saying that further development will only be permitted within the context of a review of the RSS. Core Policy 2 says that new development outside of identified development boundaries will not be permitted except in identified circumstances.

As a consequence of these policies, this application is a departure from the Development Plan. Of the policies referred to above, greater weight should be given to those in the Local Plan because they were adopted after the Structure Plan, and as a consequence they are thus in conformity with the Structure Plan. Taking each in turn, Core Policy 1 is significant in that it supports economic regeneration and that it recognises that the existing site is of regional significance at present. Hence the current proposal would gain implicit support from this Core Policy. Core Policy 2 indicates that “identified circumstances” are needed to warrant new development outside of development boundaries. Clearly these circumstances must be identified and given significant weight, if this application is to be supported. It is noteworthy however at this stage to say that the current form of proposal – a logistics site – is not one that would normally be accommodated actually within a settlement, or indeed within a tightly drawn settlement boundary, and hence there does need to be some reservation as to the applicability of the Core Policy to this proposal. Policy ECON1 says that the expansion of Birch Coppice will be looked at only in the context

of the RSS Review. Whilst the RSS is now revoked, the Government has explicitly confirmed that the evidence base undertaken in the preparation of the review can be treated as a material consideration. There is such evidence that is wholly relevant to this application, and this will be explored more fully below. As indicated in the introduction to this section, the critical issue for the Board is to specify the material considerations that are relevant to this case; identify the weight to be given to them, and then to assess whether they are of sufficient weight to determine that the application may be treated as an exception to the Development Plan.

There are clearly other policies in the Development Plan which are relevant to the application, but the key issue, is to first look at the principle of the proposal. The conclusion thus reached, can then be balanced against these other policies.

### **c) Other Material Considerations – The Evidence Base**

The first consideration is the conclusion reached from the evidence base that was undertaken in the preparation of the RSS. This is the work that resulted in the Regional Logistics Site Studies of 2004 and 2005. These were updated, and a further report was published in May 2009. The earlier reports outlined growth in the Logistics sector that ranged from 176 to 336 hectares depending on a variety of scenarios. They concluded that land for this growth should be located at rail-linked sites, and with good access to the strategic road network. In particular a corridor stretching broadly along the route of the West Coast Main rail line would be the most competitive. The Studies concluded that a geographic choice of site should always be available. These Studies were updated through the RSS process, and a further report was published in 2009. This develops the general conclusions reached in the earlier reports. There are several conclusions:

- The West Midlands is a core region in terms of growth in the logistics sector
- The priority area for such growth is identified as the M42/A5 corridor.
- There are benefits in environmental and financial terms of having B8 developments with a rail link
- New rail-linked land will have to be brought forward to satisfy need
- There are no sites of around 50 hectares currently available or in the pipe-line that are rail-linked.
- The land supply situation at existing operational major Logistics sites with rail connections, including the existing Phase One at Birch Coppice, is that they all have few further plots available.
- There are only three active intermodal terminals in the West Midlands; there is a need for an additional 4 to 6 sites.
- There is land “available” at Birch Coppice in order to expand this existing facility.

The overall conclusion from the 2009 Study was that in order to meet an immediate and un-met need for Logistics sites, which would be of sufficient size to make them viable, and to have access to intermodal freight terminals, then Birch Coppice would be a favoured candidate.

The second part of this consideration is that this conclusion, arising from the 2009 updated Study, was taken forward into the RSS Preferred Option by way of it proposing Birch Coppice for expansion. The Preferred Option was independently and objectively examined through the Examination in Public in the summer of 2009. The Panel explored the conclusions of the 2009 Study, and its translation into draft policy. That examination is significant because, it also listened to objections that raised a number of other legitimate planning and environmental grounds; it considered a range of alternative sites, their availability and suitability. That robust and independent examination endorsed the proposed expansion of Birch Coppice, by recommending “utilising the full potential for the expansion of RLS at ... Birch Coppice”. That Recommendation can not now be taken forward through an RSS Policy route. However it can still be taken forward as a material consideration in support of the current application.

It is concluded that in principle, significant weight should be given to the outcome from this consideration. The evidence is directly relevant to the nature of this current proposal; it is up to date and was published after the adoption of the Local Plan. Policy ECON1 of that Local Plan refers to expansion of Birch only in the context of the RSS review. The Government has explicitly indicated that the evidence upon which that review is based can be treated as a material consideration. The fact that the RSS has now been revoked does not weaken the conclusions arising from the independently commissioned Studies, or from the independent and comprehensive assessment of those conclusions by the Panel.

#### **d) Other Material Considerations - Employment**

The second consideration is that of employment provision. One of the concerns expressed by Members in respect of B8 developments, has been that they are perceived as having low employment opportunities, and that they only provide low skilled jobs. The number of jobs presently provided at Birch Coppice is around 2000. This equates to an employment density of 30 per hectare – the area excludes the spoil heap and the presently undeveloped plots. The applicant is saying that up to 1750 new jobs will be provided on Phase Two through this current application. This equates to 40 per hectare – the area excludes the perimeter landscaping belts. The applicants themselves are thus anticipating a greater density of employment on Phase Two.

For comparison purposes, the average employment density for the Station Road Estate in Coleshill and for the Carlyon Road estate in Atherstone is 65 per hectare. It is important however to stress that these two industrial estates were developed as early as the 1950's and 60's, and therefore a modern industrial estate would be very unlikely to meet this kind of figure. In order to test this further, the applicant was requested to provide a better evidence base to support the figures put forward in the application. Research has been submitted with the application dating from 2007, based on data collected throughout the UK. This concludes that on average, a B8 worker occupies around 50 square metres of actual floor space, and that on average an industrial worker occupies 60 square metres. It is suggested by the authors of the research that B8 floor space nowadays is more likely to provide numbers of jobs closer to those normally perceived on industrial estates.

The same research documents looked at the range, or “quality” of employment provided in recent B8 developments throughout the country. The occupational breakdown was found to be 36% in skilled jobs, 24% in semi-skilled, 23% in office jobs, 12% as drivers and the remainder - 5% as unskilled. Earnings were generally higher than those of industrial workers and the range of jobs within any one unit were generally found to be more varied than in an industrial unit. These general trends are supported by the County Council’s own Economic Development Group. The research therefore suggests that the general perception about job opportunities in B8 developments is now misplaced.

The issue for the Board is to determine what weight should be given to the applicant’s claim that up to 1750 jobs would be provided. Firstly, it is reasonable to conclude that there is a reasonable prospect of this figure being a credible outcome, and that the range of jobs is likely to be far more varied than perhaps seen in earlier B8 units, and that more jobs are likely to be provided on Phase Two at Birch than on the existing Phase One. Secondly, the draft Section 106 Agreement contains a specific and bespoke contribution to a package of measures designed to link the job opportunities proposed to local employment needs. This link was recognised through the Agreements relating to the existing development at Birch Coppice, but the current package of measures now being proposed would be far more focussed on the requirements of the occupiers of the Phase Two, and specifically linking those into the local community. As a consequence, the recognised unemployment situation locally, and the low skills levels seen locally, can be specifically addressed through this dedicated package of measures. This outcome is material both in terms of the Core Regeneration Policy of the Local Plan and to meeting the objectives of the Sustainable Community Strategy. As a consequence, it is concluded that this consideration does carry significant weight.

#### **f) Material Considerations – Other Sites**

Members are fully aware that the RSS review process resulted in Hams Hall also being identified as a Logistics site through extension of the existing development there. Indeed the Examination in Public looked at a number of other green field sites in the Borough as well. This issue for the Board is thus to consider the implication, support for the current application at Birch Coppice would have for the determination of subsequent applications should other sites come forward. There are several considerations. Firstly, this application was submitted prior to the revocation of the RSS, and it is the only fully worked up proposal that will deliver logistics provision quickly. Secondly, the Development Plan no longer includes a policy requirement for the provision of B8 uses within Regional Logistics Sites (RLS). Subsequent applications can be deflected because there is no longer this RSS obligation to meet a “base line” land requirement. As a consequence each application must therefore be treated on its merits. An approval here, based on the acceptance of the evidence base for B8 provision, does not mean that there is no longer an acceptance to support further B8 provision in order to meet a “base-line” policy requirement, because that requirement does not exist. Thirdly, and importantly there are distinct differences between these other sites and the current application site. They are all in the Green Belt. Thus whilst the evidence base still exists for B8 provision, the Council will need to refer to Development Plan policy and National Planning Policy in

respect of these other locations, and it may conclude that those policies outweigh the evidence base. Furthermore, the current application contains another consideration unique to this submission, namely the proposed re-location of the County's Waste Transfer site. This factor is explored more closely in the next section. In conclusion therefore, the Council is no longer obliged to support B8 developments in order to meet a Development Plan policy requirement, however this does not preclude support for such developments where these are considered on merit to be justified and to benefit the local area.

### **g) Material Considerations - The Re-location of the Lower House Farm Development**

This application also includes a proposal to re-locate the County Council's proposed Household Waste and Recycling Centre and Waste Transfer Station from Lower House Farm to within the Phase Two proposed extension of Birch Coppice. Members will be aware, that notwithstanding objections from this Council, Warwickshire County Council granted planning permission for this waste operation through the re-development of the Lower House Farm site. That permission can still be taken up. The applicant and the County Council have been looking at an alternative arrangement, whereby the waste operation would be incorporated into the Phase Two proposals, and this is now proposed within this current application.

There are several issues to consider. Firstly, as the RSS is now revoked, there is no obligation to provide B8 floor space as a contribution to an RSS base-line for such development. Secondly, the proposed re-location would not prejudice the County Council's overall waste strategy, or the timing for implementing that strategy. Finally, there will be environmental and highway benefits. One of the objections raised by the Council to the Lower House Farm scheme was that a large new building here would be prominent on that site within the landscape. With the Phase Two ground levels being proposed to be substantially lower (4 to 5 metres) than the present Lower House Farm, the building would be materially less visible. The main objection to the Lower House Farm proposals however, was the increased HGV movement in Lower House Lane. The current alternative proposal would enable all HGV movements associated with the waste proposal to be routed through the existing Birch Coppice estate and then into Phase Two. Members will be aware however, that the public's access into the proposed household facility within the re-location proposal, would still be via Lower House Lane.

Overall, it is concluded that the proposed re-location does have benefits to the environment; to traffic matters and to the amenity of local residents. These are of such weight to conclude that the re-location proposal does offer an opportunity to achieve an improved alternative for the County Council's Waste site. It was stressed in the initial Board report (Appendix A), that this part of the proposal should not be treated as a "driver" for considering support for an RLS site. However, with the demise of the RSS, this part of the proposal is considered to now have added weight, and can be treated as a significant gain. This conclusion now carries significant weight as a material consideration in the assessment of the overall Phase Two proposals.

## **h) Material Considerations - The Draft Section 106 Agreement**

Following the May Board meeting, officers have explored two matters in particular. The first related to the “training” package, and the aim to ensure that this does focus on employment opportunities through apprenticeship schemes. Both IM Properties and the County Council’s Economic Development Officers are keen to see this package work. To do so, it should not replicate existing Apprenticeship schemes or measures; it should be bespoke to the occupiers at Birch Coppice, and that first opportunities for training should be in the Dordon and Polesworth area. County Officers have therefore re-confirmed that this package would be directed at this geographic area and that all prospective occupiers of Phase Two will be approached individually to establish likely training and employment requirements. These measures are included in the present package, and should provide the confidence to Members to support the draft Agreement.

The second matter was to explore the provision for enabling alternative journey to work measures to the use of the private car. It was reported that the current Bus-to-Work service, largely financed through current Section 106 contributions, had a regular customer base of 90 passengers. The Board was concerned that the contribution did not appear to be providing value for money at this level of patronage i.e. - £830 per head per year. The County Council has now confirmed that these regular customers have taken over 16000 passenger journeys – a passenger journey being a return trip. If looked at in this light, and bearing in mind that the service also visits Kingsbury Link, and has customers outside of Dordon and Polesworth, then there is good value for money - £5 per journey. It is still considered based on this evidence, that this bespoke ‘bus service is significant and that it should be continued, rather than try to introduce alternatives at this stage. There is a good base with the current service, and this now needs to be built on. Greater patronage would assist this cause, and it is agreed by IM that it should receive a higher profile at tenants meetings, and the County Council has agreed to be represented at these meetings. These measures need to be written into the present draft Green Travel Plan, with a monitoring regime. Secondly, it is important that the service should be continued after Section 106 contributions have been expended. The County Council and IM Properties agree that the real push for retention of the service should be through the occupiers of the estate themselves, and thus Phase 2 occupiers would expect to see conditions attached to any consents with this prospect included, via the need to agree Green Travel Plans with the Council. It is therefore concluded that the present Phase Two draft Green Travel Plan needs review to enhance the promotion of the Bus to Work service, and that all future occupiers of Phase Two, will be expected to explore ways of continuing the service.

It is concluded that the draft Section 106 Agreement as amended is a material consideration of significance in that it helps achieve objectives that are both Development Plan and Sustainable Community Strategy Plan based.

## **Other Matters**

This report to date has identified a number of material planning considerations that it is concluded cumulatively carry significant weight. These need to be balanced against the thrust of Development Plan policy which indicates that the proposal is a departure from that Plan. However before doing so, it is important now to take a look at all of the other material planning considerations, to see if there is any such matter that introduces such weight as to nullify the positive support identified above. It is proposed to run through those where there are outstanding concerns.

### **a) The Highways Agency**

There has been a considerable amount of discussion between the applicant and the Agency in order to provide the Agency with the comfort that it seeks concerning the potential impacts on the existing access arrangements and the capacity of the A5 Trunk Road. It is understood that the initial response from the Agency is not one of principle, given that it was involved in the RSS review, and that the Panel Recommendations at the Examination in Public did not reject the possibility of an extension to the Birch Coppice estate. Regardless of the status of the RSS, it is a matter of fact that the Agency did not raise a technical objection during that process, and thus one is not expected now. The Council can not grant a planning permission whilst the Agency's holding Direction remains in place. The latest information from the Agency is it expects to be in a position to conclude it's exploration of the additional information now supplied by the applicant, before the date of the Board meeting. It is anticipated that conditions will be recommended. As a consequence a verbal update will be required at that time.

### **b) Archaeology**

The thrust of the concern here is that the proposals involve significant civil engineering works, such that ground levels would be permanently lowered, thus not allowing any archaeology to be left in situ. Site investigations have been underway in recent weeks, in consultation with the Museum, so that those parts of the site where the Museum considers that there is a strong likelihood, particularly of medieval remains, are being explored as a matter of priority. An interim report is expected just after the preparation of this report, and so officers will up date the Board verbally. Again, it is anticipated that the conditions will be recommended.

### **c) Ecology**

The thrust of the concern here was that the Trust is presently not able to fully assess the remediation and mitigation measures that are being proposed, as it considered that the Environmental Statement lacked sufficient survey detail. The applicant's have since provided background material; have undertaken further survey investigations, and have drawn attention to the measures already introduced on the existing estate that are to be further enhanced. It is anticipated that this will provide the comfort necessary for the Trust to recommend conditions. Similarly here, the Board will need updating.

## **e) Agricultural Land**

The response from DEFRA is still awaited. It is acknowledged that the proposal would result in the loss of agricultural land and that such land is graded as being the “best and most versatile”. That is an impact from this proposal that can not be mitigated. As such, the Board will have to balance its loss against the other considerations set out above that lend support to the proposals. It is considered that there are factors, not mentioned previously, that would give less weight to this particular issue. The first is that the site is within a geographic area where there is already agricultural land of similar grade. Its loss would therefore not materially reduce land around the site. Secondly, it is a matter of fact that the CPRE appeared at the Examination in Public into the RSS review, and indicated that Birch Coppice might be acceptable for expansion subject to detailed planning considerations, being aware of all of the other alternatives. This was because such a proposal was preferable, being seen as an extension of an existing site and not as a completely new site, requiring full infrastructure provision. Thirdly, the Panel, having considered all of the issues, came to an overall recommendation to support an extension in order to accommodate an existing and growing need. Fourthly, Government Policy in PPS7, states that agricultural land value is one of many material planning considerations that should be taken into account when determining applications. However it does continue by being more explicit, saying that areas of lower quality agricultural land are preferred for new development proposals, “except where this would be inconsistent with other sustainability considerations”. It is considered that those considerations do apply to this particular case – access to the national rail and strategic road network; meeting an immediate economic development need, providing a “better” solution for the County’s Waste Transfer Station, together with provisions within existing and proposed Section 106 Agreements in respect of public transport provision and employment opportunities within an area of identified need. Regardless of the status of the RSS, the Panel at the Examination in Public explored all of the competing interests, balanced all of the issues, and recommended that this proposed extension was a suitable and favoured candidate for logistics provision.

## **f) Other Representations**

The letters of objection refer to matters of principle as well as to matters of likely adverse impacts. The policy issues and some of the other concerns have already been covered in the report above. It is noted that traffic and highway considerations appear as major issues. At the present time the Highway Agency’s holding direction remains in place, but if this is withdrawn then the weight given to these concerns would lessen. Similarly, the final consultation response from the Trust would lessen bio-diversity concerns. Other detailed issues can be dealt with through the imposition of conditions on the grant of any planning permission in order that future details of design, layout, lighting and noise can be thoroughly investigated so as to reduce adverse impacts arising from these concerns. It is accepted that there are public footpaths that cross this site. There is legislation that enables diversion of these paths as a consequence of planning permissions granted. It must be acknowledged however that the scale of the proposal can not be wholly mitigated, and thus the Board’s decision will always rest on the balance that it makes between all of the considerations involved.

## Conditions

The conditions that are recommended below are not unusual for a large development and have been applied many times by the Council. Additionally some are a direct response to consultation responses. At this time Members attention is drawn to what may be called the more “bespoke” conditions unique to this proposal – numbers (xv), (xvi) and (xvii).

The first of these relates to promotion of the existing rail infrastructure at Birch Coppice and particularly to the intermodal terminal. Members will be aware that this terminal and the connecting rail line are not in the control of the applicant, and thus a condition requiring use of those facilities would be wholly unreasonable given the advice set out in the Government’s Circular 11/1995. Moreover, Members will recall the appeal decision relating to a condition attached to the VW premises at Birch Coppice that required rail provision to be the “primary” source of deliveries. That decision removed the condition from the permission, on the grounds that the occupier had very little control over national or European rail operations or capacity, and that economic conditions vary, such that mandatory reliance on rail through such a condition was an unreasonable interference in that occupier’s ability to trade and to do business. In other words, conditions can safeguard rail infrastructure, but they should not be used to “force” rail use. The condition set out here is written as a direct consequence of that decision. It is a necessary condition; it serves a planning purpose and is directly related to this proposal

The second condition is straight forward in that it seeks the highest standard available at the time of a building’s design and construction in respect of energy efficiency.

The third condition relates to employment provision, and is unusual. This form of condition is not recommended by the Government, for the very reasons outlined above – in that its’ achievement is very much outside of the control of the applicant, and that it could “unfairly” disadvantage a developer. However in this case it is considered that there are specific reasons for its use. Firstly, the applicant has directly referred to this number of jobs being created in his application and at the presentation to Members. Secondly, it is based on the research evidence reported above concerning employment densities on more recent B8 developments. Thirdly, the applicant has been marketing this site for some months, and it is understood that there is significant interest (this would reinforce the “need” for B8 developments in the area generally evidenced by the Studies referred to earlier), and as such the applicant will have an informed basis for promoting this level of employment. Fourthly, this number of job opportunities for the local area and for North Warwickshire generally is highly significant in the current economic climate, and coupled with the draft Section 106 contribution, is a substantial beneficial outcome meeting Development and Sustainable Community Plan objectives. The condition can assist in delivering these outcomes given the evidence base that sits behind it. As a consequence, in this particular case, the condition is recommended because it is evidence based and it because serves a direct planning purpose, tied into a Section 106 obligation.

## Conclusions

At the beginning of this report, the Board was advised to determine this application on the basis of the current Development Plan, unless it considered that material considerations indicate otherwise. If there are such considerations, then the Board has to decide what weight to give them, in order to see if the application can be treated exceptionally to the Development Plan. It was pointed out that the Development Plan no longer contains the RSS, and thus the Board is reliant on the relevant saved policies of the Structure and Local Plan. When considered against these policies, the current development proposal is a departure from that Plan in that a large commercial proposal is being proposed on an unallocated site outside of a defined settlement boundary. Hence if there are material circumstances in this case, they should carry significant weight. This report has identified such circumstances, and in summary these are: implicit support through saved Local Plan Core Policy 1 that seeks economic regeneration in the Borough; the evidence base that informed the preparation of the RSS, which the Government advises may, if relevant, be such a consideration; the employment provisions, the ability now to treat each proposal on its own merits without having a policy obligation to provide a floor space base-line, the proposals to re-locate the proposals for the County Council's Waste Transfer Station, and the bespoke Draft Section 106 Agreement. The report concludes that these do carry significant weight.

The process outlined above is no different to that which the Board engages in when dealing with any other departure application. The best example would be when the Board has to weigh the considerations pertaining to an inappropriate development in the Green Belt to assess whether those considerations are of such weight to be the "very special circumstances" to warrant overriding the harm done to the Green Belt because of the inappropriate development. The unusual situation in this case is the demise of the RSS in that it no longer is part of the Development Plan. This means that there is now, no policy requirement for the provision of a base-line of logistics provision, or that it should be provided at named sites. However, the evidence on which that policy requirement was drafted still stands. It indicates that the need to provide for logistics sites still remains. Because this evidence is a material consideration it carries weight. That evidence shows an un-met and immediate need for such sites, and provides the criteria that would best suit the location of such sites. This all suggests that Birch Coppice is an appropriate candidate for an extension. As a consequence the evidence base can no longer be used to formulate policy through the RSS route, but it can be used as a material consideration in the determination of a planning application.

The Council is no longer obliged to provide a base-line for logistics provision. It now has the ability to decide itself if it should provide some logistics development, and if so, where that should be. The decision can thus be made on its own terms, provided that they are planning based, reasonable and proportionate. Officers are recommending that Birch Coppice is still an appropriate candidate for logistics provision for all of the reasons set out in this report. The Council, because of the demise of the RSS and its policy requirement that obliges the Council to run with other sites, can now deal with any applications for those other sites on their individual merits, just as is occurring with this current application. Those other sites

are likely to be in the Green Belt and the Council could determine that Green Belt Development Plan policy might outweigh all other considerations.

Notwithstanding the change in circumstance with the revocation of the RSS since the submission of this application, it is considered that the balance of the arguments that have been set out in this report remains in favour of supporting the application. This conclusion still stands, even though there are outstanding issues as a consequence of some of the consultation responses. Officers consider that these are matters of detail rather than principle, and thus they can be resolved through the use of conditions.

## **Recommendation**

**A)** That this Board recommends to Council that outline planning permission is granted subject to:

- i) Removal of the Direction of refusal from the Highways Agency
- ii) Removal of objections from the outstanding consultations
- iii) A Section 106 Agreement in the form as set out in the report to Board in May, as clarified by this present report, and
- iv) the imposition of conditions as drafted below under B, together with additional conditions as may be required arising from (b) above.

## **B) Conditions**

- i) Standard Outline condition (i) - omit layout; scale and access
- ii) Standard Outline condition (ii) - five years for submission
- iii) Standard Outline condition (iii) – three years time period
- iv) Standard Plan numbers condition to include plan numbers: 829-020A; 11201/122, 123, 124, 125, 127 all received on 10 March 2010, plus plan numbers 11201/121C, 129D, 133B and 09-0406 Rev A received on 25 June 2010, together with Appendix A (Design Brief) and Appendix 2 (Landscape Design Guide) of the Design and Access Statement received on 10 March 2010.
- v) The development hereby permitted shall only be carried out in accordance with the approved Flood Risk Assessment (FRA) Ref: PCB/JWH/11201/3.3 – Issue 2 dated December 2009; the FRA Supplementary Information Ref: PCB/JWH/11201/3.0 dated February 2010, and the Investigations for Surface Water Disposal and FRA Ref: DAC/JWH/11201/3.3 dated April 2010, together with the following mitigation measures:
  - a) the limitation of the rate of surface water run-off generated by the total site (Phases 1 and 2) so as to discharge at a rate of not more than the greenfield run-off rate as detailed in the FRA and associated documents.
  - b) Provision of attenuation storage volume on the total site to retain the 100 year plus 20% flow event volume.

c) Provision of an 8 metre easement strip adjacent to the top of the bank of the Penmire Brook as detailed in the FRA and associated documents

d) No ground levels to be raised in the area defined in the FRA as being at risk of flooding in a 1 in a 100 year plus climate change allowance, event.

Reason: To prevent the increased risk of flooding; to improve and to protect water quality, habitat and amenity, and to ensure future maintenance of the system.

vi) The B8 Use hereby approved shall be limited to a maximum of 186,000 square metres of gross floor space.

Reason: In the interests of highway safety by ensuring that there is no adverse impact on the capacity of the existing road network.

## Pre-Commencement Conditions

- vii) No work shall commence on site until such time as full details of how the entire surface water drainage system is to be maintained and managed following completion, have first been submitted to and approved in writing by the Local Planning Authority.

Reason: In order to reduce of pollution and of flooding

- viii) No work shall commence on site until such time as a Construction Method and Management Statement has first been submitted to and approved in writing by the Local Planning Authority. This Plan shall include details of the method, working and phasing of the ground works; working hours, mitigation measures in respect of noise attenuation and reducing deposits on the surrounding highway network arising from HGV traffic, the location of site compounds and storage facilities, and the location of any site lighting during the construction phase. It shall also identify the means by which its terms are monitored and reviewed including the handling of complaints. The Plan once agreed by the Local Planning Authority shall remain in place until such time as agreed by the Authority.

Reason: In the interests of reducing adverse highway, traffic and environmental impacts as a consequence of this major construction project.

## Pre – Occupancy Conditions

- ix) All of the works itemised in condition (v) above shall have been completed in full and to the satisfaction in writing of the Local Planning Authority, and the details required under condition (vii) above shall have been approved in writing by the Local Planning Authority, prior to the occupation for business purposes of the first unit to be constructed under this planning permission.

Reason: In order to reduce the risk of pollution and of flooding.

- i) No building hereby approved shall be occupied for business purposes until such time as details of the means of lighting the estate roads as shown on the approved plans, have first been submitted to and approved in writing by the Local Planning Authority. Only the approved detail shall then be implemented.

Reason: In the interests of good design; to reduce the risk of light pollution beyond the site, and in the interests of reducing crime.

- ii) No building hereby approved shall be occupied for business purposes until such time as details of the measures to be installed necessary for fire fighting throughout the site have first been submitted to and approved in writing by the Local Planning Authority. Only the approved measures shall then be installed.

Reason: In the interests of fire safety

- iii) No building constructed pursuant to this permission shall be occupied for business purposes until such time as the whole of the spine road, roundabouts, access roads and access arrangements, including the secondary and emergency access measures as shown on the approved plans detailed under condition (iv), or as may have been subsequently amended in writing by the Local Planning Authority, have first been completed to the satisfaction in writing of the Local Planning Authority.

Reason: In the interests of highway safety

- iv) No building constructed pursuant to this permission, shall be occupied for business purposes until such time as all of the peripheral landscaping as shown on the approved plans under condition (iv) of this permission, or as subsequently amended in writing by the Local Planning Authority, have first been fully implemented to the satisfaction in writing of the Local Planning Authority.

Reason: In the interests of securing structural landscaping at the beginning of this development in order to secure its visual and bio-diversity benefits.

- v) No building constructed pursuant to this permission, shall be occupied for business purposes until such time as the fire fighting measures, and the lighting details approved under conditions (viii) and (ix) above or as may be subsequently amended in writing by the Local Planning Authority, have first been fully installed to the satisfaction in writing of the Local Planning Authority.

Reason: In the interests of fire safety and to reduce the risk of crime.

- vi) No building hereby approved shall be occupied for business purposes until time as the following measures to deal with risks associated with contamination on the site have first been submitted to and approved in writing by the Local Planning Authority:
  - a) A preliminary Risk Assessment which identifies all previous uses; potential contaminants associated with those uses, a conceptual model of the site indicating sources, pathways and receptors, together with potentially unacceptable risks arising from contamination at the site.
  - b) A site investigation scheme based on (a) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
  - c) An options appraisal and remediation strategy based on (a) and (b) above 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 ( c ) above are complete, and identifying any requirements for longer term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

Any variation in these measures shall be agreed in writing by the Local Planning Authority.

Reason: To reduce the risk of pollution.

#### Reserved Matters

- vii) No building approved under this permission shall be constructed until such time as the matters reserved under condition 1(iii) and 1(iv) above, have first been submitted to and approved in writing by the Local Planning Authority. For the avoidance of doubt those matters shall include the following details and particulars in respect of development of each plot:
  - a) The plot layout, including all access, circulation and car parking areas.
  - b) The siting, design and external appearance of all buildings, including fixed structures and plant
  - c) The type, texture and colour of building materials
  - d) The site boundary treatments – including all walls, fences and other means of enclosure
  - e) Landscaping details within each plot
  - f) Final site levels
  - g) Foul and surface water arrangements to the point of disposal from the plot boundary
  - h) All external illumination, security structures and equipment.

Only the matters approved under this condition shall then be implemented.

Reason: In order to ensure a high quality of development.

#### Bespoke Conditions to the Development

- viii) Within three months of the date of this permission, details showing how the promotion and encouragement of use of the rail facilities and intermodal freight terminal at Birch Coppice, for the movement of freight arising from occupation of the new development hereby approved, shall be

submitted to the Local Planning Authority. These details shall include a description of those details; the processes involved, how they are to be monitored and reviewed. Once approved in writing, these measures shall be implemented and evidence of the measures taken and the monitoring undertaken shall be referred to the Local Planning Authority when requested. For the avoidance of doubt, these measures shall relate to all occupiers of the development hereby approved, and not just to the initial occupier.

Reason: In order to promote the intermodal facility at the site so as to achieve a sustainable development.

- ix) Each building constructed pursuant to this permission shall achieve the prevailing minimum standard in terms of energy efficiency at the time of its design, and for the avoidance of doubt the base-line for this minimum standard shall be the present BREEAM “good” standard.

Reason: In order to achieve sustainable development with a minimum carbon footprint and to encourage the use of renewable energy.

- x) A minimum of 1750 jobs shall be provided within the whole of the development hereby approved, unless otherwise agreed or varied in writing by the Local Planning Authority. For the avoidance of doubt this shall refer to Full Time Equivalent jobs and shall be calculated at the time when the first occupiers of the plots so approved, are fully operational”

Reason: In order to meet the requirements of Saved Core Policies 1 and 12 of the North Warwickshire Local Plan 2006, together with the Local Economy aim of the North Warwickshire Sustainable Community Plan 2006 – 2009, such that the local economy is able to diversify and adapt to changes in the wider economy, whilst remaining relevant to the needs of local people.

#### Reasoned Justification

The application represents a departure from the Development Plan in that the proposal is for major commercial development on a green field site not allocated for such a purpose. It is considered that there are material planning considerations of such weight to warrant the application being treated as an exception to the Development Plan. These are:

- i) Support from saved Core Policy 1 of the North Warwickshire Local Plan 2 that the economic regeneration of the Borough.
- ii) the evidence base that informed the preparation of the Regional Spatial Strategy indicates an unmet and immediate need for logistics sites, and that an extension of the existing Birch Coppice site would “fit” the locational criteria outlined in that evidence, for such provision.

- iii) the employment provisions that propose a higher density of employment provision and opportunity in an area recognised as having high unemployment and with low skills
- iv) the ability to treat each application for logistics provision in North Warwickshire on its own merits without being obliged to provide floor space because of a policy base-line requirement
- v) the proposals contained within the application to re-locate the Warwickshire County Council's Waste Transfer Station to an alternative site within the application site, such that there are material planning, environmental and traffic benefits
- vi) the bespoke package of measures contained within a Section 106 Agreement accompanying the application that is focussed on public transport provision and on the provision of measures aimed at linking the job opportunities provided by the proposal with local employment needs and training opportunities.

It is not considered that there would be adverse impacts arising from the proposals that warrant refusal. This is based on the responses from a number of Statutory and technical consultations; the use of conditions to mitigate impacts, and the content of the Section 106 Agreement. It is acknowledged that this is a significant application and that it is not possible to completely mitigate all impacts. The Council's has had to balance the benefits and opportunities arising from the proposals, against these residual impacts, most notably the loss of agricultural land. It considers that on balance, the application can be supported.

## BACKGROUND PAPERS

Local Government Act 1972 Section 100D, as substituted by the Local Government Act, 2000 Section 97

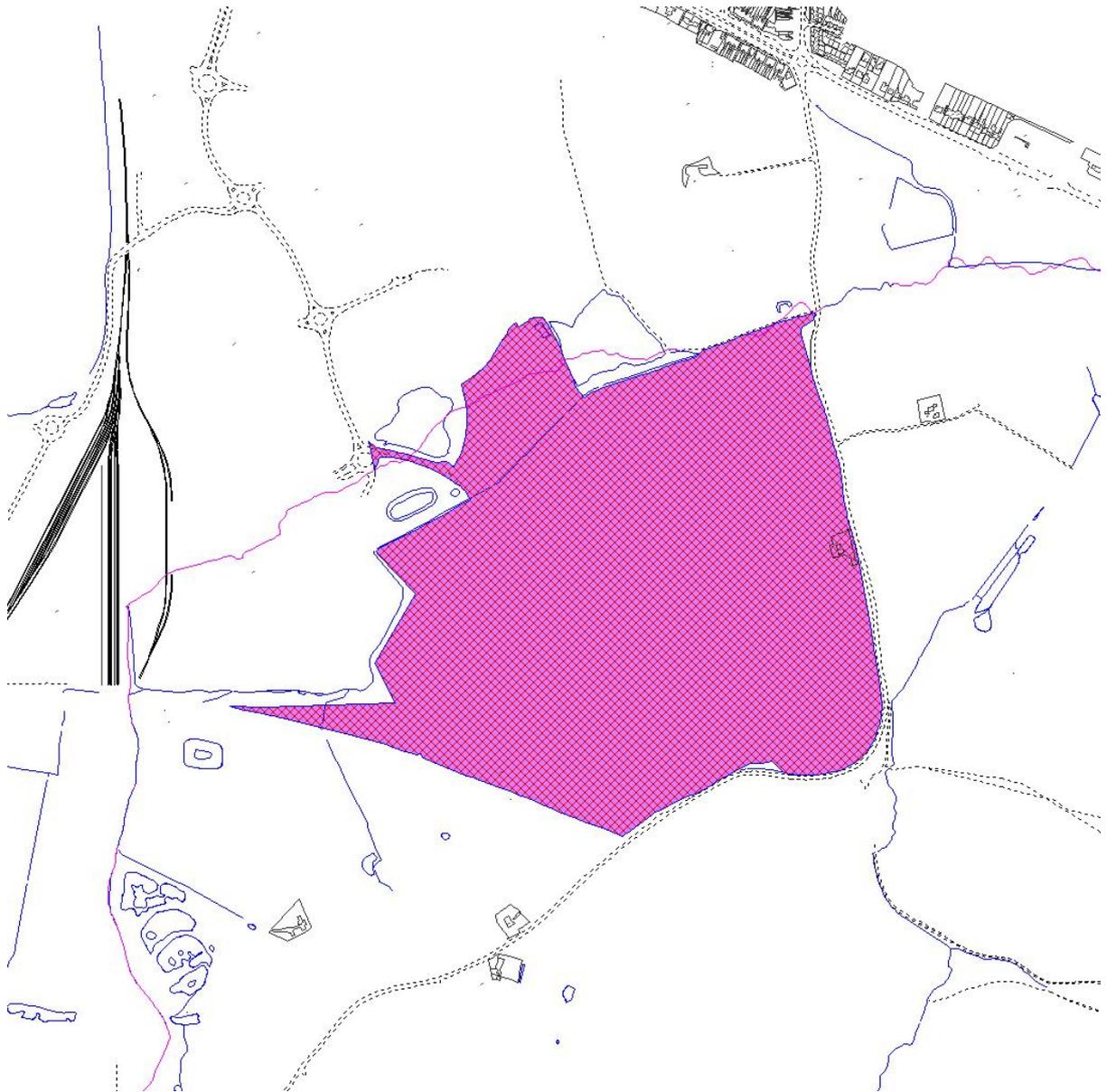
### Planning Application No: PAP/2010/0102

Background Paper No	Author	Nature of Background Paper	Date
1	The Applicant or Applicants Agent	Planning Application Forms and Plans	10/3/10
2		Note of meeting	18/1/10
3	Head of Development Control	Letter	16/3/10
4	Network Rail	Consultation	22/3/10
5	Mike O'Brien	Representation	26/3/10
6	Dr Gordon	Representation	2/4/10
7	Head of Development Control	Letter	19/4/10
8	Head of Development Control	Letter	21/4/10
9	D Hopwood	Objection	30/3/10
10	R Cole	Objection	8/4/10
11	A Baxter	Objection	9/4/10
12	Birmingham International Airport	Consultation	30/3/10
13	Severn Trent Water Ltd	Consultation	14/4/10
14	CPRE (Warwickshire)	Objection	15/4/10
15	Advantage West Midlands	Consultation	16/4/10
16	Warwickshire Wildlife Trust	Consultation	16/4/10
17	Fire Services Authority	Consultation	16/4/10
18	Warwickshire Police	Consultation	20/4/10
19	Highways Agency	Consultation	26/4/10
20	Warwickshire Museum	Consultation	26/4/10
21	Tamworth Borough Council	Consultation	26/4/10
22	Mrs Dearing	Objection	3/5/10
23	Applicants Agent	Letter	29/4/10
24	West Midlands Leaders Board	Consultation	30/4/10
25	Applicants Agent	Letter	18/5/10
26		Note of Site Visit	22/5/10
27	Warwickshire Economic Development Group	Note	24/5/10
28	Applicants Agent	Letters	3/6/10
29	DEFRA	Consultation	23/6/10
30	Environment Agency	Consultation	28/6/10
31	Applicants Agent	Letters	1/7/10
32	Applicants Agent	Letter	7/7/10
33	Environment Agency	Consultation	5/7/10
34	Applicants Agent	Letter	25/6/10
35	Environment Agency	Consultation	24/6/10

36	Applicants Agent	E-mail	5/7/10
37	Highways Agency	E-mail	25/6/10
38	Applicants Agent	Letter	18/6/10
39	Warwickshire County Council Economic Development Group	Briefing note	11/6/10
40	Applicants Agent	E-mail	9/7/10

*Note: This list of background papers excludes published documents which may be referred to in the report, such as The Development Plan and Planning Policy Guidance Notes.*

*A background paper will include any item which the Planning Officer has relied upon in preparing the report and formulating his recommendation. This may include correspondence, reports and documents such as Environmental Impact Assessments or Traffic Impact Assessments.*



PA 2010/0102

**Birch Coppice Business Park, Off Danny Morson Way, Dordon**

**Outline planning application for 49.4 hectares of land to the south east of the Birch Coppice Business Park for approximately 186,000 square metres of storage and distribution (Class B8) purposes; formation and construction of proposed access road connecting to existing road network in adjacent business park, site layout, associated drainage infrastructure works, site levels and structural landscaping for**

**IM Properties (Dordon) Ltd**

### **Introduction**

This report informs Members of the receipt of this outline planning application; describes the proposals, identifies the relevant Development Plan policy framework and draws attention to the main issues that will be involved with its determination.

### **The Site**

The application site extends over 49.4 hectares to the south east of the existing Birch Coppice Business Park, located south of the A5 Trunk Road between Dordon and Junction 10 of the M42 Motorway. The land is presently in agricultural use, leased to a local farmer. The site includes Lower House Farm.

The existing Business Park amounts to some 112 hectares and the majority of it is now developed providing around 2 million square metres of distribution warehouse sheds and other commercial buildings. A rail freight terminal is located to the west. The former Birch Coppice colliery spoil heap has been re-graded and is to the west.

The site is bounded to the east by Lower House Lane which runs from the Dordon roundabout on the A5 into Wood End. The site includes Lower House Farm, which has a house and a collection of agricultural buildings. Open countryside lies beyond this lane, with a few small agricultural units. The western edge of Baddesley Ensor is 500 metres from the site boundary and at a significantly higher level. Wood End is 1.3 kilometres distant. The northern boundary is the line of an access track which leads from the existing Business Park to Lower House Lane, following the course of the Penmire Brook. The southern boundary is the line of the former mineral railway that ran from Baxterley Colliery to Kingsbury. The reinstated part of this line further to the west serves the Rail Freight Terminal referred to above.

Appendix A provides a plan illustrating the site and its setting as described above.

### **The Proposal**

This is an outline planning application to develop the area as Phase Two of the Birch Coppice Business Park for approximately 186,000 square metres of floor space to be

used for B8 (Distribution) purposes. Approval is also being sought for a number of detailed matters – access to the site; site layout including plot layout, site levels, drainage, significant infrastructure and structural landscaping. The application seeks to reserve a number of matters for later applications – namely the appearance, landscaping, layout and scale of the buildings to be planned for each of the development plots. These would follow, and be the concern of the future occupiers. However these later applications would be “informed” by a Design Guide that the applicant has submitted with the current application, and which he is seeking approval for. In essence this reproduces the design, appearance and landscaping detail already seen in Phase One.

The developable area of the application site amounts to 37.5 hectares and this would provide the floor area outlined earlier. Access to the site would be through Phase One using the existing A5 junction and the Phase One road arrangements. Access into Phase Two is thus from the southern end of Danny Morson Way off a connecting spur. This would be extended into Phase Two providing a straight access right down to the south eastern end of the site, dividing the site into two development plateaux – one of 21.5 and the second of 16 hectares. Both would have a finished site level of 92.3 metres AOD. This is lower than the surrounding countryside. For instance Lower House Lane varies between 100 AOD where it crosses the railway line; 90 AOD where it has the sharp curve, 98 AOD at Lower House Farm and 83 AOD where it crosses the Penmire Brook. The former mineral line to the south is at 90 AOD. There would be no “export” of material off the Birch Coppice site as a consequence of this proposed level, as the material is needed to provide the final site level over the whole site, and for the structural landscaping banks that would run around the perimeter of the site.

The proposals include reservation at the south eastern end of one of the two plateaux referred to above, of space for the Warwickshire County Council to relocate its Household Waste Recycling Centre and Waste Transfer Station. Planning permission exists for the redevelopment of Lower House Farm for this purpose, but with the inclusion of that site into the Phase Two proposals, the applicant and the County Council have agreed a relocation package. All HGV access to the County’s site would come through the Phase Two site thus linking to Phase One and the A5 junction. Vehicular access for the public wanting to use the household waste centre would be via the already approved new access onto Lower House Lane. This would not enable a through route into Phase Two, being a dedicated public access only to the Recycling Centre.

Dedicated emergency access points are to be provided from Phase Two onto Lower House Lane close to where it passes over the former railway line, and along the line of the Penmire Brook.

The existing reed beds at the south end of Phase One are to be extended to enable a sustainable surface water drainage system for Phase Two to be incorporated into existing arrangements.

Appendix B is a plan illustrating the proposed layout as described above.

The application is accompanied by a Draft Section 106 Agreement. This has been amended from that submitted with the application, and the time of preparation of this report. It presently includes the following Obligations proposed by the applicant:

- i) An agreement that if the re-location of the County Council's proposals at Lower House Farm is agreed then, then the applicant will provide access to that site for HGV's over its own land.
- ii) To implement a Green Travel Plan
- iii) An agreement that any remaining money from the financial contribution to be provided specifically for off-site landscaping, if not expended, but already forwarded to the Borough Council under previous Section 106 Agreements, be "vired" so that it can be used instead, for public transport and training purposes.

### **Supporting Documentation**

The application is accompanied by a full Environmental Statement. This has sections on the Development Proposals (Sustainability and Construction); Socio-Economic Impacts, Landscape and Visual impacts, Cultural Heritage and Archaeology, Highways and Transportation, Noise and Vibration, Ground Conditions, Agricultural Classification, Hydrology, drainage and ecology. A Non-Technical Summary has been provided and this is attached in full at Appendix C.

In addition, the applicant has submitted a Planning Statement that deals with the applicant's planning case for the development, assessing the proposals against Development Plan policy and Government Guidance and Policy.

Other Documents include a Design and Access Statement that sets out the applicant's reasoning behind the preparation of the site and the layout selected; a Building Design Statement that sets out the applicant's criteria for the design and appearance of the finished buildings and plots, a Tree survey, a Flood Risk Assessment, a report covering Civil Engineering considerations, a Transport Assessment, a Marketing Report and a Statement of Community Involvement. The latter describes the pre-application work undertaken by the applicant.

### **Procedural Matters**

The development proposals are considered to represent a departure from the current Development Plan. As such, the Secretary of State has been informed to see if he wishes to call-in the proposal for his own determination following a Public Inquiry. The Council may refuse planning permission without referral.

The applicants provided a presentation of their proposals to the Members of the Borough Council prior to submission of the application. An agreed minute from that presentation is attached at Appendix D.

## **Development Plan**

North Warwickshire Local Plan 2006 ("the Local Plan") – Saved Core Policies CP1 (Social and Economic Regeneration), CP2 (Development Distribution), CP3 (Natural and Historic Environment), CP9 (Employment Land Requirement), CP11 (Quality of Development) and CP12 (Implementation) together with saved policies ENV1 (Protection and Enhancement of the Natural Landscape), ENV4 (Trees and Hedgerows), ENV6 (Land Resources), ENV7 (Development of Existing Employment Land Outside Development Boundaries), ENV8 (Water Resources), ENV9 (Land Resources), ENV10 (Energy Generation and Conservation), ENV11 (Neighbour Amenities), ENV12 (Urban Design), ENV13 (Building Design), ENV14 (Access Design), ECON1 (Industrial Sites), TPT1 (Transport Considerations), TPT3 (Access and Sustainable Development), TPT 5 (Promoting Sustainable Freight Movements) and TPT6 (Vehicle Parking)

Regional Spatial Strategy for the West Midlands 2008 ("the RSS") – Policies PA1 (Prosperity for All), PA6 (Portfolio of Employment Land), PA9 (Regional Logistics Sites), PA14 (Economic Development and the Rural Economy), QE1 (Conserving and Enhancing the Environment), QE3 (Creating a High Quality Built Environment), QE9 (The Water Environment), EN1 (Energy Generation), EN2 (Energy Conservation)

Warwickshire Structure Plan 1996-2011 ("the Structure Plan") - Saved Policy I2 (Industrial Land Provision)

## **Other Material Planning Considerations**

RSS Phase 2 Revision Preferred Option (2007) - Policies PA1 (Prosperity for All), PA6 (Portfolio of Employment Land and Premises), Policy PA6A (Employment Land Provision), PA9 (Regional Logistics Sites), PA14, QE1, QE3, QE9, EN1 and EN2.

RSS Phase 2 Revision Report of the Examination in Public - Recommendations in respect of Policy PA9

The Regional Logistics Sites Studies - Stages 1 (2004) and 2 (2005)

Government Planning Policy Statements and Guidance -PPS1 (Delivering Sustainable Development), PPS 4 (Planning for Sustainable Economic Growth), PPS7 (Sustainable Development in Rural Areas), PPG13 (Transport), PPS23 (Planning and Pollution Control) and PPS25 (Development and Flood Risk)

North Warwickshire Borough Council – The LDF Core Strategy Issues and Options Paper (June 2009), and its Draft Strategic Housing Land Availability Assessment (June 2009)

## **Observations**

### **a) The Main Issue**

The application is a departure from the current Development Plan. The main issue that the Board will have to deal with is whether there are material planning considerations

of such weight that they could still lead to the grant of a planning permission. Those considerations revolve around the emerging status of the RSS. It is worthwhile at this stage to outline the issue in a little more detail.

This application is being promoted as a Regional Logistics Site (RLS), and thus the departure issue is focussed around the policies relating to such sites.

The Development Plan is currently made up of the RSS, the saved Structure Plan policies and the saved policies of the Local Plan. In the latter two documents, the application site is not identified or allocated for new development. It is agricultural land lying outside of any defined settlement boundary. The site is neither named nor otherwise identified in the adopted RSS. However the RSS does contain Policy PA9. This acknowledges that RLS's should be provided in a portfolio of employment sites. It says that they should have good quality access to the region's rail and highway networks; be served, or proposed to be served, by multi-modal transport facilities, be of the order of 50 hectares in area, have easy access to appropriate labour supply and education and training opportunities, and minimise impacts on the local environment. It concludes by saying that the region should "have a choice of RLS available at any point in time".

The Preferred Option for the Phase 2 Review of the RSS, amongst other things, expanded on the original RSS Policy PA9, with the benefit of a series of technical and research papers exploring the criteria referred to in that Policy, in order to give it more focus. These papers are the Regional Logistics Sites Studies referred to above as a material planning consideration. The outcome was that the reviewed Policy PA9 as set out in the Preferred Option, states that at least 150 hectares of land for RLS provision is required in the Region up to 2021, and it clearly says that additional land, as its first priority, should be brought forward, "to upgrade the existing rail-connected logistics facility at Birch Coppice, to a RLS". The Preferred Option was the subject of an Examination in Public, and the Panel's Recommendations to the Secretary of State, have been published. These resulted in more detail being added to Policy PA9, by including a recommendation that, "a further 40 hectares, to complete Phases 1 and 2 at Birch Coppice as part of the RSS base line provision for RLS throughout the Region" be provided.

The Panel's Recommendations remain with the Secretary of State, and he has not yet published his Proposed Modifications to the RSS Phase Two Preferred Option, in response. The earliest indication is that they will not be available before July.

The issue is therefore that whilst the application is a departure from the Development Plan, the Board has to decide what weight it gives to the Panel Recommendations to the Secretary of State, and the evidence base on which they were made, in regard of them specifically identifying expansion at Birch Coppice of the order proposed in this application.

#### **b) The Re-Location of the Lower House Farm Development**

This application also includes a proposal to re-locate the County Council's proposed Household Waste Recycling Centre and Waste Transfer Station from Lower House

within one of the development plots proposed in this Phase Two application. The Board will need to examine whether this is appropriate given the promotion of the site as part of the RLS base line; whether there are environmental and highway benefits arising from the proposed re-location and identify any dis-benefits or adverse impacts. At this stage the issue is confined to the principle of the proposed re-location, as the detail would be looked at following the grant of any planning permission for Phase 2.

However, it is important for the Board to deal with the application it has before it as an RLS, proposed to provide the base line for such developments under the RSS. It should not be considering approving the application just because it might provide a better solution to the Lower House Farm proposals. The re-location proposal is a consequence of the former, and should not be seen as the "driver".

**c) The Draft Section 106 Agreement**

The draft Agreement will need attention. The three heads within the current draft were outlined above. There is one significant issue here. It will be seen that no "new" contribution is being offered as a direct consequence of the Phase 2 proposals. In its place, the applicants are saying that any monies "left over" from the off-site landscaping contributions, provided under previous 106 Agreements relating to Phase One, should be re-directed to the other matters already contained in those previous Agreements. This approach is not accepted. The first Agreements related to impacts from the first phase. It will be necessary to establish needs that directly arise from the Phase 2 proposals. These will then have to be addressed through an Agreement for the Phase 2 proposals.

**d) Other Issues**

As with all major applications accompanied by an Environmental Statement, the Board will have to ensure that the matters covered are satisfactorily dealt with. In other words that they agree that there are unlikely to be adverse impacts where so concluded, but that where there are, then they can be reasonably mitigated or compensated through good design; planning conditions or by way of the Section 106 Agreement. If there are impacts that can not be so dealt with, these "residual" impacts need to be identified, and then a weight given to them such that the harm can be balanced against any identified benefits from the proposal.

**Recommendation**

- a) That the Board visits the application site and its surroundings prior to determination of the application.
- b) That an early report is brought to Board in respect of the draft Section 106 Agreement.

Background Papers

Application 10/3/10

**Application Number 2010/0102**

**Birch Coppice – Phase Two Proposals for**

**IM Properties (Dordon) Ltd**

**Introduction**

The receipt of this application was reported to the Board's last meeting. It resolved to visit the site and arrangements for this are now in hand. Additionally, officers indicated that a further report would be brought to this meeting in order to explore the issues raised by the draft Section 106 Agreement accompanying the application. This report now deals with this matter.

**A) The Submitted Draft Section 106 Agreement**

The original draft Agreement submitted with the application was amended soon after that submission, and it currently contains three Obligations suggested by the applicant. These are:

- i) An agreement that if the re-location of the County Council's proposals at Lower House Farm for a Waste Transfer Station is agreed, then the applicant will provide access to that site for HGV's, over its land to that site, from the A5.
- ii) To implement a Green Travel Plan.
- iii) An agreement that any remaining money from the financial contributions that have already been made specifically for off-site landscaping arising from the existing 106 Agreements in respect of the "Phase One" development, if not expended, be "varied", so that it can be used instead, for public transport and training purposes.

For information, the original draft submitted with the application, contained a fourth draft Obligation, such that the applicants would provide a contribution of £50,000 for a Miners Memorial to be placed on their land, and that this would be leased to the Council for maintenance purposes. This was withdrawn following planning and legal advice from Council officers, as such a draft Obligation would certainly not meet the new Statutory tests for 106 Agreements, as outlined elsewhere in this Agenda.

Each of the current three draft Obligations, will now be looked at, beginning with the third, as this involves wider issues, and will take up the bulk of this report.

**B) Linking the Phase Two Draft Obligations to Existing Obligations**

**a) Introduction**

There are two significant factors here that need stressing immediately. Firstly, the impacts arising from the Phase One development were dealt with in the existing 106 Agreements (notably those of 2000 and 2004). Impacts arising from Phase Two proposals need to be identified and dealt with separately. Secondly, it can not be

assumed that the Phase One impacts have already been dealt with, and therefore that there is a remaining unspent balance. These are now looked at in more detail, beginning with the second.

The two primary existing Agreements are from 2000 and 2004. The financial contributions arising from these, focus on several matters. It is agreed between IM Properties and the Council, that the contribution that went towards traffic calming and HGV signage has been fully expended. The contribution for public transport has fully gone to the County Council to support the Bus-to-Work project that has secured regular patronage for around 90 employees at Birch Coppice. This funding will enable this project to continue to April 2011. The contribution for enhancing training opportunities for local people has partly been expended on the Recruitment Now project run by the County Council during 2004. There is a balance of £95,000 to be spent from this contribution. The final contribution is for off-site landscaping and environmental improvements. This remains unspent and amounts to £405,000. Work on the Core Strategy is continuing well and colleagues in the Forward Planning Section are optimistic that options for the expenditure of this contribution are coming forward, and that these will be identified in the Preferred Option.

IM Properties is satisfied that the unspent balance under the training contribution can continue to be used for such purposes for both Phase One and Phase Two. It is the unspent "landscaping" balance that they are saying can pay for other Phase Two impacts, thus not requiring new contributions specifically arising from Phase Two. This is an understandable position, but it is based on two unknown factors – firstly the impacts from Phase Two have not been identified or scaled, and secondly, the cost of providing the landscaping has not yet been determined. Until these are made explicit, the Phase One landscaping contribution should remain in full for its agreed purpose. It may be frustrating to IM to have this money unspent, but the Agreements themselves do allow this to remain with the Council until 2019, and it is only recently with the much more detailed work being undertaken on the Preferred Option, that the options for the expenditure of this contribution are becoming available.

As a consequence of all of these factors, it is not recommended that the two Agreements be linked.

#### **b) Phase Two Contributions - General**

The Bus-to-Work project is being successful in enabling employees to 'bus to work rather than drive. It is a bespoke service that fits in with the shift patterns at Birch Coppice. The needs from Phase Two will be the same; the existing service directly meets a site based requirement and need, it has to be sustained beyond 2011 if it is to serve Phase Two, and its continuation will directly meet Development Plan and Government Policy requirements. As such, a contribution in association with the Phase Two proposals is recommended to sustain this service as it would fully meet the statutory tests for Section 106 Agreements. The County Council consider that £150,000 will enable the service to continue for a further two years. If planning permission was granted for Phase Two and development commenced immediately then that funding could retain the service to April 2013. If development were delayed then there would be a gap in the funding. This is addressed separately below. Additionally, the continuation of the service once funding from Section 106

contributions end, is also an issue, but a suggestion is made below, in connection with the discussion on the draft Green Travel Plan.

The Recruitment Now project enabled training and employment opportunities to become far more available for local people, so that they had a far better chance to find employment at Birch Coppice. Since then the economic downturn has directly impacted on North Warwickshire and on specific areas within the Borough including the communities around Birch Coppice. The County Council can evidence increased unemployment; high levels of younger people who are NEETS, low skill levels and low educational attainment in the area. The provision of training and employment opportunities with particular reference to the existing occupiers at Birch and future ones on Phase Two if permission is granted, would also meet Development Plan, Government Policy and Community Strategy requirements. As such they too would meet the statutory tests for Section 106 Agreements. The County Council has prepared a package of measures that would run through the Phase Two development. This is attached at Appendix A. The cost of delivery of such a package would amount to £150,000. As there remains a balance of £95,000 unspent, a contribution of £55,000 is recommended in association with a Phase Two Agreement.

No off-site landscaping contribution is recommended. This is because the land on which this could be undertaken, is already included within the area defined by the earlier Agreements. They include substantial areas of land around the proposed Phase Two site. The current application too includes substantive peripheral landscaping. The current Phase One contribution can thus, if necessary, be used in connection with the Phase Two proposals, if there is a balance remaining after completion of Phase One planting.

No additional traffic calming measures are recommended. This is because all traffic would use existing access arrangements, and existing traffic calming has already been added as a direct result of the Phase One proposals. The County Council would require no additional measures. New arrangements for Lower House Lane, as a consequence of non HGV traffic potentially using the new proposed Waste Transfer Site, would be paid for by the County Council itself.

As a consequence of these factors, it is recommended that a total contribution of £205,000 is sought through a Phase Two Section 106 Agreement - £150k for continuation of the Bus-to-Work project, and £55k for assistance on the package of training measures. All of this contribution is required to be paid to the County Council, once development commences on the Phase Two proposals.

#### **c) Phase Two – Some Detail**

The 'bus contribution will provide a two year extension of the existing project, but it can only be linked to the Phase Two proposals. In essence, if Phase Two does not commence for whatever reason within the life of any permission granted, it should be refunded. If the occupation of the Phase Two units commences around April 2011, then it can be used at once. If not, then clearly there will be a funding gap. It is thus recommended that, in these circumstances, if a funding gap is likely because of timing, then the interest that has accrued on the existing Section 106 Agreements

should be forwarded to the County Council to fund any gap that arises from April 2011. There is sufficient interest accumulated to enable continuation for at least a further twelve months. The expenditure of the interest in this way is in line with the existing Agreements. In this way, the existing service can be maintained after April 2011 for at least a further twelve months, and that would enable the Phase Two contribution to start at the first occupation of the Phase Two units.

The training contribution essentially is targeted at providing opportunities prior to occupation of the Phase Two Units. It should thus be fully expended before the expiry of six months after the final occupation of the last Phase Two unit, otherwise the unspent balance should be refunded.

#### **d) Clarification**

So, on the basis of retaining separate Section 106 Agreements, the position would be that, the outstanding training and landscaping contributions from the existing Agreements remain to be expended on training measures and on off-site landscaping options, for both Phases. The new Phase Two Agreement would contribute a further £205k for continuation of the Bus-to-Work project, and to assist in the training package. This total contribution is tied to specific requirements, and these are time limited. Interest accrued from the existing Section 106 Agreements can assist in overcoming funding gaps should the timing of the commencement of the Phase Two proposals be delayed.

#### **C) The Draft Green Travel Plan**

The draft Green Travel Plan submitted with the current Phase Two proposals is the same as that already agreed under the existing Agreements. As such there are no issues with it. In particular it encourages car sharing as the main measure to reduce reliance on car transport amongst employees.

As indicated above, the existing Bus-to-Work service is having an influence here and that needs to be encouraged. If funding comes from a Phase Two Section 106, then it should be heavily promoted by IM Properties and occupiers. Funding the service is the critical issue. Existing and hopefully the Phase Two Agreement, will provide this directly, and indirectly through the use of the interest accrued. However this will end at some stage. Whilst the County Council is assisting the service too, it is debateable as to whether it could continue to fund the service in full and permanently. A partnership is still considered to be the best way forward. It is therefore suggested that the draft Green Travel Plan be amended such that each occupier, once in operation at the site, pay a "service charge" to IM Properties, and that the accumulation of these be paid by IM Properties to the County Council, in lieu of the Section 106 contribution. In this way the service can continue and be paid for by the occupiers themselves. It is thus recommended that this be put to IM Properties for consideration.

#### **D) Access through Phase One**

There is no issue with this clause in the draft Agreement. The County Council is satisfied with its content.

### **E) The Response from IM Properties Ltd**

The content of this report has been discussed with IM Properties for some time now since the submission of the application for Phase Two. A letter has been received that agrees to the suggestions put forward in this report, except for that relating to the Green Travel Plan. Appendix B is a copy of this letter.

This agreement by IM Properties is fully welcomed and as a consequence a new draft Agreement is being drawn up.

It is considered that the matter of the continuation of the Bus- to-Work project, and the end of the Section 106 funding periods is a matter that does need further investigation, and it is recommended below that discussions continue between the parties and with the County Council. It does not however delay the planning process on the Phase Two application as this is a matter that is outside of the remit of Section 106.

### **Recommendations**

**A)** That IM Properties (Dordon) Ltd's agreement to re-draft the Phase Two Section 106 Agreement so as to contain the following matters, be welcomed.

- i) A total contribution of £205,000 to be directed towards maintenance of the existing Bus-to-Work service, and for a package of measures, as set out in this report, designed to improve employment and training opportunities for access to new jobs at Phase Two specifically for local people.
- ii) That the Clause relating to HGV access remains.
- iii) That a Green Travel Plan be included

**B)** That the interest accrued under the existing 106 Agreements be transferred to the County Council in order to fund any gap in the continuation of the Bus-to-Work service, and that any further interest arising from the existing Agreements, and from any new Agreement related to the Phase Two proposals be similarly used.

**C)** That officers continue to work with IM Properties (Dordon) Ltd and the County Council to resolve the continuation of the Bus-to-Work project following expiry of the Section 106 funding.

**D)** That a report is brought to the Board when appropriate, outlining the outcome of the continuing discussions on the expenditure of the existing contribution for off-site landscaping measures.

### **Background Papers:**

Head of DC	Letter	19/4/10
Head of DC	Letter	21/4/10
Tweedale	Letter	27/4/10

**Birch Coppice – Phase  
PA 2010/0102**

**Board Site Visit  
Sat 22 May at 1000**

**Present:** Councillors L and N Dirveiks, Lea, Morson, Phillips, Sherratt, Simpson, Stanley, Winter and Wykes.

1. Members looked at the site from the line of the proposed access road into the proposed site. The boundaries of the site were noted and particular attention was paid to the location of Lower House Farm, the proposed ground levels of the future development plateaux, and the design and appearance of the existing buildings and the general appearance of the existing estate on Phase One.
2. The Visit concluded at 1030.