

**Haston Reynolds Ltd
Shrewsbury Area S16 – Inset 1
Protected Employment Area
Representor 251**

Shropshire Site Allocations and
Management of Development
DPD

Comments on the Council's
Responses to Inspector's
Questions IQ1 to IQ5

18 May 2015

1. INTRODUCTION

- 1.1 This Statement supplements the representations that have previously been made by Haston Reynolds Ltd in relation to Shrewsbury Area S16 – Inset 1, namely the status of the undeveloped portion of the area formerly branded as the Shropshire Food Enterprise Park (now referred to as Greenhills Employment Park), west of Battlefield Road, south of the A5124, north of the Battlefield Brook and east of Battlefield Way, as a Protected Employment Area under Policy MD9 – Protected Employment Areas.
- 1.2 It has been accepted by Haston Reynolds that the areas occupied by the Food Enterprise Centre and the Mercedes Dealership benefit from extant implemented planning permissions, constitute developed land and as such should be included within the Protected Employment Area designation.
- 1.3 This Statement focusses on the Council’s Responses to the five questions (IQ1 – IQ5) posed by the Inspector following the Examination in Public Hearing session of 17 December 2014 and to the Council document entitled *Clarification of the Council’s position having regard to the evidence available* dated 24 April 2015.
- 1.4 Regard is also had to the Opinion of Hugh Richards of No 5 Chambers, publication of which was made at the request of the Inspector.
- 1.5 It is however noted that the published version of the Opinion is not the original version. Rather, it is an abridged version with advice on certain ‘other matters’ having been excluded¹. However, those ‘other matters’ would presumably have related to the SAMDev and the proposed Protected Employment Area and accordingly for the sake of transparency, it is requested that the original version of the Opinion is made available prior to any decision being made as to the ultimate status of the ‘GEP’ in the SAMDev or indeed as to the adoption of the SAMDev. If nothing else, the withholding of the original Opinion could give the impression that it contains advice that is not helpful to the Council’s case.
- 1.6 Ironically, the withholding of the original Opinion does not sit comfortably with the title of the Council’s latest submission entitled *‘Protected Employment Land - Clarification of the Council’s position having regard to the evidence available’*.
- 1.7 If necessary, publication of the original version of the Opinion will be sought by way of a Freedom of Information Request.

¹ See paragraph 1 of the Opinion of Hugh Richards dated 12 April 2015.

2. CURRENT PLANNING STATUS OF THE UNDEVELOPED AREA

2.1 Both Haston Reynolds and English Heritage objected to the designation of the currently undeveloped portion of the area formerly branded as the Shropshire Food Enterprise Park (GEP) as a Protected Employment Area, inter alia, on the basis that:

- The site is currently undeveloped;
- The site is currently open countryside;
- It is not currently allocated for development in the adopted development plan and has never been allocated for development;
- It does not benefit from any extant planning permission; and
- It had not undergone thorough assessment by way of Sustainability Appraisal or Habitats Regulations Assessment.

2.2 Common Ground [EV107] was subsequently reached between Shropshire Council and English Heritage concerning various matters including the status of the area to the north of the Battlefield Brook that lies to the west of the severed portion of the Registered Battlefield (Shrewsbury 1403).

2.3 It was noted that Shropshire Council was able to persuade English Heritage that this undeveloped area should be afforded Protected Employment Area status on the basis that:

‘SC provided details of the history of this area which shows that the principle of development has been established through planning applications and that any specific design matters and mitigation measures can be dealt with through the Development Management process.’ [paragraph 3.12 of EV107].

2.4 The Council’s justification for including the undeveloped area as part of the Protected Employment Area on page 17 of CD27 was:

‘Policy MD9 does not allocate land for employment, it safeguards existing sites and areas and, as regards the land at Battlefield Enterprise Park, consent for employment development on the land has already been granted and some development taken place, including the Food Enterprise Centre and around the periphery of the site (Waste Transfer Station and Energy from Waste Facility). ...’

2.5 Whilst the Council had made reference to the ‘planning history of the area’ it had not provided any specific details other than general references to that relating to:

- the Waste Transfer Station and EWF, which never even formed part of the former Shropshire Food Enterprise Park area;
- The Food Enterprise Centre, permission for which was granted by way of a full planning application and which does lie within the area formerly branded as the Shropshire Food Enterprise Park.

- 2.6 Haston Reynolds undertook a comprehensive review of the planning history of the area on behalf of Battlefield 1403 and The Albrighton Estate in connection with the Section 78 Appeal by Veolia ES Shropshire Ltd for the Energy from Waste Facility. A copy of that evidence was provided at Appendix 1 to my previous Statement. That evidence was presented at Public Inquiry and remarked upon at paragraphs 25 and 26 of the Appeal Decision (see Appendix 2 of my previous Statement).
- 2.8 At the EIP Hearing Session of 13 November 2014, the Council maintained that the undeveloped area benefited from an extant planning permission until invited to produce a copy of the reserved matters approval associated with (lapsed) outline planning permission 02/1429/O.
- 2.9 In light of that change in the Council's position, it was suggested at the hearing that English Heritage may have inadvertently agreed to the Statement of Common Ground with the Council and may have withdrawn its objection on the basis of inaccurate information. This was subsequently confirmed by English Heritage in their email to Liam Cowden dated 16 December 2014.
- 2.10 At the EIP Hearing Session of 17 December 2014, the Council's position on the planning status of the undeveloped area north of the Battlefield Brook seemed to have partially reverted back to its original position, on the basis that outline planning permission 02/1429/O was purported to be a partially implemented hybrid planning permission presumably still capable of further implementation. This however contrasted with the view expressed both orally and in writing² by the owner's agent that outline planning permission 02/1429/O had lapsed.
- 2.11 The published version of the Opinion of Hugh Richards confirms at paragraph 12 that:
- 'As a matter of law, in my opinion, (and in answer to IQ1) what are now plots 2, 3 and 4 do not benefit from an extant grant of planning permission. Any development on these plots would require a fresh grant of outline/full permission.'*
- 2.12 The position could not be any clearer. Outline planning permission 02/1429/O lapsed on 30 September 2006 and the undeveloped area to the north of Battlefield Brook **does not benefit from an extant planning permission** i.e. the position set out by Haston Reynolds from the outset.

² The Programme Officer issued Development Plan Representations by Spawforths under cover of email dated 16 December 2014 stating that *'The Inspector has invited PxP to submit the attached Statement and attend the Shrewsbury session tomorrow'*. At the hearing session of 17 December 2014, the Inspector confirmed that the owner had been invited to attend the session but had not in fact been invited to submit the written Statement.

3. STATUS OF THE UNAUTHORISED DEVELOPMENTS

3.1 The Inspector noted that some extensive engineering works have been carried out to the land and queried whether these works had been carried out lawfully (IQ2).

3.2 The Council and the owner's agent have maintained that the construction of the roadway, installation of drainage and the earthmoving works on land to the north of Battlefield Brook are now immune from enforcement action by virtue of the passage of time. Indeed, much reliance has been placed by the Council on these engineering works (which include the formation of length of access road within the site, drainage and remodelling of landform) in support of its assertion that they help to justify the land's designation as a Protected Employment Area. Indeed, they are a key plank of the Council's argument.

3.3 The published version of the Opinion of Hugh Richards discusses the status of those engineering works at paragraphs 14 to 39 and essentially concludes that they were unlawful. Various scenarios were considered by Hugh Richards, including the suggestion or possibility that 'informal consent' may have been granted to amendments to the outline planning permission. At paragraph 35 of his published Opinion, Hugh Richards advised that:

"The Council should be cautious in asserting that the acts of its predecessors in (helpfully?) agreeing to 'non-material' amendments now operate to bind the Council."

3.4 If the Council was to pursue this line of argument, then written evidence to substantiate such approvals would be requested.

3.5 In any event, at paragraph 39 of his published Opinion Hugh Richards states:

'Therefore, as a matter of law, if the Council's predecessor gave informal consent to amendments to the outline elements of the hybrid planning permission, these amendments will not operate to make implementation of the permission lawful where it was unlawful under the terms of the original permission.'

3.6 **The engineering works were therefore undertaken unlawfully.** This is the position maintained by Haston Reynolds from the outset.

3.7 Quite why the Council considers that it is regrettable that the decision notice 02/1429/O contained additional 'conditions precedent' is unclear. Perhaps what is 'regrettable' is that despite those conditions precedent not having been discharged, large scale engineering operations were undertaken without consent and it is 'regrettable' that the local planning authority only now appears to acknowledge that those works were unlawful.

4. IMPLICATIONS FOR THE LAWFUL USE OF THE SITE

- 4.1 It is unclear exactly when the unlawful engineering works were carried out. Perhaps more importantly it is unclear whether the unlawful works were carried out whilst the land was under the ownership of Shropshire County Council (up to December 2003), Advantage West Midlands (up to May 2007) or a more recent owner.
- 4.2 Irrespective of which party the unlawful works were undertaken by, or on behalf of, a serious question has to be raised as to how it was that the local planning authority did not notice what would have been dramatic large-scale earth moving operations in a prominent location adjacent to a Registered Battlefield and did not consider whether to take action accordingly.
- 4.3 From a heritage perspective, what is of particular concern is that battle-related artefacts that may have been present on the land may now have been permanently lost to the Nation. Any suggestion that these unlawful works should justify an exemption from the Policy requirement³ for an archaeological field evaluation would however be inappropriate and could give the impression of a benefit arising from an unlawful act.
- 4.4 Whilst the unlawful works may now be immune from enforcement action by virtue of the passage of time, this does not mean that they should now be used as the basis to justify the promotion or development of a site.
- 4.5 In any event, unless a lawful development certificate is applied for and issued in respect of the unlawful works, little if any weight should be attached to them in connection with this or any other decision-making process.

5. READILY AVAILABLE LAND

- 5.1 Within the Council's latest submission '*Protected Employment Land – Clarification of the Council's position having regard to the evidence available*', the fourth paragraph states:

'In response to the Inspector's current request, and on the basis of the evidence now available, this authority's preferred approach is to maintain the designation of the undeveloped land within GEP as a Protected Employment Area under Policy MD9. This was confirmed in para 2 of our second submission to Inspector Question IQ5 – that the MD9 designation is sound. This authority based their preferred approach on the Counsel's advice which we have disclosed and our two submissions (with supporting evidence documents) made to Inspector's questions IQ1 – IW5 already provided. This authority addresses in general the issue of soundness in para 11 of our first submission and in detail throughout our second submission.'

³ Policy BBZ6 of the Shropshire Council Interim Planning Guidance Note: Safeguarding the Registered Site of the Battle of Shrewsbury Interpretation of Relevant Policies and Guidance

5.2 Whilst the published version of the Opinion provides some relatively detailed explanations in connection with Inspector's Questions IQ1 to IQ3, the advice in respect of IQ4 is extremely brief. This question is dealt with at paragraphs 45 and 46 which simply state:

At IQ4 the Inspector asked whether the fact that the site may be judged to be "readily available land" for the purposes of Core Strategy policy CS14 has "any relevance to the existing status of the land".

If the Inspector means the 'planning status' of the land in the sense of what extant planning permissions pertain to it, then the answer is plainly "no".

5.3 If, as I think Counsel intended, one substitutes the phrase 'existing status of the land' with the phrase 'planning status of the land', then as indicated at paragraph 46 of the published Opinion, whether or not land is deemed to be 'readily available land' has no bearing on the 'planning status' of the land.

5.4 However, with respect, I think that the Inspector was actually seeking a view on whether land that meets the definition of "readily available land" is of any relevance to the status of the land as a 'protected employment area'.

5.5 The definition of 'readily available land' is given in the Glossary of the Core Strategy which 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.'

5.6 Given that the undeveloped land north of the Battlefield Brook does not have the benefit of an extant planning permission and is not allocated for economic development in the development plan (it is designated as open countryside in the adopted Shrewsbury and Atcham Local Plan), the only way in which it could meet the first criterion is if 'it is committed by an appropriate Council Resolution'.

5.7 Unless I am mistaken, the Council has not provided a copy of the 'appropriate Council Resolution' which has 'committed' it. Without evidence of that resolution, (i.e. a copy of that specific resolution) the land cannot comply with the definition of 'readily available land'.

5.8 Paragraph 61 of the Council's Response to the Inspector's Question IQ4 acknowledges that '*...the definition of 'readily available land' should not be used to circumvent the grant of consent to determine the lawful use of land..*' and yet this seems to be a possible effect of

including the wording ‘*is committed by an appropriate Council resolution...*’ within the definition, without clarification of what is meant by ‘committed’ or what constitutes ‘an appropriate Council resolution’. It potentially provides a means of circumventing the normal process of allocating specific employment sites through the development plan preparation process together with the level of scrutiny that normally entails. Furthermore, development plan policies are supposed to be contained within the development plan rather than being made outside of the plan process.

5.9 Other criteria for ‘readily available land’, all of which have to be satisfied are that:

- 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.

5.10 Paragraph 4.28 of the supporting text to Policy MD4 – *Managing Employment Development* states that:

The reservoir will be reviewed along with the Shropshire Place Plans. Landowners are expected to provide expeditious interventions to ensure their sites are readily available and can be brought to the market. These interventions should include addressing site constraints, making infrastructure investments, marketing their land and developing sites expeditiously in response to demand, in order to deliver their sites within the Plan period. The expeditious intervention by landowners will be considered when determining whether to renew permissions for committed sites especially where the site has been available for 5 years or more.

5.11 The undeveloped land to the north of the Battlefield Brook has now been actively marketed for employment uses for approaching 12 years, which is significantly more than the 5 year trigger point at which continued inclusion within the ‘reservoir’ should be reviewed.

5.12 In relation to ‘soundness’, the Council sets out within its document ‘*Clarification of the Council’s position having regard to the evidence available*’ some of the key elements of the evidence upon which it has relied.

5.13 Part of the evidence base is the Employment Land Review and Sites Assessment dated November 2011[EV7]. From just a brief review of this document, it is noted that the site assessment proforma for the majority of the area to the north of the Battlefield Brook (Appendix 3 – Central – Page 10) indicates the Planning Status of the site (reference SY2002/0149) as ‘*Windfall B1/B2/B8 – outline planning permission*’. This assertion is repeated within the schedule on numbered page 104 of the Review and Assessment. This was clearly not the case when the Review and Assessment was carried out in 2011 as the outline planning permission had in fact lapsed some 5 years previously. Given that the planning status of the site would have been an important consideration, the basis upon which

the assessment was undertaken was flawed and the evidence base cannot be considered to be sound.

5.14 Appendix 5e of the Employment Land Review and Sites Assessment includes a Site Scoring schedule, under which the Shropshire Food Enterprise Park (SY2002/0149) scored 94 out of a possible 100. This is perhaps not surprising given the Site Scoring System detailed at Appendix 5a of the document which attributes very limited weight to environmental considerations under the category of ‘Site Development Constraints’:

- Legal/Ownership;
- Environmental/planning (flood zone, environmental designations and heritage features, identified development requirements , etc)
- Physical/abnormal development requirement.

5.15 These constraints collectively could equate to the deduction of just 10 points from the overall site score, so a site within Flood Zone 3, a SSSI, a Conservation Area and a RAMSAR site with a listed building could still potentially score 90 out of a possible hundred points.

5.16 Setting aside the suitability of the scoring system used, it is considered that the scores attributed to the site are flawed. For example:

- Under ‘Sequential Test’, sites within the urban area should score 10, whilst those on the urban fringe (adjacent to a settlement development boundary) should score 7. The land is, as a matter of fact, currently located within an area of open countryside outside of the development boundary of Shrewsbury. It should therefore have scored 7 rather than 10; and
- Under ‘Site Development Constraints’ just two points were deducted, resulting in a score of 8 of 10, despite: part of the land being designated as a Registered Battlefield (a nationally designated heritage asset of the highest importance); despite the land being within the setting of the Registered Battlefield; despite the proximity of the land to the Grade II* listed Church of St Mary Magdalene; despite the proximity of the land to the Scheduled Monument associated with the Church; despite the land being known be terrestrial habitat associated with a pond within the site that supports a breeding population of great crested newts; despite the presence of a badger sett; and despite part of the site lying within Flood Zones 2/3. The score under this section perhaps should have been 0/10 rather than 8/10.

5.17 Accordingly, it is considered that the evidence base is flawed, the Protected Employment Area status of the land to the north of the Battlefield Brook is not justified and the SAMDev is not therefore ‘sound’.

6. SITE ALLOCATION

- 6.1 It is noted that paragraph 48 of the published version of the Opinion, opines that the ‘obvious solution’ is to allocate the land for employment use on the proposals map under Policy MD4. The published version of the Opinion however goes on to explain that such an allocation would have to be ‘sound’ in the sense that it would be consistent with national policy – “the plan should enable the delivery of sustainable development in accordance with the policies of the Framework” and further comments that the SA/SEA may need revising to assess the site for allocation.
- 6.2 A recently produced Stage 2a Site Assessment for the ‘GEP’ has been published by the Council. The summary of the Stage 2a assessment points out that *‘the larger proportion of the sustainability indicators in this part of the assessment were neutral’* and that *‘the overall sustainability of the site would be regarded as fair on the currently available evidence’*. Given that the Stage 2a Assessment is undated it is uncertain what the baseline date for currently available evidence actual is.
- 6.3 The Summary of the Stage 2a Assessment opines that *‘the larger proportion of the sustainability indicators in the part of the assessment were neutral in their effect.’* However, what it fails to state is that whilst three of the sustainability indicators gave rise to a positive result, six gave rise to a negative effect.
- 6.4 It is noted that whilst scores are attributed to: whether there are Scheduled monuments within 300 metres of the boundary (which there is); whether the site is wholly or partly within a World Heritage Site or Conservation Area (which it is not); and whether the site is within a World Heritage Site Buffer Zone, 300 metres of a Conservation Area or 300 metres of Registered Park or Garden (which it is not). Given that: Registered Battlefields are nationally designated heritage assets of the highest importance; the Site of the Battle of Shrewsbury 1403 is the only Registered Battlefield site within Shropshire; and given that the Battlefield is located immediately to the north of the Battlefield Industrial Estate, it is quite astounding that the Site Assessment proforma failed to even include a category dealing with proximity to a Registered Battlefield. Accordingly it is considered that the Stage 2a Assessment is skewed in favour of the development of the land. Had the proximity of the land to the Registered Battlefield been properly taken into consideration, it is considered that the overall sustainability outcome would be poor.
- 6.5 A recently produced Stage 2b Site Assessment for the ‘GEP’ has also been published by the Council.
- 6.6 Against the criterion of ‘Brownfield or Greenfield’, the assessment given states: *To the north, engineered plots 2, 3 and 4 comprise naturalised brownfield land ...’* Given that the definition of ‘previously developed land in the NPPF expressly excludes *‘..land that was previously developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape in the process of time.’* there can be absolutely no

question that the vast majority of the land north of the Battlefield Brook falls outside of the definition of previously developed land / brownfield land. It should therefore have been acknowledged to be 'greenfield land' and the failure to do so undermines the integrity of the assessment that has been undertaken.

6.7 Against the criterion of 'Topography', the assessment notes the land has existing structural planting to the west and north. The Masterplan associated with now-lapsed outline planning permission 02/1429/O indicated that there would be a 10 metre wide belt of structural planting along the northern boundary of the site. Whilst some structural planting has taken place, this is typically in the order of just 4 to 5 metres wide.

6.8 Against the criterion 'Local highway capacity / constraints' the assessment notes that '*...engineered plots 2, 3 and 4 are accessed via the fully services estate road...*'. The assessment does not however acknowledge that the estate road constituted unlawful development and that its status has yet to be formally regularised.

6.9 Against the criterion 'Inherent Landscape Character' the assessment states '**Shrewsbury 14: Landscape sensitivity / capacity** medium / low. The site however understood to lie within Shrewsbury 15 rather than Shrewsbury 14 and although it is now classified as having low sensitivity it was previously classified in Shropshire Council's earlier Landscape Character Assessment as falling within landscape description unit SP/50 and forming part of the 'Principal Settled Farmlands' landscape type. LDU SP/50 is assessed in the Shropshire Landscape Character Assessment as having 'Moderate' strength of character and 'Moderate' overall landscape sensitivity with a management vision of 'Restore and Enhance'. It would therefore appear that this landscape has been allowed to deteriorate in recent years and this does not instil confidence in the Council's ability to ensure that further decline is prevented irrespective of the Interim Planning Guidance for the Battlefield, the preparation of which was in fact instigated by Battlefield 1403/Albrighton Estate.

6.10 The final part of the assessment for 'Inherent landscape character' states

'EH regard the Registered Battlefield as being vulnerable but not at risk and recognise that the majority of the site is in agricultural use and the two principal landowners are both sympathetic to the value of this heritage asset.'

6.11 However, The EH risk assessment for Shrewsbury Battlefield (LEN: 1000033) actually states:

Shrewsbury battlefield is considered to be vulnerable. Its current condition is fair to good, in large part due to the positive management of the site by the majority owner, it would therefore be inappropriate to consider it as at risk. It is however, vulnerable to development on its margins which has the potential to impact negatively upon its setting and development which has already taken place means that both ambience and landscape readability are declining.'

- 6.12 The majority landowner of the Registered Battlefield is the Albrighton Estate (85% of the land area). Shropshire Council is currently a minority landowner. The EH assessment makes no reference to *'the two principal landowners'*. The Council is however responsible, as local planning authority, for the management and control of development to the south of the Registered Battlefield, which the English Heritage Risk Assessment considers has resulted in a decline in both ambience and landscape readability. The main reason that Shrewsbury Battlefield is considered vulnerable is due to development on its margins and this does not engender confidence in the local planning authority's ability to ensure that any new development in even closer proximity to the Registered Battlefield will not result in yet further decline in ambience and landscape readability or result in further adverse impact on the setting and significance of the Registered Battlefield.
- 6.13 The Interim Planning Guidance Note for safeguarding the Registered Site of the Battle of Shrewsbury does not form part of the Development Plan, it is merely a material consideration and does not provide the level of protection for the setting of the Registered Battlefield or its significance that the Council appears to be suggesting. A detailed assessment of the potential impact of the development of this land is needed prior to the allocation of the site to establish, inter alia: whether the site can in principle be developed without unacceptable harm to the setting and significance of the Registered Battlefield; the maximum height of buildings that can be developed; and the additional structural planting and landscape mitigation that needs to be provided.
- 6.14 Finally, given that the most recent Ecological Survey was undertaken outside of the recognised great crested newt survey season (to establish breeding populations etc) and given that the survey indicates the possible presence badger, bats, water vole, otter and hedgehog, further ecological surveys and assessments would need to be undertaken to establish the presence and population of these species and to more clearly ascertain the ecological constraints on the development of the site.
- 6.15 Given the environmental characteristics of the land and the area immediately to the north, it is considered that these detailed assessments are needed to ensure that any proposed allocation would be consistent with national policy and that the development can in fact be delivered.

David A Haston Dip Est Man MRICS
Haston Reynolds Ltd
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