



# Appeal Decision

Inquiry opened on 22 April 2009

Site visit made on 24 April 2009

by **Shelagh Bussey MA, Dip TP, Dip EM, PhD, MRTPI.**

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

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**Decision date:  
19 May 2009**

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## Appeal Ref: APP/V4630/A/08/2091047

### Land to the west of Northgate, Aldridge, Walsall, WS9 8TL.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Mr D Cooke against the decision of Walsall Metropolitan Borough Council.
- The application Ref 07/2559/OL/E11, dated 17<sup>th</sup> October 2007, was refused by notice dated 9<sup>th</sup> June 2008.
- The development proposed is: Residential Development (125 dwellings) (outline – Layout and Means of Access); Demolition of Existing Industrial Buildings; Closure of Existing Vehicular Accesses; Formation of New Vehicular Access.
- The inquiry sat for 3 days on 22<sup>nd</sup>, 23<sup>rd</sup> and 24<sup>th</sup> April 2008.

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## Decision

1. I dismiss the appeal.

## Procedural and Other Matters

2. By agreement between the Appellant and the Council the description of the development was amended to that given on the Council's refusal notice, which states, "Residential Development (50 Dwellings Per Hectare)". The scope of the outline application was also changed; making layout, scale, appearance, access and landscaping all the subject of subsequent reserved matters application(s). This is confirmed in the statement of common ground (SCG) signed by both of the main parties on 22<sup>nd</sup> April 2009.
  3. Correspondence between the Appellant and the Council indicates that there was discussion concerning possible further amendment to the development description as; Residential Development (Up to 50 Dwellings Per Hectare), but no written agreement was reached. I do not consider that the agreed revised description would preclude flexibility, at the reserved matters stage, to permit 'up to 50 dwellings per hectare' (dph). I have considered the development on the basis of the description given on the Council's refusal notice.
  4. The refusal notice lists five reasons. The fourth refusal reason refers to the absence of any financial contributions or other arrangements to mitigate demand on educational facilities, community healthcare facilities, affordable housing and public open space provision. During the appeal procedure the Council added a requirement also for a contribution towards public art, in accordance with saved policy ENV34 of the Walsall Unitary Development Plan March 2005 (UDP). The SCG confirms the main parties' agreement that these considerations are capable of being secured through the use of an appropriate undertaking/agreement.
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5. At the Inquiry, the Appellant submitted two completed unilateral undertakings made pursuant to section 106 of the Town and Country Planning Act 1990 (the Act). Version (Final A) includes all of the matters referred to in refusal reason four. Alternative version (Final B) also makes provision for public art. In addition, both versions of the undertaking include a business and relocation obligation under their Schedule 3.
6. I am satisfied that the undertakings satisfy the requirements of section 106 of the Act, the tests of Circular 05/2005 and that they are enforceable. I also conclude that both versions overcome the Council's fourth refusal reason, and that the development would accord with saved policies GP3, H4 and LC1, and paragraphs 8.8 and 8.9 of the UDP. It would also comply with the Council's Supplementary Planning Documents (SPD) relating to Education, Healthcare, Urban Open Space and Affordable Housing.
7. In response to refusal reason five, which refers to flood risk, the Appellant has submitted a revised flood risk assessment (FRA) dated December 2008. The Environment Agency has confirmed that, subject to the conditions which it suggests being imposed, this FRA overcomes its concerns with regard to the flood risk implications of the development. On this basis the Council subsequently withdrew this refusal reason prior to the opening of the Inquiry. This matter is agreed in the SCG and I am likewise satisfied in this regard. Consequently, I conclude that the development would accord with the requirements of PPS25 and with saved UDP policy ENV40.

### **Main Issues**

8. Thus, with reference to the Council's first three refusal reasons and other matters raised in the representations, I consider that the main issues in this case are:
  - Whether the development would achieve a high standard of sustainable urban design with particular reference to; provision of an adequate buffer between industrial uses and proposed residential properties, provision of adequate landscaping, highway design, parking and access standards, space and separation between dwellings, provision of private and shared amenity space, consideration of secure by design principles and sustainability.
  - The effect of the development on the continued functioning of neighbouring industry having regard to the preservation of satisfactory residential amenities for future occupiers of the site.
  - The effect of the development on the cohesion of the Core Employment Area, the provision for employment land and the regeneration aims for the Borough.

### **Reasons**

9. The appeal site comprises some 2.56 hectares. There are several industrial buildings on the site of varying eaves height, which are used primarily for employment purposes, principally within Class B2 – general industry, although part of building 6, as identified in the SCG, is used as a children's nursery. Those areas of the site that are not covered by buildings are laid out as hardstanding, used either as car parking or for external storage. It has a frontage of some 147.0 metres to Northgate.
10. The site is located within a Core Employment Area (CEA) designated by saved policy JP5 of the UDP, and as defined on its accompanying Proposals Map. It is some 500

metres from the boundary with Aldridge District Centre. It adjoins residential development to the south-east, south and south-west, other industrial sites within the CEA to the south-west, west and north. To the east, on the opposite side of Northgate, there is open space. The site is well related to public transport routes and there are bus stops located on either side of Northgate adjacent to it.

11. It is common ground between the main parties that the site comprises previously developed land as defined in Annex B of PPS3, and that the Council is currently able to demonstrate in excess of a five year housing supply in accordance with paragraph 54 of PPS3. Also, that the housing figures contained in Table 1 referred to in policy CF3 of the Regional Spatial Strategy for the West Midlands (RSS) are expressed as minima within the Major Urban Areas (MUAs) that include Walsall. I have no reason to dispute these matters. I conclude that in terms of these housing policies, the stance towards residential development of the appeal site is neutral. Saved policy H3 of the UDP is supportive of residential development of windfall sites subject to its criteria being met. In addition to sustainability issues, and in line with RSS policy CF3, these seek to balance residential development with other uses, such as employment.

### ***Sustainable Urban Design***

12. With reference to the first main issue, the outline planning application has been the subject of extensive pre-application discussion and community consultation over several years. At submission, it was supported by extensive background information in addition to a comprehensive design and access statement, which includes an indicative design proposal for a mixed house types scheme, including 25% affordable housing and having a density of 50 dph. Other supporting information includes several bat surveys, a transport assessment, two flood risk assessments, a phase 1 geo-environmental survey, two noise surveys and a planning statement. Together, these studies refer to all of the matters listed in the Council's third refusal reason, and in my opinion, indicate that there are no constraints, which make the site physically unsuitable for residential development in principle that could not be satisfactorily mitigated. As conceded by the Council at the Inquiry, it is in a sustainable location, close to several local facilities, Aldridge town centre and is well provided for by public transport.
13. In an attempt to address the Council's criticisms of the indicative design proposal contained in the design and access statement, the Appellant has submitted a further indicative layout for a scheme having a density of 41 dph. In the Council's opinion, this layout, which includes provision of 3.0 metres high acoustic fencing along those boundaries that adjoin industrial development, is a contrived engineered solution that would result in poor visual appearance and inadequate residential amenity, in addition to failing to meet the 50 dph specified in the amended development description.
14. Noise mitigation, by means of a 4.0 metres high fence, is provided to recently constructed residential development at Burnfields Way, which adjoins the appeal site to the south-west. I agree with the Council that it has a somewhat stark appearance. This is also acknowledged by the Appellant, who indicates that the lower acoustic fencing that would be necessary to provide future residents of the appeal site with adequate noise mitigation could be screened by vegetation. This is clearly a requirement that he is aware of, which could be incorporated in a detailed proposal at the reserved matters stage, and which could be conditioned.

15. Likewise, other design shortcomings of the indicative layouts perceived by the Council, which include; road design, parking and access standards, space and separation between dwellings, provision of private and shared amenity space and consideration of secure by design principles, have been brought to the attention of the Appellant. From the written and oral evidence I have no reason to think that it is disputed that these are important considerations for the achievement of the high quality design required by national and development plan policy.
16. My assessment of the submitted background material and the indicative layouts is that building on these, with forward thinking, imaginative design, all of the Council's design requirements and full compliance with all of the saved policies of the UDP listed in the third refusal reason, together with the listed relevant policies of the Council's SPD, 'Designing Walsall' could be achieved at this site. This could be most appropriately ensured by imposition of suitable conditions at this outline stage and by future consideration of reserved matters applications, and any other necessary consequential conditions. Taking into account that this outline application reserves all detailed matters for future consideration, I do not consider that detailed demonstration of their compliance is necessary at this stage.
17. The Appellant is confident that the maximum residential density being sought could be achieved at the appeal site in full compliance with all of the saved policies listed in the third refusal reason. At the Inquiry, the Council more cautiously conceded that at least 30 dph could be satisfactorily provided. Both of these densities fall within the range that is compliant with the guidance of PPS3, with saved policy H9 of the UDP and also within the scope of the outline permission sought.
18. I conclude that the development could achieve a high standard of sustainable urban design with particular reference to all of the matters referred to in the Council's third refusal reason and my associated main issue. Consequently, I further conclude that it could comply with the relevant saved parts of the UDP and the SPD, 'Designing Walsall', namely; paragraphs 2.2, 3.6, 3.7, 3.16, 3.116, and policies GP2, GP7, ENV18, ENV23, ENV32, ENV33, H9, H10, T7 and T13 of the UDP. Also, with policies DW1, DW2, DW4, DW5, DW8 and DW9 of the SPD.

### ***The Effect on the Operation of Adjoining Employment Sites***

19. Criterion (a) IV of saved UDP policy H3, which relates to windfall sites, informs that residential development should not unacceptably constrain the development of any adjacent site for its allocated or identified use. The long established industrial uses operating within the CEA are unconstrained by noise or hours of operation limitations, or any other conditions. A concern of the Council, as set out in its second refusal reason, which is reiterated by the Managing Director of the adjoining employment site to the north of the appeal site, is that the proposed residential development has the potential to constrain industrial operations in premises to the north and south. This possible tension between adjoining residential and industrial occupiers, which was clearly put at the Inquiry by the third party, relates to noise and vibration from the operation of industrial equipment and heavy goods vehicles. Also of concern is the additional financial expense and management time that may be necessary to upgrade the security of the neighbouring industrial premises in order to prevent vandalism and theft by people accessing those industrial sites from the proposed housing site.

20. I sympathise with this third party's concerns and acknowledge that such tensions do occur. However, these potential problems have not been substantiated by facts concerning the specific part of the CEA in which the appeal site is located. The Council highlighted at the Inquiry that the appeal site, at which large, heavy presses are also operated, and which adjoins residential development, has not been the subject of complaints from those adjoining residents, despite such perceived fears being expressed by the Appellant's company at the time when the residential permission at Burnsfields Way was granted.
21. Furthermore, the owner of the industrial land to the south of the appeal site has stated in his letter supporting the proposal that he notes the intended erection of an acoustic fence. In his opinion, this together with conditions relating to the operation of his business following a recent change of use application to Class B8, and the degree of separation between the proposed residential development and his industrial unit, which is similar to the distance between his unit and the residential development in Burnfields Way, will ensure that there is no conflict. However, I note also that this industrial owner has some interest in pursuing the residential redevelopment of his own site in the future.
22. A further aspect of this matter is one that is raised by the Appellant in terms of being a consideration in support of part of his case that renewal of the industrial buildings at the appeal site is not a viable option open to him. It concerns his perception of how the Council would treat a possible planning application for industrial redevelopment of the appeal site, having regard to the preservation of satisfactory residential amenities for adjoining occupiers.
23. The Appellant is of the (untested) opinion that any alternative proposals to redevelop the appeal site with modern, fit for purpose industrial buildings is likely to be fettered by a conditional permission that would possibly, amongst other matters, limit the hours of operation, to the detriment of the efficient and economical operation of the industrial site. If this were the case, it is an argument that could equally be applied to the adjoining industrial sites to the north and south. However, the Council has rejected this contention in its written and oral evidence. In addition, the letter referred to above from the owner of the employment site to the south of the appeal property addresses this matter, and indicates that his recently granted B8 permission (reference 07/2750/FL/E6) is not the subject of conditions that he considers to be unduly onerous.
24. If he had thought that any were unnecessary or unreasonable he could have appealed against them. Furthermore, I consider that it would be contrary to the intentions of policy JP5 to fetter permissions for core employment development with onerous conditions that would constrain their industrial operations.
25. Thus the arguments and evidence of the main parties and third parties on this issue are somewhat inconsistent and contradictory. I conclude that the proposed development has the potential to give rise to residential/employment use tension. But in respect of a residential development that incorporates suitable mitigation measures in terms of its layout, design and the provision of acoustic fencing, the anticipation of such conflict is likely to be far greater than its actuality. Thus, I further conclude that the proposed residential development need not unacceptably constrain the functioning of the adjacent sites for their designated employment use. Therefore, the development would not conflict with part (a) criterion IV of UDP policy H3. Consequently, I also conclude that the proximity of existing residential

development to the appeal site is not a significant contributory factor in its alleged unsuitability as an employment site.

***The Effect on the Cohesion of the Core Employment Area, Provision for Employment Land and on Regeneration***

26. Although I have concluded favourably towards the proposal in respect of the first two main issues, I consider that the key consideration upon which this case turns is its effect on the cohesion of the CEA, the provision for employment land and the regeneration aims for the Borough. These considerations reflect general principles of the UDP set out in paragraphs 2.1 and 4.7, which seek to revitalise the economy of Walsall by boosting jobs and prosperity in the Borough, by providing enough land of the right quality to meet the full range of employment needs, and by promoting the enhancement of existing employment areas. Consequently, and as agreed by the main parties, I consider that saved UDP policy JP5: Core Employment Areas is fundamental to my consideration of this issue. I turn now to consider these matters.
27. Part (a) of saved policy JP5 states that the CEAs are shown on the UDP Proposal Map. These areas are safeguarded for core employment uses. Proposals for other uses will only be permitted if either of the policy's two exceptions can be demonstrated; that a need would be met which could not be satisfied elsewhere in the Borough; or the range and quality of employment opportunities would be significantly increased. Part (b) of the policy informs that when windfall sites or buildings in CEAs come forward for re-use or redevelopment, they will normally be safeguarded for core employment uses.
28. It is the purpose of policy JP5 to ensure that these areas, the best industrial areas that Walsall has to offer, will be retained for these uses. They are strategic employment areas, where their critical mass, as well as the quality of individual sites within them is important. Historically, the Borough has had a fragmented portfolio of employment sites that are generally less well suited to modern industry as a whole. Policy JP5 provides a policy framework for securing a sufficient critical mass of industrial land that will enable the creation of large sites and the clustering of use-related smaller enterprises. Whilst in the current recession these factors will not alone be enough for firms to remain solvent, in my opinion, they provide the necessary pre-requisite for the Borough's long-term economic regeneration prospects.
29. Although the specific criteria used for selecting sites for inclusion in the CEA are not particularly transparent, the justification text to the policy informs at paragraph 4.34 that they were defined on the basis that they contain major concentrations of core employment uses and/or good quality buildings or development opportunities. Their boundaries were tested and changed as part of the UDP Inquiry process. No objection was raised at that stage by the Appellant or anyone else to the inclusion of the appeal site in the CEA.
30. I have noted from the evidence and from my site visit that in the locality there are other employment sites of the same 'local' quality as the appeal site and others that are clearly of better quality, which are not included within the CEA. However, I am satisfied that the appeal site, which is used predominantly for Class B uses, falls within a major concentration of sites similarly used. Therefore, that it was appropriately designated as being within the CEA. I consider that the value of the appeal site is its contribution to the mass of the CEA rather than the quality of the

buildings on it. In line with RSS policy PA6, it will be for a review of the employment land portfolio in Walsall, through the ongoing Local Development Framework (LDF) process, to consider if the CEA boundary should be changed to exclude sites currently within it or to include other peripheral sites outside the designated area.

31. It is conceded by the Appellant that neither of the two exceptions of policy JP5 part (a) apply to the appeal proposal, it is therefore contrary to the policy and hence also to part (a) criterion V of UDP policy H3. It is the Appellant's case that the word *normally* in part (b) of policy JP5 allows it to be applied flexibly, if there are material considerations that would clearly overcome the normal presumption against non-employment uses in the CEAs. Furthermore, that such considerations exist in this case.
32. I endorse this interpretation of part (b) of the policy. Indeed, it has been the approach used by the Council in respect of other employment sites within the CEAs for which it has granted planning permission for alternative residential development; for example the Caparo (reference 08/0163/OL) and the Leamore Lane (reference 06/1118/FL/W2) sites. However, as conceded by the Appellant at the Inquiry, these other cases do not present irresistible precedents for granting planning permission at the appeal site, which has differing material considerations that should be considered on their own merits. These are listed in the planning statement submitted with the planning application and were relied on at the Inquiry as being; obsolescence, redevelopment potential, location, and availability of industrial land. I consider these in due course.
33. The rationale for the proposal is one of economics. The Appellant wants his business to continue to prosper, preferably in Aldridge, but it is thought that the existing buildings are obsolete and that the site is inefficient for a number of reasons. He therefore wishes to relocate. To finance this, the sale of the site for residential development is thought to be the only viable option. However, it is not argued that failure to relocate will result in the business immediately ceasing or in jobs being lost. The venture is intended to secure its medium to long term development.
34. All but two of the ten industrial units on the site are occupied. The most recent assessment of the Appellant's company accounts dated 21<sup>st</sup> April 2009 confirms that the company continues to be, "a sustainable and financially viable business...with no net bank or other material borrowings", which the Appellant ascribes to prudent business practise. However, the Appellant occupies only about one third of the appeal site. The remainder is owned by two other landowners within the Appellant's family; Endeavor Trust (the Appellant's family pension fund) and Trinity Investments. The buildings and land owned by these two associated companies are occupied on short term leases by three separate manufacturing companies and a children's nursery. No evidence has been provided on the viability of these other businesses or their preferences concerning future location.
35. Alternative scenarios of selling the appeal site as an industrial site to fund the relocation, or for redeveloping the site with modern buildings for continued operation of the business at the site have been considered by the Appellant, but were discounted as being uneconomic. Little detail has been provided on the latter alternative, and the Council has provided alternative, more lucrative figures for the first scenario. Furthermore, a witness on behalf of the Appellant conceded at the Inquiry that the redevelopment of the appeal site as a whole or in part, with high quality industrial buildings, could viably take place. Therefore, I am not convinced

by the evidence that the sale of the appeal site for continued employment use could not fund the relocation of the Appellant's business, which has a significantly smaller relocation site size requirement.

36. Nevertheless, taking into account all of the relevant matters in this case, including that apparently, insufficient long term planning and site management and development has taken place, and necessary contingency funds have not been set aside to satisfactorily maintain and modernise the existing buildings, I am satisfied that the appeal proposal is the most economically attractive prospect for the Appellant. However, the planning system is not intended to promote personal interests above the wider public interest.
37. Whilst the unilateral undertaking offered by the Appellant would seek to ensure that jobs associated with his business would be relocated elsewhere in the Borough, there is no clear evidence in the form of a business plan or otherwise to show that it would create more jobs, or better retain existing jobs. Nor does the relocation undertaking extend to the some 46 jobs connected with the other businesses at the site, which would be lost as a result of the proposal. Furthermore, the development would permanently remove the site from the Borough's employment portfolio and it would, as a consequence, reduce the critical mass of the CEA.
38. In addition, I consider that it is highly likely that granting permission in this case would increase 'hope' value of neighbouring industrial sites, including that to the south. That owner has expressed an interest in the residential redevelopment of his site and the Appellant's indicative layouts show how it could be connected to the appeal site. Thus, this is a realistic outcome, which notwithstanding the need to justify individual cases, the Council would find increasingly difficult to resist, and which could result in a creeping erosion and fragmentation of the CEA that would be contrary to the Council's economic regeneration aims for the Borough.
39. I conclude that cumulatively, these consequences would result in loss of cohesion and functioning of the CEA, loss of overall provision for employment land and the thwarting of the regeneration aims for the Borough. I now consider if the material considerations advanced by the Appellant are sufficient to outweigh the non-compliance of the development with policy JP5 and the resulting adverse economic implications for the Borough.

#### *Obsolescence*

40. Details of the individual buildings, which were built on behalf of the Appellant in the 1950's, their locations and eaves heights are agreed by the main parties in the SCG, with which I have no reason to disagree. It is contended that the limited eaves height of many of the buildings, poor insulation, poor loading/unloading facilities, inadequate heavy goods vehicular access, inadequate car parking and the gently sloping nature of the site, which results in several of the buildings having split floor levels, render the site with an inappropriate design to meet the requirements of modern industrial and employment users. In particular, it is contended that these factors result in production operations being carried out in several buildings, which are of insufficient eaves height to conveniently accommodate the large industrial presses necessary to modernise the Appellant's production. This leads to inefficiency and increased costs, and it affects the ability of the business to compete, especially with foreign markets.



41. Marketing evidence presented by the Appellant suggests that for these reasons also, the premises on the site not required for the Appellant's business are difficult to let. However, marketing for long term lets or for the letting of the entire site has not been tested. Thus, whilst I agree that the appeal buildings are dated, I am not convinced that they are unfit for many of the Class B uses that typically take place within the CEA. I saw that many other sites within the CEA contain buildings of a similar age, design and height that appear to be occupied for a variety of core employment uses.
42. I conclude that whilst they may be inconvenient for some employment uses, including the Appellant's, the evidence does not clearly demonstrate that the site or its premises are obsolete for core employment uses generally. Consequently I do not attach significant weight to this consideration.

#### *Redevelopment Potential*

43. I have considered the redevelopment potential of the site in terms of my second main issue and have concluded at paragraph 25 that there is insufficient evidence to support the Appellant's contention that the presence of residential development in close proximity to the appeal site would necessarily result in the imposition of conditions on a permission granted for industrial redevelopment at the appeal site, which would constrain the operation of heavy presses or a 24/7 production schedule. Therefore, I give little weight to this consideration.

#### *Location*

44. I have concluded in paragraphs 29 and 30 that the appeal site satisfies the principles for inclusion within the CEA referred to in the justification text for policy JP5. I acknowledge that it is located towards a south-eastern boundary of the CEA, but it is not sited on an isolated limb. It benefits from a prominent and attractive location and has three vehicular accesses to Northgate, which is a busy road serving many other employment sites to the north, as well as being an important public transport route. Therefore, I do not consider that its location, which I consider to be favourable, weighs in favour of the appeal proposal. Furthermore, I do not consider this consideration to be a sound planning reason to grant permission for the appeal proposal even if the site had been located at the extreme periphery of the CEA; some sites inevitably have to be edge of boundary. This does not necessarily make them less valuable as employment sites in policy terms; although it does make them more vulnerable to pressure for their release for more economically rewarding uses such as housing, resulting in the 'creeping erosion' that I have referred to in paragraph 38.

#### *Availability of Industrial Land*

45. The fourth main consideration presented by the Appellant as justification for allowing the development as a departure to policy JP5 is his contention that there is a generous supply of vacant employment floorspace and vacant industrial land within the Aldridge area. Consequently, that the loss of the appeal site would not result in a material reduction in the supply of employment land in the locality.
46. An alternative interpretation of the schedules of available employment premises presented by the Appellant, which I find more convincing, is that they indicate a trend that there is an around 41,000 square metres turnover of such premises over a two year period within the Aldridge area. This supports the Council's contention

that the current supply represents the 10-15% churn that could reasonably be expected and which is necessary to ensure that firms have a choice of sites within the area for establishment, expansion and relocation, if necessary.

47. I do not consider either that the GVA Grimley report convincingly demonstrates an oversupply of employment land. It does not provide an assessment of supply during the UDP period or an analysis of current supply and demand. Its purpose is to inform the emerging joint core strategy for the Black Country and the site allocations DPD with regards to predicting employment land supply up to 2026. Furthermore, whilst the report suggests that Walsall will be able to meet its employment needs in 2026, that there will be a small surplus of B2 employment land and it acknowledges that a significant amount of existing employment land will be developed for housing, it recommends a precautionary approach to the re-designation of existing employment land. The report suggests that there should be a buffer of 20-40% over predicted demand to take account of complexities in bringing forward employment land in a rational manner.
48. For these reasons, I am not convinced that there is a significant over-supply of vacant employment floorspace or land in Walsall. Consequently, I conclude that the loss of the appeal site would result in a material reduction in the supply of employment land in the Borough.
49. To summarise, my conclusions on this key issue are that the development is contrary to policy JP5 and, furthermore, that it would result in loss of cohesion of the CEA, the loss of valuable employment land and consequently, that it would hinder the economic regeneration aims for the Borough. I further conclude that neither individually nor collectively the material considerations presented by the Appellant in support of the proposal are sufficient to outweigh its conflict with the development plan and the harm that it would cause to the wider economy of the Borough. Nor could these fundamental objections be mitigated by conditions.

### **Overall Conclusions**

50. Although I have concluded favourably towards the development having regard to first two main issues, those conclusions are greatly outweighed by my unfavourable conclusion on the third main issue. Therefore, for the reasons given, I dismiss the appeal.
51. In reaching this decision I have taken into account all other matters raised in the written and oral representations and I sympathise with the Appellant's inevitable frustration with this outcome following several years of negotiating this proposal with the Council. However, none of the other matters raised are sufficient to lead me to a different decision.

*Shelagh Bussey*

INSPECTOR

**APPEARANCES:**

**FOR THE LOCAL PLANNING AUTHORITY:**

Mr Jonathan Clay - Counsel

**He called:**

Miss Alison Deakin  
Mr Daniel Edwards  
Mr Steven McKenna

**FOR THE APPELLANT:**

Mr Richard Kimblin - Counsel

**He called:**

Mr David Norman Cooke  
Mr Andrew F Burley  
Mr Christopher E Timothy

**INTERESTED PERSONS:**

Mr Derek Yates

**DOCUMENTS:**

- 1 Attendance lists
- 2 Statement of Common Ground dated 22<sup>nd</sup> April 2009
- 3 Unilateral Undertaking (Final A) dated 24<sup>th</sup> April 2009 - submitted by the Appellant
- 4 Unilateral Undertaking (Final B) dated 24<sup>th</sup> April 2009 - submitted by the Appellant
- 5 Direction under paragraph 1(3) of Schedule 8 to the Planning and Compulsory Purchase Act 2004 - submitted by the Appellant
- 6 Farmiloes Financial Viability Letter dated 20<sup>th</sup> April 2009 – submitted by the Appellant
- 7 Schedule and Map of Available Industrial Land and Premises 17<sup>th</sup> April 2009 – submitted by the Appellant
- 8 Supplementary proof of evidence of Mr Andrew F Burley – submitted by the Appellant
- 9 Committee report relating to land adjacent to S Jones Ltd, Anglian Road, Walsall, WS9 8EP – submitted by the Appellant
- 10 Response to planning statement concerning 06/1118/FL/W2 Leamore Lane – submitted by the Council
- 11 Commentary on Existing Use Valuation of the Appeal Site – submitted by the Council
- 12 Amended list of suggested conditions – submitted by the Council
- 13 Bundle of papers concerning the Council’s decision on a planning application relating to land at Brownhills Business Park and Veolia Environmental Services – submitted by the Council

**PLANS:**

- A Locations of sites the subject of planning application Committee reports discussed at the Inquiry – submitted by the Appellant