

**EXAMINATION OF THE SITE ALLOCATIONS & MANAGEMENT OF DEVELOPMENT
(SAMDev) PLAN
Protected Employment Site
PxP West Midlands Response to the Inspector's additional questions to the Council**

1. This Representation forms PxP West Midlands (PxP) response to the Inspector's additional questions issued to the Council on the 5th January 2015, in respect of the Protected Employment site, Greenhills Business Park.

2. This Representation relates to the discussions at the EiP hearing sessions regarding the inclusion of this land as part of an existing employment area under Policy MD9 and Policy I6 'Shrewsbury'. On the 15th December 2014 (prior to the EiP Hearing session on the 17th December 2014), Spawforths submitted a Participatory Statement to the Programme Officer setting out PxP's position. The Inspector allowed Spawforths to present their case at the Hearing, but did not accept the Participatory Statement as other participants had not had time to review it.

3. PxP have now reviewed all the documents and information posted on the Council's website, which include the following:
 - Inspector's additional questions - protected employment land, Shrewsbury
 - Matter 8 S16 - LPA response re protected employment land
 - Matter 8 S16 - LPA Supplementary Response re Employment Land Shrewsbury
 - Matter 8 S16 Appendix 1 - Stage 1 assessment ELR145 GEP
 - Matter 8 S16 Appendix 1 - Stage 2a assessment ELR145 GEP
 - Matter 8 S16 Appendix 1 - Stage 2b assessment ELR145 GEP
 - Matter 8 S16 Appendix 3 - MD13 tracked change 27.02.15
 - Matter 8 S16 Appendix 4 - PEA Report
 - Appendix 5 - Flood and Drainage constraints
 - Matter 8 S16 English Heritages Interim Position re Employment land adjacent to Registered Battlefield
 - Counsels Opinion - protected land
 - Protected employment land – Clarification of the Council's position, having regard to the evidence available

4. In light of these documents, PxP consider that the evidence and justification which is set out in their Participatory Statement addresses the issues raised by the Inspector but Spawforths have now supplemented this Participatory Statement with this Representation. For ease of reference the PxP Participatory Statement is appended to this Representation.

PxP **SUPPORTS** the Local Authority's position as set out in their latest Statement and object to any proposal to designate their site as Open Countryside and consider that **NO CHANGE** should be made to the SAMDEV designation under Policy MD9 as a result of objections.

IQ 1: Is it existing employment land that can be safeguarded?

5. PxP **AGREE** with the Council's position, which confirms that the identification of the remaining plots within the existing employment area is 'sound', given the planning history of the land.
6. PxP's position regarding the planning history of the site is clearly set out in their Participatory Statement and is supplemented by a detailed review of planning history, which verifies the position in the Participatory Statement. This is dealt with in detail in response to the Inspectors Questions 2, 3 and 4 dealt with later in this Representation.
7. PxP recognise that the outline permission has lapsed and that completion of Greenhills Enterprise Park would now require a grant of permission(s) for the development of the remaining plots. However, as PxP have previously set in their Participatory Statement (para' 6), neither Policy MD9 nor its supporting explanatory text state that "*protected employment areas*" need to have the benefit of any extant planning permission. In fact, the policy text (paragraph 4.82 of the SAMDev Plan) states that employment areas protected in this policy comprise "*accessed and serviced employment land*". Paragraph 4.76 also refers to the need to protect serviced employment land.
8. In the Local Plan, there is no definition of an "*existing employment area*" in either the Core Strategy or SAMDev Plan which would limit the inclusion of sites within an existing employment area to those sites which have the benefit of an extant permission for employment development. Therefore, we agree with the Council's position set out in their response to the Inspector and do not accept that the absence of an extant permission for Plots 2, 3 4 and 5b of Greenhills Enterprise Park should disqualify the land from being part of the existing employment area of Battlefield Enterprise Park under Policy MD9, as proposed in the Draft SAMDev Plan.

9. Paragraph 4.78 of Policy MD9 also provides for the protection of existing employment areas and states “As required in Policy CS14, the protection of existing employment areas is based on evidence of the purpose, viability and redevelopment potential of the sites.” In our participatory Statement we set out why these evidential reports confirm the importance of the site to the employment strategy of the SAMDev. To delete the site from employment use would therefore be at odds with the evidence base of the SAMDev and hence undermine the “soundness” of the Plan. Paragraphs 160 and 161 of the National Planning Policy Framework (The Framework) confirm that in drawing up Local Plans, Planning Authorities should “work closely with the business community to understand their changing needs and identify and address barriers to investment” and that Planning Authorities should use their evidence base to assess the needs for land and business. Any de-allocation of this land from employment use would be inconsistent with the evidence base used to prepare the Core Strategy and the SAMDev Plan and hence would be contrary to the “justified” test of soundness in The Framework.
10. The evidence contained within PxP’s Participatory Statement (para’s 10, 11 and Appendix 2) provides further confirmation that the site is readily available, accessed and serviced employment land, which is being actively marketed. This confirms that its designation under Policy MD9 is justified and consistent with the Core Strategy, based on the proportionate evidence in the Strategic Employment Areas Study (SEAS) Phase I. This demonstrates that the designation was positively prepared in relation to the Core Strategy and in relation to the objectives of Policies MD4 and MD9, where the reasonable and justifiable intent was to secure ‘readily available land’ by protecting it as an employment investment location.
11. PxP **AGREE** with the Council’s position set out in paragraph 3-14 of their response to the Inspector and consider that there is sound justification for determining that Greenhills Enterprise Park is existing employment land that can be safeguarded.

IQ2 - Were these works carried out lawfully?

12. In light of the evidence that Spawforths put to the Hearing, the Inspector accepts that “some extensive engineering works have been carried out to the land” and that “it was agreed at the hearing that these were substantially completed more than four years ago and are now therefore immune from any enforcement action”.
13. The Planning and Compensation Act 1991 supports this position and confirms that the four year time limit applies to “engineering or other operations in, on, over or under land, without planning

permission". The infrastructure and ground re-profiling works now constructed on the Greenhills Enterprise Park all fall within this definition and were constructed in excess of four years ago. The Planning and Compensation Act 1991 confirms that such works, after the 4 year period has elapsed, are not only immune from enforcement but "*the development becomes lawful in terms of planning*". Whilst the Inspector asks whether they were carried out lawfully (this is addressed below), there should be no ambiguity as a matter of law that they are lawful now through the passage of time.

14. The roads and associated infrastructure work as now built, were constructed in 2004 (Phase 1 road) and the later section of road (Phase 2) servicing plots 3 and 4 being built in 2007. This view is based on the review of the planning history associated with the original outline application, in particular the Long Section Drawing No: 911 Rev A stamped approved by Shrewsbury and Atcham Borough Council on the 1 October 2003 which refers to all three access roads which are now constructed on site; and also minutes of meetings from AWM's agents King Sturge, which confirm "non-material amendments" to the approved highway access were made. On the basis of the above, PxP consider that these works were undertaken lawfully and in accordance with Stamped approved drawings.
15. Irrespective of whether it is adjudged that these works were carried out lawfully at the time of construction, the fact of the matter is that the appropriate time limits have passed and the development has therefore become lawful.

IQ3 – What are the implications of these works for the lawful use of the site?

16. Regardless of any expiry of permissions, the lawful development of the roads, sewers, development platforms, landscape boundary treatment and electricity substation is significant and has now created an accessed and serviced existing employment area (some of which has been built out for the Food Enterprise Park and the Mercedes Showroom). Whilst planning permissions have now lapsed, the physical development which has occurred was to service **the whole site**, cost in excess of £10m of public sector funding and is now agreed to be established lawful development.
17. Notwithstanding PxP's position, which is set out in the section above and the Participatory Statement, we have considered the Council's application of the 'Whitley' principle, set out in their response to the Inspector and its exceptions in law which should be used to come to a sound planning judgement. We agree with the conclusion of the Council's response in so far as it

establishes that the need for a new permission does not prevent the land being protected as part of an existing employment areas, as a matter of planning judgement, where the evidence base justifies this approach.

18. In completing the full road layout under the agreed non-material amendment, the Applicant also implemented the highway access to the site in accordance with Condition 2 of the original outline planning permission. Any enforcement action against these works would have been irrational at the time as the works were considered to be lawful and indeed were undertaken following resolutions of Public bodies, and were funded by Public bodies. All parties at the time considered that there were undertaking lawful forms of development. Therefore, this exception to the 'Whitley' principle may be applied to Condition 2.
19. The completed engineering, highway infrastructure (agreed under the non-material amendment) and landscaping works are now established development and are now immune from enforcement action. PxP agree with the Council's statement, which confirms that this established development has effectively changed the character of the undeveloped land and this significantly influences the reasonable expectations for its future use.
20. The structural landscaping and bunding has further enclosed the land from the surrounding countryside, supporting the significant barrier created by the highway landscaping around the A5124, Battlefield Link Road. Significant engineering works were undertaken to establish Plots 2, 3 and 4 which are now being marketed. These works re-profiled the site levels of Plot 2 (to 73 AOD), Plot 3 (to 72.25 AOD) and Plot 4 (to 70.5) creating recognisable development platforms and hence investment opportunities on the Greenhills Enterprise Park. The related road and service / utility infrastructure developed to the plot boundaries clearly links these undeveloped plots into the highway layout of Battlefield Enterprise Park.
21. PxP **AGREE** with the Council position set out in their response to the Inspector and consider that the established development on Greenhills Enterprise Park changes the character of this land from its previous designation as countryside to serviced brownfield land in the employment zone of north Shrewsbury.
22. The change to the character of the land is consistent with the location of Greenhills Enterprise Park within the existing employment area of Battlefield Enterprise Park. The effect of this location is evidenced by the progressive planning history in this locality where Plots 1 and 5a of Greenhills Enterprise Park have been developed by the Shropshire Food Enterprise Centre and Mercedes dealership. Further evidence of this planning history and approach to development on the

Enterprise Park and character of the land is contained within PxP's Participatory Statement (para's 5 – 17 and Appendix 1).

23. Consequently, we **ENDORSE** the Council's position and consider that an employment designation would be appropriate for this land.

IQ4 - Is this of any relevance to the existing status of the land?

24. Core Strategy Policy CS14 relates to the managed release of employment land and a requirement to maintain a portfolio of employment land and premises. The Inspector stated in her additional questions to the Council, that it was put to her at the Hearing that the land in question meets the definition of "*readily available land*", and she questioned the relevance of this definition contained within Core Strategy Policy CS14 to the existing status of the Greenhills Enterprise Park.
25. The objective of delivering '*readily available employment land*' to the market is consistent with the objectives of The Framework paras 22 and 173 and also with Core Strategy Policies CS13 and CS14. The concept of '*readily available employment land*' is also a key driver for the allocation of land in SAMDev Policy MD4 and protection of existing employment areas in Policy MD9.
26. Policy CS14 relates to the managed release of employment land and a requirement to maintain a portfolio of employment land and premises, comprising 72 hectares of land including readily available employment commitments and allocations. This is the overarching policy which the SAMDev Policy MD9 and Policy S16 must be in conformity with. Policy CS14 relates to "*a suitable portfolio of employment land and premises*" and also to "*protecting existing strategic employment land and premises to secure these sites for employment uses*". The Policy therefore relates to two types of land and premises i.e. new allocations and protecting existing sites and buildings. In respect of the latter, it seeks to protect existing employment areas to maintain and support the portfolio and a managed reservoir of employment land and buildings.
27. The term "*readily available land*" is part of the CS14 policy wording and is set out in the context of "*a rolling 5 year strategic land supply of 72 hectares comprising **readily available employment commitments and allocations***". The reference is clearly to both types of land and premises referred to above i.e. commitments and allocations. The term "*readily available land*" is referenced in the glossary of the Core Strategy (Page 145) states:

"Defined within the RSS. A site is defined as readily available if all the following criteria are met:

- *the site either has planning permission and/or is allocated for economic development in the development plan and/or **is committed by an appropriate Council resolution;***
- ***there are no major problems of physical condition;***
- ***no major infrastructure problems in relation to the scale of development/activity proposed; and***
- ***the site is being actively marketed.***

28. For the SAMDev to be in conformity with CS14, it brings forward two policies, MD4 and MD9. The SAMDev is clear that both policies relate to CS14 (para 4.78 of the SAMDEV and S16). Policy MD9 of the SAMDev is clear that it relates to both safeguarding employment opportunities (criterion 1) and providing development opportunities for business start-up, growth and inward investment (criterion 2). It therefore relates to both existing buildings and to land development opportunities and this is supported by the Evidence Base documents to the SAMDev in relation to the employment land portfolio.
29. For the Greenhills Enterprise Park to be a “*Protected Employment Area*” within the terms of Policy MD9 of the SAMDev and for this to be in conformity with policy CS14 of the Core Strategy, it must meet the criteria of being readily available building or land opportunities. The Greenhills Enterprise Park meets the criteria for “*readily available land*” as it has been committed by an appropriate Council resolution; there are no major problems of physical condition; there are no major infrastructure problems in relation to the scale of development/activity proposed; and the site is being actively marketed. PxP’s Participatory Statement provides evidence that the site meets these criteria. This is supported by further evidence from the Council’s Economic Development Team and the Evidence Base assessments on Employment Land Supply which support the SAMDev. This is further reinforced by the fact that the road infrastructure now constructed on site is committed by an appropriate Council resolution, given it was approved by Shrewsbury and Atcham Borough Council in 2003 and undertaken by the County Council. This overall site preparation work cost in excess of £10m of Public sector money. For the reasons confirmed above, development has occurred on site to service the whole site, and therefore the site is now an established existing employment area.
30. The protection of this employment land under SAMDev Policy MD9 and Policy S16.1 Schedule 1d is therefore wholly consistent with and in conformity with the adopted Core Strategy, in particular Policy CS14.

31. The question of whether it has or has not got a current planning permission for employment use is therefore not relevant in establishing the key question of the existing status of the land.
32. PxP consider that in light of the above, the protection of this site under Policy MD9 is therefore sound and it complies with the legal requirements of The Framework to confirm that the SAMDev is positively prepared, justified, effective and consistent with national policy. Re-designation of this site as anything other than for employment use would not be consistent with the evidence base used to inform SAMDev and could be contrary to The Framework (para's 160 – 161) and Core Strategy Policy CS14. Any designation other than for employment use would therefore be unsound.
33. The Participatory Statement (para' 2) provides further evidence of the marketing of the site by PxP, which demonstrates reasonable prospects of securing the development of the land. Indeed PxP have very strong interest in several plots on the Greenhills Enterprise Park at present which it is keen to move forward. The planning history of the site, documented in both the Council's Statement and PxP's Participatory Statement also provides further evidence of the serviced nature of the remaining plots and established landscaping and infrastructure, which demonstrates that the physical condition of the land will support employment uses.

IQ5 - If the land is not existing employment land that can be protected, its inclusion in the SAMDev Plan as part of a Protected Employment site would appear not to be justified. If this is the case, but the Council nevertheless maintain that the land should be allocated for employment purposes:

- **what assessments have been carried out to establish the suitability of the site for employment purposes ?**
 - **particularly having regard to –**
 - **its proximity to the historic Battlefield I403 ?**
 - **any ecological interests on or close to the site ?**
34. If the Inspector was minded not to support the protection of this employment land under Policy MD9, PxP consider that given the prestige nature of this employment site and its importance to the employment supply, it should be retained for employment development under Policy MD4 – *“Managing Employment Development”*. When testing the Greenhills Enterprise Park site against the policy criteria and explanation set out in Policy MD4, PxP consider that it is *“sustainable development”*, which *“comprises Class B uses”*; is *“compatible with adjoining uses”* and can *“satisfy the relevant settlement policy and accompanying development guidelines”*.

35. PxP's initial support for this approach was set out in their Participatory Statement (para's 25 – 27). PxP supplemented this evidence in respect of technical and environmental matters to demonstrate the suitability of land for employment purposes. This was submitted to the Council, to form part of their Sustainability Appraisal and is set out in their Statements. The Preliminary Ecological Assessment and Flood Risk and Drainage Assessment undertaken for PxP provide the necessary assurances about the suitability of designating the land for employment use and both demonstrate that appropriate mitigation measures can be put in place without significant constraint or concerns over the delivery of the site and that re-profiling of the site topography has already reduced any risk of flooding on the site.
36. The DRAFT Interim Planning Guidance Note for the Registered Battlefield site (March 2013) prepared by Shropshire Council, now agreed with English Heritage will also ensure that the heritage impact of new development proposals on the Registered Battlefield is fully considered. English Heritage has recently removed their previous objections and concerns in connection with the protection of this site for employment purposes. They consider that the amended Battlefield Planning Guidance Note and proposed Modifications to the SAMDev being prepared by the Council will allow applications for development on the Greenhills Enterprise Park to adequately respect the setting of the Registered Battlefield.
37. In these circumstances, we do not consider there are any significant heritage, ecological, flood risk or contamination issues on the site which would diminish the suitability or deliverability of the site for employment purposes.
38. In light of the above, having reviewed the Council's Response dated 2nd March 2015 to the Inspectors additional question 5, PxP consider that this further evidence demonstrates the suitability of the site for employment purposes and could also support the allocation of the undeveloped land at Greenhills Enterprise Park for employment use in Policy MD4. This evidence, including the Stage 1, 2a and 2b Sustainability Appraisal assessment forms, would also enable the provision of development guidelines in Policy S16.1 to secure the completion of Greenhills Enterprise Park.

Summary

39. In summary, PxP maintain their position set out in their Participatory Statement and support the retention of the site as a "Protected Employment Area" under Policy MD9. The additional

information submitted by the Council has re-affirmed and further justified this position taken by PxP. PxP consider that the evidence presented by the Council in response to the Inspectors additional questions is robust and the protection of this site under Policy MD9 is therefore sound and complies with the legal requirements of The Framework and that the SAMDev is positively prepared, justified, effective and consistent with national policy.

40. If the Inspector was minded not to support the protection of this employment land under Policy MD9, PxP consider that given the prestige nature of this employment site and its importance to the employment supply, it should be retained for employment development under Policy MD4 – *“Managing Employment Development”*.