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Ardleigh Parish Council's comments on the Report to  
Planning Committee: A.1 PLANNING APPLICATION –  
20/00594/FUL – LAND ADJOINING IPSWICH ROAD AND  
WICK LANE ARDLEIGH CO7 7QL

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Date: 12/09/2022

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## Introduction

This document provides Ardleigh Parish Council's comments on the Planning Committee Report for application 20/00594/FUL.

Ardleigh Parish Council's comprehensive grounds of objection to the application have been submitted previously and are not repeated here.

Please note: Ardleigh Parish Council's comments appear in red below the relevant paragraphs of the committee report in black.

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## Commentary

1.2 Clear policy conflict has been identified in terms of the landscape harm, and the harmful impact of the 'in depth' part of the warehouse and HGV hardstanding area on the character and appearance of Wick Lane and the immediate hinterland to the east of the site, as well as the impact of the large warehouse on residential amenity by way of light pollution and being overbearing in nature to nearby residents, especially those residents to the north west and east of the site. These harmful elements weigh significantly against the development proposal. The proposal will also result in the loss of agricultural land and as a result there is conflict with Paragraph 174 a) of the National Planning Policy Framework 2021 ('the Framework').

Clear policy conflict also arises from the location of the development. The officer's failure to acknowledge and properly assess the form and extent of the locational policy conflict is a significant omission that calls into fundamental question the legal soundness of the decision-making process<sup>1</sup>.

The locational policy conflict lies as follows -

Local policy PP13 provides the approach to development in the countryside outside of defined Settlement Development Boundaries. It is therefore of primary relevance to this application which concerns development in the countryside outside of defined Settlement Development Boundaries. The development does not comply with any of the forms of development allowed by policy PP13. Fundamental conflict arises.

Local policy PP7 is concerned with employment-related development. It supports B2 and B8 development on the employment site allocations identified by the policy. The

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<sup>1</sup> The Courts have established:

In *City of Edinburgh [1997] 1 WLR 1447* - it is necessary for the decision-maker to consider the development plan, identify any provisions in it which are relevant to the question before them and make a proper interpretation of them. A decision-maker will be open to challenge if they fail to have regard to a policy in the development plan which is relevant to the application or fail properly to interpret it

In *Tesco Stores Ltd v Dundee City Council [2012] USCO 13* - it is necessary to understand the nature and extent of the departure from the plan which the grant of consent would involve in order to consider on a proper basis whether such a departure is justified by other material considerations

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application site is not on land allocated for employment. In addition, policy PP7 provides: “proposals for new employment-related development on land outside of these allocations will be considered having regard to their potential to support economic growth in the district **and the requirements of other policies in this Local Plan.**” [bold emphasis added]. It is therefore necessary to consider the development’s accordance with the requirements of other policies in the Local Plan.

In a locational sense, the most important other policies in the Local Plan are SPL1 which provides the settlement hierarchy and SPL2 which provides, inter alia, the approach that will be taken by the Council to planning applications brought forward outside of Settlement Development Boundaries.

Policy SPL1 provides a hierarchy of settlements - the settlements at the top are the most sustainable and the settlements at the bottom, the least.

The supporting text confirms that the hierarchy prioritises locations with access to the strategic road network, public transport and which have the potential to offer the widest range of services. It confirms that major economic development should be directed towards the highest level settlements. It also confirms the smaller rural settlements - including Ardleigh - to be suitable for small-scale development that is sympathetic to their rural character only.

Policy SPL2 confirms that the Council will consider applications that come forward outside of Settlement Development Boundaries **in relation to the pattern and scales of growth promoted through the Settlement Hierarchy in Policy SPL1** and any other relevant policies in this plan.

As the application site lies in the open countryside close to the Smaller Rural Settlement of Ardleigh and distant from any of the District’s higher-level settlements, there can be no dispute that its location is in fundamental conflict with important strategic policies PP13, PP7, SPL1 and SPL2.

Notwithstanding any other policy conflicts, the locational policy conflicts identified above are substantial and provide sufficient reason - alone - to refuse permission for the development. In reaching this conclusion, the Parish Council has had regard to paragraph 12 of the NPPF, the implications of which are set out below.

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1.3 Against this harm the benefits to the local and wider economy, the benefits to the food distribution sector in particular, and direct and indirect job retention/creation would be substantial, and very significant weight is attributed to these benefits.

1.4 All other material planning considerations have been taken into account and where relevant, where harm arises, these can be mitigated against by way of planning conditions or s106 obligations, all these elements are neutral in the planning balance.

1.5 Ultimately, the weight given to the substantial benefits as outlined in this report is considered to very marginally outweigh the significant weight given to the landscape and character harm, as well as the identified harm to residential amenity. For these reasons, it is recommended that planning permission be granted, subject to the completed S106 legal agreement and the conditions as recommended in section 7.0 below.

Paragraph 12 of the NPPF provides:

“The presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision-making. Where a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted. **Local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed.**” [bold emphasis added]

In this case, the officer has identified the following material considerations only:

- Benefits to local and wider economy;
- Benefits to the food distribution sector; and
- Substantial direct and indirect job retention/creation.

Per paragraph 12 of the NPPF, where decisions are to be made in conflict with the development plan, the critical test is that any identified material considerations should indicate that the plan should not be followed.

In this case, the identified benefits of the scheme would apply in equal or greater

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measure if the site were relocated such that it did accord with the development plan. For this reason, the benefits of the scheme clearly do not indicate that the plan should not be followed.

To draw a helpful comparison: if the same site was proposed for 250 houses, it would attract many of the same generic public benefits as a 250-house scheme located within the settlement boundaries of one of the District's sustainable urban settlements, e.g. contribution to housing supply and substantial social/economic benefits associated with the construction and occupation of the dwellings.

If the decision-makers would reject the following argument:

*The principle of 250 houses on this site should be supported because the public benefits (comprising contribution to housing supply and substantial social/economic benefits associated with the construction and occupation of the dwellings) are material considerations that outweigh its inappropriate location*

Then, in the important interests of consistency in decision-making, they must reject the comparable argument attempted here.

In addition to the above, the LPA's officer agrees that the scheme gives rise to various significant disbenefits, including harm to the rural landscape, harm to local character & appearance, harm to residential amenities and loss of best and most versatile agricultural land. It is reasonable to consider that at least some of these significant harms - including harm to rural landscape and loss of agricultural land - would be avoided entirely if the site were to be located in accordance with the development plan.

The pertinent question for the decision-makers is this:

Does the location of this development site in conflict with the development plan give rise to any benefits or disbenefits that a location in accordance with the development plan would not?

The answer to this question is, indisputably:

- It gives rise to no such benefits; and



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- It gives rise to multiple, substantial disbenefits.

For this reason, there are no material considerations in this case that indicate the development plan should not be followed. Permission must consequently be refused.

2.3 Tendring District Council received an application to designate a neighbourhood area from Ardleigh Parish Council over the winter of 2019-20. The application proposed that the neighbourhood area should cover the entire parish of Ardleigh and that this would be the area covered by the Ardleigh Neighbourhood Plan. At the time of writing this report, and according to Ardleigh Parish Council's website, the PC is currently working with various stakeholders as part of finalising the Policy Headings for their draft neighbourhood plan.

The Neighbourhood Plan is at regulation 14 stage. The informal consultation period opened on 08/08/2022 and closes on 23/09/2022. Informal consultation has already occurred with Tendring District Council's planning policy team who are of the opinion that the emerging Neighbourhood Plan is in general conformity with the Local Plan.

The Neighbourhood Plan is considered to be at an advanced stage of preparation and its policies thus attract some weight in the planning balance.

The main Neighbourhood Plan policy of relevance is GDP which provides the General Approach to Development in Ardleigh Parish.

Policy GDP mostly reinforces the Local Plan approach to development in Ardleigh, i.e. that a range of small-scale development on a limited basis can be accommodated within the village's Settlement Boundaries, with more limited development (including farm and rural-land-based development) permissible in its open countryside.

Policy GDP expands on the types of development permissible in open countryside, providing new support for a wider range of economic proposals that are modest in scale and impact. It should therefore be read as a positive and proactive policy that seeks to directly encourage development and growth in the rural areas of the Parish.

The development is in firm conflict with policy GDP. It also conflicts on multiple counts with emerging Neighbourhood Plan policies EP (concerning the natural, built and

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historic environment) and TP (concerning transport and parking).

### Consultations

#### Colchester Borough Council 04/02/2022

Overall, once again the Borough Council acknowledges that there are significant public benefits associated with the development that TDC will wish to weigh in the 'planning balance' yet these benefits could be delivered on an allocated employment site, in either TDC or CBC, without the negative impacts upon the countryside and highway network associated with the current proposal. In conclusion, the current scheme is contrary to significant key local plan policies and does not represent sustainable development. Once again, the Borough Council urges TDC to support the applicant in identifying alternative allocated employment sites; including those within CBC providing good access to the primary highway network and capable of delivering the requisite mitigation for the development.

Ardleigh Parish Council is in firm agreement with the comments of Colchester Borough Council. All the benefits of the scheme could be delivered on an allocated employment site, without the negative impacts associated with the current proposals.

In addition, Ardleigh Parish Council acknowledges that local policy PP7 provides in-principle support for major employment development on sites not specifically allocated for employment. In these circumstances, the policy requires that applications are determined in accordance with other policies in the Plan. Of particular relevance are broad spatial policies SPL1 (settlement hierarchy) and SPL2 (settlement development boundaries) which provide support for this form of major employment site within the settlement development boundaries of the District's multiple higher-level settlements.

In addition to the specific site allocations at policy PP7, there are thus numerous unallocated sites within the settlement boundaries of the District's higher-level settlements that would provide an appropriate location for the development, in demonstrable accordance with the development plan.

In these numerous sustainable locations, all of the same benefits of the scheme would accrue whilst fewer of the negative impacts would apply.

On this topic, the decision-makers attention is drawn to a 2018 Public Inquiry held in the

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parish of Ardleigh (ref. APP/P1560/W/17/3185776, LPA ref. 17/00859/OUT). This local case concerned the erection of up to 145 dwellings on land south of Bromley Road, Ardleigh, CO7 7SE.

In the case of the above Inquiry, all parties agreed the tilted balance applied as policies concerned with the supply of housing were out-of-date. The tilted balance is not engaged here and policies concerned with the supply and location of employment land are up-to-date.

In the above Public Inquiry, the appellant advanced various public benefits of the development, including the provision of affordable housing and market housing.

Tendring District Council's formal response to the public benefits identified by the appellant in the above case was this:

*"140. No issue is taken with the benefits themselves [...] the usual economic benefits of housing apply here as they do to all proposals of this nature and size (which is not to downplay their significance, but to point out that they exist in all cases, and not all cases result in a grant of planning permission - in a sense they are a "given")".*

[Closing submissions of Josef Cannon, Counsel for Tendring District Council, 24/04/2018].

The Inspector clearly gave weight to this argument of Tendring District Council as, at paragraph 134, their decision letter provides:

*"It can be said that similar benefits could also be achieved by any housing development of this scale, particularly one more policy-compliant. But given the potential delay in adoption of the ELP, the likely delivery of these outcomes is important".*

The circumstances of the current application are materially different; the Local Plan has been adopted and there is no deficit - actual or anticipated - of employment land or sites in the District.

Accordingly, there is no compelling reason, especially so early in the plan period, to set aside the development plan in order to secure the delivery of public benefits that would

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be secured, all the same, if the policies of the plan were applied.

ECC Highways 09/06/2022

The (rural/remote) location of the site is such that access to key active and sustainable, public transport, facilities are limited and for the vast majority of journeys the only practical option would be the car. This should be taken into consideration by the Planning Authority when assessing the overall sustainability and acceptability of the site against for example any employment benefits.

Highways England 02/03/2022

4. No part of the development hereby approved shall be brought into use unless and until the Travel Plan has been approved in writing by the Local Planning Authority who shall consult with Essex County Council and National Highways as Highways Authorities.

The Travel Plan shall be in line with prevailing policy and best practice and shall as a minimum include:-

- The identification of targets for trip reduction and modal Shift
- The methods employed to meet these targets
- The mechanisms for monitoring and review
- The mechanisms and review
- The penalties to be applied in the event that targets are not met
- The mechanisms for mitigation
- Implementation of the travel plan to an agreed timescale or timetable and its operation thereafter
- Mechanisms to secure variations to the Travel plan following monitoring and reviews

A travel plan is required to encourage sustainable travel behaviour to and from the proposed development in accordance with national planning policy to encourage sustainable travel and to ensure that the A12 continue to serve its purpose as a part of a national system for through traffic in accordance.

The Local Highways Authority finds that for the vast majority of journeys associated with the site, the only practical option would be the car.

Highways England find that a Travel Plan is required to “encourage sustainable travel behaviour”. The LPA suggests elsewhere, in relation to the proposed s106 Agreement,

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that a Travel Plan is required “to promote sustainable transport and comply with the accessibility requirements of the development plan and the Framework”.

No Travel Plan has been provided with the application and Ardleigh Parish Council strongly considers it is inappropriate to allow this most important document to be provided subsequent to a grant of planning permission. Reasons being -

1. Given the constraints of the area and total lack of available sustainable transport modes, there is clearly a substantial question concerning the ability of any Travel Plan to identify, promote and deliver sustainable transport initiatives (i.e. to actually fulfil its purpose);
2. National planning practice guidance (Paragraph: 003 Reference ID: 42-003-20140306 Revision date: 06 03 2014 & Paragraph: 007 Reference ID: 42-007-20140306 Revision date: 06 03 2014) is clear that, “Travel Plans should where possible, be considered in parallel to development proposals and readily integrated into the design and occupation of the new site” and “Travel Plans should be established at the earliest practicable possible stage of a development proposal”.

Without sight of a draft Travel Plan, it is simply not possible for the decision-makers to conclude with any level of certainty that the provision of an effective Travel Plan that would genuinely encourage sustainable travel behaviour in compliance with local and national planning policies is achievable.

The only evidence available would, in fact, strongly suggest that it is not achievable<sup>2</sup>. The onus is on the developer to prove otherwise with a draft Travel Plan.

The very likely reliance on the private car of the vast majority of users and visitors to the site, in hand with the lack of a Travel Plan that would adequately mitigate this harm, is sufficient reason to refuse the application.

#### TDC Tree & Landscape Officer

The document [applicant’s LVIA] accurately describes existing landscape character and

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<sup>2</sup> for example, the LPA acknowledges at paragraph 6.145 of their committee report that the developer’s contributions have the potential to make cycling and walking to and from the site “less unattractive”. In other words, cycling and walking would remain an unattractive option for users and visitors of the site

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qualities of the landscape. It identifies and records the potential impact of the development on the character of the landscape and the way that it is perceived and enjoyed by the public.

This is inaccurate. The applicant's LVIA makes no mention of the Public Open Space - in the form of a Country Park open to the general public - due for delivery on the adjacent plot (ESS/57/04/TEN). It is only the narrow and rural Wick Lane that will separate the proposed industrial site from the Country Park.

The Tree & Landscape Officer's consultation response and the LPA's committee report both similarly fail to take proper account of the substantial harm that would be caused to the forthcoming Public Open Space.

The only assessment provided in the report is at paragraph 6.95 where the officer finds the development would have a detrimental impact on the public open space "because the warehouse building will clearly be seen". This does not accurately portray the full extent of harm that would be caused.

The harm would arise due to:

- Views and landscape character - the new warehouse building would loom above the Country Park, having a substantial oppressive, overbearing and urbanising impact and totally transforming/dominating views out of the Park which are currently open and rural;
- Biodiversity - the new 24/7 HGV facility (with its noise, lighting, vehicle movements etc.) would cause serious disruption and detriment to plant and animal species, including protected species, due to be located within the Country Park; and
- Public enjoyment and perceptions/qualities - the intention is for the Country Park to provide a tranquil and beautiful public green space, with new (accessible) pedestrian access to the reservoir secured. The presence of a major 24/7 HGV site on the land adjacent will spoil these qualities and substantially reduce the public amenity value of the Country Park before it is even delivered.

The level of harm caused to the forthcoming Public Open Space (landscape and otherwise) is consequently far greater than the LPA has found.

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6.6 In terms of particular regard to cumulation with other existing development and/or approved development, in the vicinity of the site (especially along the east side of Old Ipswich Road) there are a number of industrial/storage/distribution uses to the north, and an Aggregates Site (SRC Aggregates) to the south. The application site and wider area is also a 'safeguarded sand/gravel area' and the site and wider area is an allocated mineral extract site as per the policies map of the 2013-33 Local Plan. Tendring District Council also recently approved planning permission (under planning reference 20/01783/FUL) for the construction of up to 30 'start-up' business units under flexible E(g), B2 and B8 use and associated development, at the Systematic Business Park on Old Ipswich Road immediately to the north of the site the subject of this application. The developer of this site is currently going through the process of discharging pre-commencement planning conditions.

Ardleigh Parish Council considers this assessment of the area surrounding the application site to be misleading. Whilst it is true that there are a number of industrial/storage/distribution sites in the vicinity, none of these reasonably compare to the development proposed. The established employment sites in the area are modest - in terms both of character and impact - and thus appropriate to the modest scale and character of the Parish. They do **not** provide a context favourable to the current proposals.

The site is no more suitable for a major urban-scale employment development of this nature than it would be for a major urban-scale housing development. The presence of a scattering of modest dwellings in the vicinity does not alter this finding and nor does the presence of modest, small-scale employment sites.

6.27 Having regard to the relevant section of the policy as outlined above, the principle of a new food storage and distribution facility and associated logistics yard and office in this location would not be positively supported by Policy PP7. However, Policy PP7 clearly envisages that proposals for employment related development may be acceptable on land outside of these allocations having regard to their potential to support economic growth in the district and the requirements of other policies in this Local Plan. The comment from Ardleigh Parish Council and other third party contributories in respect of the settlement hierarchy in the local plan, the large scale nature of the proposal (major employment development) and that it should be directed to higher tier settlements, as well as general sustainability concerns, are noted. The

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remainder of this report will cover these matters, including the potential for the proposals to support economic growth and it will also assess the proposal against the other policies in the Local Plan in the sections below, including the site's overall sustainability credentials (or lack thereof). The overall balance of the planning considerations is further considered in the section on planning balance below.

The LPA's assessment of the principle of development (from para 6.23) firstly addresses policy PP7. It states the application site is not an allocated site and goes on to recognise that PP7 also provides that "proposals for new employment-related development on land outside of these allocations will be considered having regard to their potential to support economic growth in the district and the requirements of other policies in this Local Plan."

The LPA "notes" the Parish Council's view that development should be located in accordance with the settlement hierarchy.

The LPA then considers the applicants' site sequential test and agrees with their conclusions that none of the allocated sites in PP7 are suitable and available.

The LPA then concludes, as there are no allocated sites available, that "non allocated sites, such as this, need to be considered on its individual planning merits".

The committee report then proceeds to consider the development's accordance with various development management policies of the local plan.

Ardleigh Parish Council has serious concerns with the above officer's approach to the principle of the site's development.

Policy PP7 expects new employment-related development outside of the policy's specific site allocations to be in accordance with other Local Plan policies. It does not, as suggested by the officer, suggest that any unallocated site in any location should be "considered on its individual merits".

In terms of location, the most important "other" policies in the local plan are invariably SPL1 and SPL2.



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The officer's total lack of regard to the Spatial Strategy provided by policies SPL1 and SPL2 is a very significant omission in their assessment of the "principle of development". Their assessment of the site's "principle of development" is consequently inaccurate and fails to prioritise the development plan as the starting point for decision-making, leaving the decision open to legal challenge.

6.29 The LPA's position is that it was reasonable for the SSTS [applicant's Supplementary Sequential Test Statement] to focus on allocated sites in the administrative area of TDC only, as the primary purpose of, and intent behind the proposal is to enable the expansion of the business in the Tendring area, due regard is given to the fact that the business is already a Tendring based business with the current facility located in Harwich, and because of the area's proximity to the two ports of Harwich and Felixstowe.

Ardleigh Parish Council firmly disputes this reasoning. Whilst it is agreed to be appropriate for the SSTS to focus on land in the administrative area of TDC, this does not explain or justify why the SSTS has only considered 6 allocated sites in Tendring and the application site.

Having considered and discounted 7 sites in total (1 being the application site and the other 6 being sites specifically allocated by local policy PP7), the conclusion of the SSTS is this:

*"The only one of the relevant sites that is available and suitable is the application site."*

The applicant has clearly failed to justify why the only sites assessed in the SSTS consist of:

1. Policy PP7's employment site allocations; and
2. An unallocated Greenfield site consisting of best and most versatile agricultural land in the open countryside surrounding a Smaller Rural Settlement.

Clearly, in the event that all 6 employment site allocations were found to be unavailable and unsuitable, a genuine "sequential test" would require alternative sustainable sites in sustainable locations to be considered in advance of unsustainable sites in unsustainable locations.

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The local plan's settlement hierarchy (SPL1) provides the logical order in which sites ought to have been assessed.

The assessment of Greenfield sites in the open countryside should only have occurred once more suitable sites in the built-up areas of the District's various higher-level, sustainable settlements had been thoroughly considered and discounted. This has not occurred.

The applicant's sequential test is, purportedly, based on the NPPF's retail sequential test (see section 3: Methodology of the SSTS).

Current national planning practice guidance (Paragraph: 009 Reference ID: 2b-009-20190722 Revision date: 22 07 2019) provides the following description of the retail sequential test and its purpose:

*"The sequential test guides main town centre uses towards town centre locations first, then, if no town centre locations are available, to edge of centre locations, and, if neither town centre locations nor edge of centre locations are available, to out of centre locations (with preference for accessible sites which are well connected to the town centre)."*

Applying these basic principles to the current development proposals, Ardleigh Parish Council is of the reasonable view that the sequential test should have been conducted as follows:

Firstly, consideration should have been given to the site allocations at policy PP7.

If no site allocations were available or suitable, consideration should then have been given (in order) to land within the settlement development boundaries of the following settlement types:

1. Strategic Urban Settlements;
2. Smaller Urban Settlements;
3. Rural Service Centres; and
4. Smaller Rural Settlements.

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If no land within the settlement boundaries of the above settlements was available or suitable, consideration should then have been given (in order) to land on the edge of the settlement boundaries of the following settlement types:

1. Strategic Urban Settlements;
2. Smaller Urban Settlements;
3. Rural Service Centres; and
4. Smaller Rural Settlements.

Having conducted the above stages, it is only if no land was available on the edge of the above settlements that any consideration should have been given to land located in open countryside away from settlement boundaries.

Ardleigh Parish Council thus maintains its view that the applicant's SSTS is a flawed and contrived form of sequential test that misses out various important sequences.

It is obvious on the face of it that the site was selected in advance of any form of sequential test being conducted and the applicant's SSTS is a poor and transparent attempt to retrospectively justify the inexplicable choice of site.

The implication that the SSTS robustly justifies the selection of this Greenfield site in Ardleigh - when this is the only site it has considered in addition to PP7's 6 site allocations - is farcical.

6.36 Land at Stanton Europark, Parkeston - The SSTS concludes that this site is not sufficient, unavailable and not suitable in terms of its location, site layout and operational requirements. The LPA disagrees that the site is not suitable in terms of its location- the site is conveniently located adjacent to the applicants' existing Harwich facility. The Applicant has explained that the layout of this site would make development of the whole site for the warehousing use proposed significantly compromised however the site is 3.3ha in size and no evidence or supporting information has been provided to back up this claim, and no supporting information has been submitted to demonstrate how the site could be developed to function in tandem with their current site, which is directly adjacent. Notwithstanding this, the Council's Economic Development Team accepts the findings in the SSTS in respect of this site. In addition, the LPA is currently dealing with a separate planning application submitted by the owners of the Stanton

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Europark Site, for a 60 bed hotel, two office buildings, four drive through restaurants, four business units, and as part of ongoing discussions with the Applicants of application ref. 21/01240/FUL, they have indicated that they are not interested in selling the site to interested parties. As such the LPA agrees that the site is not available for these proposals.

The only reason Land at Stanton Europark is agreed by the LPA to be unavailable is because it is currently the subject of a separate planning application.

The LPA finds its size and location (close to the existing facility in Harwich) would be suitable. It is necessary to bear this finding in mind when considering the LPA's assessment of Land at Harwich Valley, East of Pond Hall Farm, Dovercourt, below.

In respect of the location, Harwich is a Strategic Urban Settlement where development of this nature is, as a matter of principle, supported by main strategic policies SPL1 and SPL2. It is also the location of the business's current food storage and distribution facility and the majority of its workforce.

Clearly, therefore, the most appropriate location for the new facility is in Harwich. The applicant has failed by some margin to justify why no unallocated sites in or within proximity of Harwich have been assessed or considered in advance of this distant Greenfield site in rural Ardleigh.

6.37 Land at Harwich Valley, East of Pond Hall Farm, Dovercourt - The SSTS concludes that this site is not available and not suitable in terms of its location and operational requirements. The applicant has explained that the road infrastructure requirements would have made the site financially unviable for Surya Foods however no evidence has been submitted to back up this claim – as such the LPA is discounting this reason. The Applicant has also explained that the site lacks the convenient access to the A12 Strategic Trunk Road, requiring instead the detour from Felixstowe to Harwich, and thence back to the A12, in order to distribute to customers around the country. The LPA accepts that this latter element is a constraint and the desire for a location on or close to the A12 is one of the main drivers of the application for a new warehouse facility as set out in the 'Proposed Development' section above.

Land at Harwich Valley, East of Pond Hall Farm, Dovercourt is adjacent the A120, only

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approximately 2.4 miles (8-minute car journey) from the applicant's existing facility. It is closer to the A12 than the existing facility.

The applicant's "desire" for a location closer to the A12 is not a planning matter<sup>3</sup> and certainly does not justify the selection of this Greenfield site in Ardeleigh.

In terms of the purported "need" for the new facility, TDC's committee report states:

"6.17 The Applicant has provided a detailed explanation in sections 3 and 6 of their Planning, Design and Access Statement setting out the need for the development. **In essence the warehouse is required because the applicant's business is growing and they have run out of storage and distribution space at their current facility in Harwich**, the Applicant has put forward arguments for an urgent requirement for a new storage and distribution centre at the application site, and for the product lines owned by Flying Trade Group. It is understood that their current facility in Harwich would be 'redeveloped' to become mainly the food processing part of the business, however this latter element does not form part of the development proposal." [bold emphasis added].

Evidently, the requirement for a new facility arises because the business has outgrown its existing facility in Harwich. Clearly, the business is viable in its current location in Harwich. It is so viable, in fact, that it is growing and thus requires larger premises. This firmly indicates that the existing location of the business is suitable for its needs and purposes.

The location of Land at Harwich Valley, East of Pond Hall Farm, Dovercourt is modestly more convenient - in terms of its location - than the applicant's existing facility.

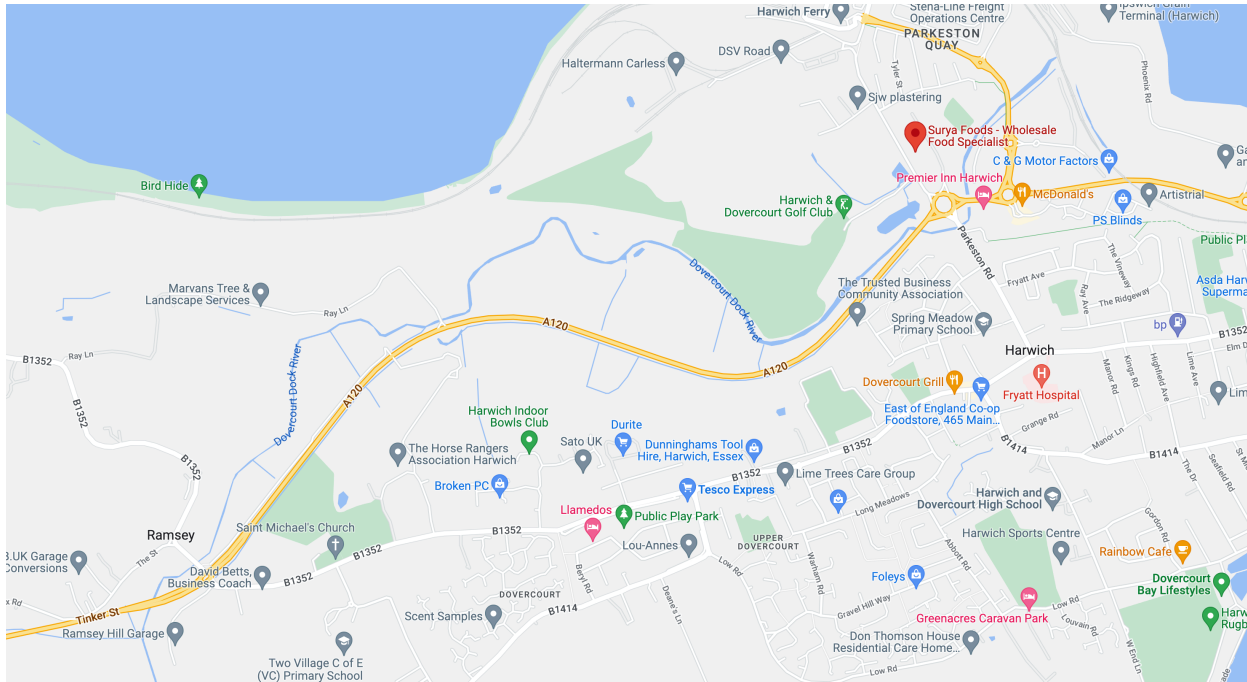
Land at Harwich Valley, East of Pond Hall Farm, Dovercourt is located on the B1352 (c. 0.5 miles or a 1-minute drive from the A120). It is 14.5 miles from the A12 (Crown Interchange). The business's existing facility is located in Harwich, off the A120. It is 16.5 miles from the A12 (Crown Interchange).

It is simply not consistent or reasonable for the LPA to have found the location of

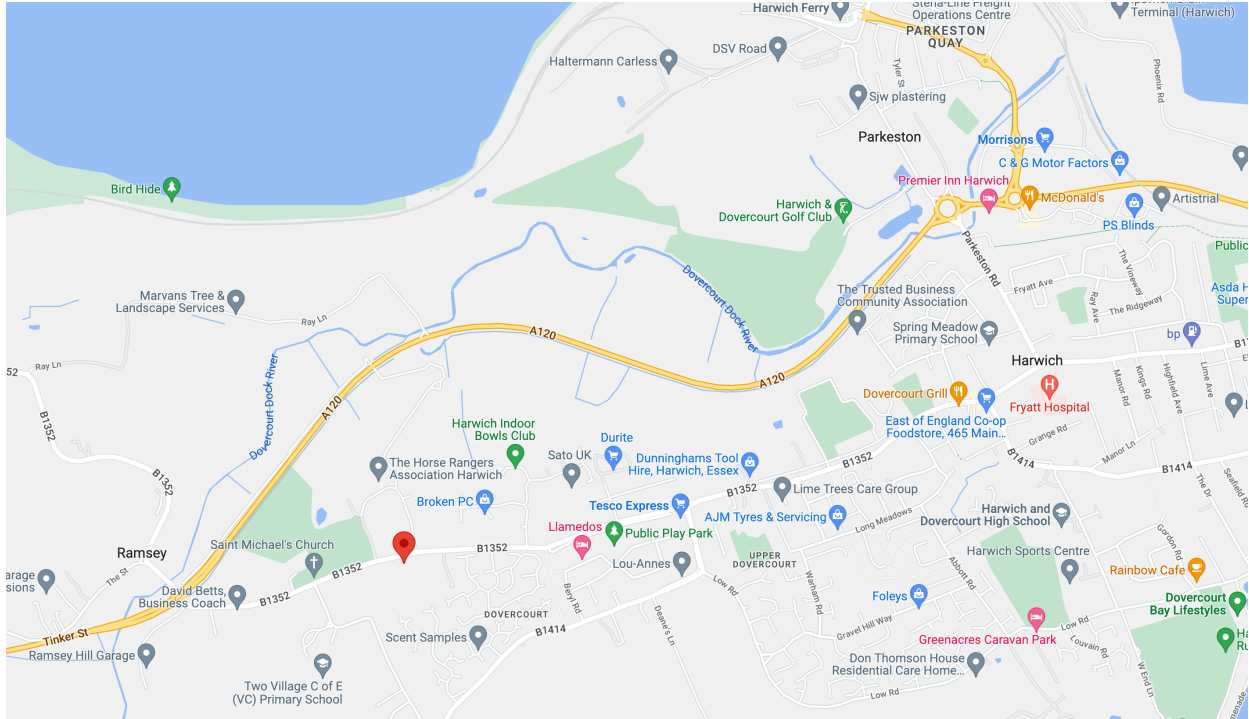
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<sup>3</sup> If the applicant had provided any evidence that a location in exceptionally close proximity of the A12 was required in order to safeguard the viability and/or vitality of the business, then it might be a planning matter. No such evidence has been provided

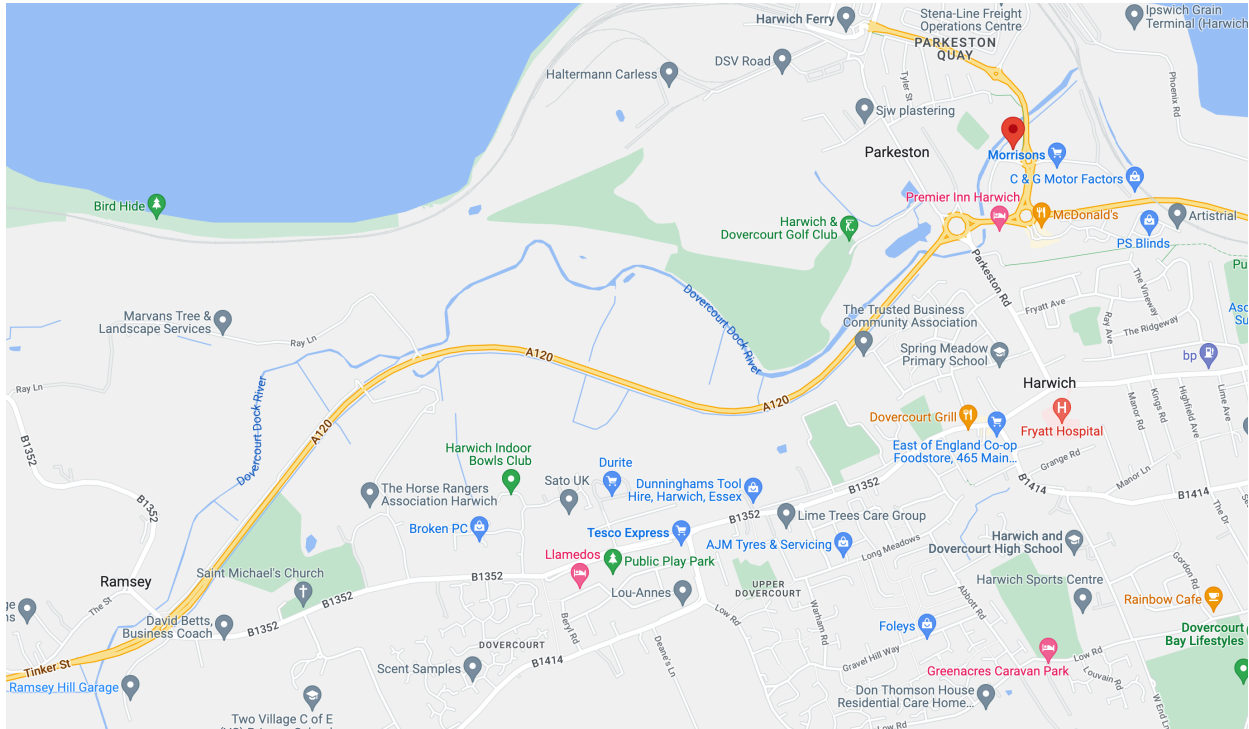
Stanton Europark, Parkeston to be suitable but the location of Land at Harwich Valley, East of Pond Hall Farm, Dovercourt to be unsuitable. For the decision-makers' reference, the location of the business's existing facility plus the locations of the two nearest site allocations are shown on the maps below



*Above: applicant's existing facility marked by a red pin*



Above: Land at Harwich Valley, East of Pond Hall Farm, Dovercourt marked by a red pin. LPA considers this location is not suitable due to its distance from the A12



Above: Land at Stanton Europark, Parkeston marked by a red pin. LPA considers this location is suitable

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Ardleigh Parish Council therefore strongly rejects the view of the officer that Land at Harwich Valley, East of Pond Hall Farm, Dovercourt is unsuitable for the development due to its distance from the A12.

Even if this allocated site's distance from the A12 is less convenient than the site in Ardleigh, this is a private disbenefit that would be borne only by the applicant.

Furthermore, if the development were to be located on Land at Harwich Valley, East of Pond Hall Farm, Dovercourt, all of the harms of the current scheme would be avoided and various additional public benefits would be secured, not least for the business's existing warehouse workers who are based in Harwich.

6.45 The Applicant has put forward arguments that a significant number of new jobs (in excess of 300 jobs) will be created as a direct result of this development – the economic benefits insofar as direct and indirect job creation is concerned is considered to be significant and attracts significant weight.

Elsewhere, the LPA refers to the “creation/retention” of jobs.

It is understood that an unspecified portion of the employment figures quoted by the applicant pertain to “retained” jobs, i.e. not new jobs, just relocated jobs.

Various statutory parties have repeatedly requested clarity from the applicant concerning how many jobs would be created by the development and how many jobs would be retained. This information has never been forthcoming and Ardleigh Parish Council considers any proposed employment figures should be taken with a considerable grain of salt.

Having conducted their own private research, Ardleigh Parish Council understand there are more than 150 employees working from the site's existing facility. Assuming this is accurate, the development would lead to the relocation of c. 150 warehouse jobs from a sustainable urban location to an unsustainable rural location.

The reality of the application is that a valued industrial employer in the built-up, more deprived urban area of Harwich would be relocated to a small, sparsely-populated and reasonably affluent rural area on the other side of the District that is only readily



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accessible via private car.

This is nothing to be celebrated. It is not good planning, it is its antithesis.

Furthermore, if permission is refused for this development, there is every reason to believe that the business will continue to operate from its existing, more suitably and sustainably located premises in Harwich until such time as a more appropriate site is selected. The applicant has not suggested otherwise.

It is questionable, therefore, whether any material positive weight should be given to the development's "retention" of jobs in the District. These jobs will be retained irrespective of the outcome of the current application and, if the current application is rejected, they will be retained in a more appropriate area.

6.50 In conclusion, the Applicant has clearly demonstrated that the proposal has significant potential to support economic growth in the district in accordance with policy PP7. It is also considered that the economic benefits in its entirety will be very significant and will include the retention of a large local employer within the district, securing a significant number of new jobs in the district, as well as safeguarding existing jobs in the district, there will be additional spend in the local and wider economy (as a result of the new job creation and other spin offs), the development will generate inward investment and add a considerable sum to the local economy over the next decade. The basket of economic benefits will therefore be substantial.

All of the same benefits would accrue if the development were to be located in accordance with the development plan and its spatial strategy. The benefits cannot, therefore, be said to provide any compelling reason to take a decision contrary to the development plan.

6.58 The proposal, if approved, will clearly result in the loss of agricultural land and there is therefore conflict with Paragraphs 174 a) and b) of the Framework which weighs against the proposal. This loss will be weighed against other benefits (if any) of the scheme as part of the ultimate planning balance.

It is also in fundamental conflict with emerging policy EP of the Neighbourhood Plan which states that development that is consistent with all other relevant Neighbourhood

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Plan policies will be supported provided (f) there is no permanent loss of best and most versatile agricultural land to non-compatible uses (the onus will be on the developer to establish the quality of any agricultural land proposed for other uses).

### Heritage

6.108 For these reasons the LPA's stance is that the proposal will result in low levels of adverse impacts (i.e. a low level of 'less than substantial harm') on the Grade II Listed Buildings mentioned above, but also to a lesser degree some very low levels of harm to the listed buildings at Thorpe Ley, Blue Barn Cottage and Blue Barn Farmhouse, all to the north, and because there are existing intervening and approved development between these listed buildings and the application site further to the south.

6.109 Following on from the above, paragraph 202 of the Framework states where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.

6.110 In terms of public benefits, the proposal will:

- Generate inward investment in the local economy and will add a very considerable sum to the local and wider regional economy over the next decade – in terms of the heritage balance only moderate weight is attributed to this public benefit because such a benefit will be forthcoming on any other site.
- The proposal will create a considerable number of direct and indirect jobs both as part of the construction phase and the ongoing operational phases of the development (if approved) – again in terms of the heritage balance only moderate weight is attributed to this public benefit because the job creation benefit will be forthcoming on any other site.
- The proposal will result in a food warehouse and distribution facility in a location that is reasonably accessible in terms of its proximity to the A12 and the wider strategic road network, this will assist in food security and more cost-effective food distribution across the UK food distribution network, which will result in a very modest public benefit for the ultimate end users of food (i.e. the wider public).

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The LPA finds, in terms of the heritage balance, that two of the three identified public benefits of the scheme can only attract “moderate weight” for the sole reason that the benefit in question would be forthcoming on any other sites.

Ardleigh Parish Council agrees that this is a reasonable approach to consideration of the scheme’s public benefits. As this approach is adopted in relation to the heritage balance, it is necessary (in the important interests of consistency) that a similar approach is adopted in relation to the overall planning balance.

In relation to the planning balance, the LPA has found as follows:

6.193 Against this harm the benefits to the local and wider economy, the benefits to the food distribution sector in particular, and direct and indirect job retention/creation would be substantial, and very significant weight is given to these benefits.

The LPA has failed to justify why these identified benefits are given moderate weight in the heritage balance yet very significant weight in the planning balance.

The only reason for the provision of “moderate weight” to these benefits in the heritage balance is that the same benefits would be forthcoming on any other site. The same is necessarily true when applying the planning balance.

6.184 The Amended Preliminary Ecological Appraisal (Iceni Ecology, April 2022) also highlights that it is likely bats could be foraging/commuting within or close to the site, and ECC Ecology advised that specific design measures in respect of external lighting would be required. Notwithstanding the issues raised in respect of the impact of external lighting on residential amenity, if planning permission is granted it is considered reasonable and necessary to require full details of all external lighting to also include the specific design measures to minimise the impact on bats.

Bats are a protected species. Paragraph 180 of the NPPF requires that planning permission is refused for a development if it causes significant harm to biodiversity that cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for.

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The development would include 24/7 external lighting<sup>4</sup>, however no details of the lighting scheme have been provided. *The Bat Conservation Trust's Bat Surveys for Professional Ecologists Good Practice Guidelines* is clear that harm to bats can arise due to lighting disturbance.

Without any details of the external lighting scheme it is simply impossible to assess what impact it would have on bats and/or whether and how this impact could be mitigated and to what extent.

The LPA has concluded (paragraph 6.118) that the development's nighttime light pollution would - no matter the mitigation - cause material harm to the amenities of the nearest residential properties. It appears very likely, therefore, that the same external lighting - no matter the mitigation - would also cause material harm to local bat populations, whose presence is evidenced within and close to the site.

As the available evidence indicates a clear potential for significant harm to be caused to biodiversity (due to the effects of 24/7 lighting on known local bat populations) and there is no evidence that this harm can be adequately mitigated or compensated for<sup>5</sup>, paragraph 180 of the NPPF compels the decision-makers to refuse planning permission.

### Planning Balance and Conclusion

6.191 The proposal is for a large storage and distribution warehouse on an unallocated site however it has been adequately demonstrated that the proposal will support economic growth in the district.

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<sup>4</sup> see paragraph 6.118 of the committee report which includes the LPA's following comments on the site's external lighting and night-time pollution: "the HGV yard and associated lighting will also result in light pollution during the hours of darkness [...] the light pollution can be mitigated to some degree by way of a tailored designed lighting scheme however the HGV yard and its inevitable requirement for lights is very likely to result in harmful luminance [...] even with the most effective luminance mitigation because the existing streets and lanes are devoted from streetlights and the introduction of external lighting with the main purpose to provide luminance for a relatively large external HGV yard will be to the detriment of the residents to the east but also (to a lesser degree) those residents further to the north and north east of the site [...] insofar as external lighting is concerned the scheme will therefore result in conflict with relevant parts of policy SPL3 and SP7

<sup>5</sup> the harm could, however, be avoided through locating on an alternative site with less harmful impacts, in accordance with paragraph 180

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6.192 However clear policy conflict has been identified in terms of the landscape harm, and the harmful impact of the ‘in depth’ part of the warehouse and HGV hardstanding area on the character and appearance of Wick Lane (which is a protected lane) and the immediate hinterland to the east, and future public amenity areas to the south of the site, as well as the impact of the large warehouse on residential amenity by way of light pollution and being overbearing and dominant in nature to nearby residents, especially those residents to the north west and east of the site. These harmful elements attracts significant weight in the overall planning balance. The proposal will also result in the loss of agricultural land and there is therefore conflict with Paragraph 174 a) of the Framework, again this weighs against the proposal.

Irrespective of the proposal’s “support [for] economic growth in the district”, its location is still in considerable, fundamental conflict with the recently adopted spatial strategy. Its location conflicts, in particular, with the following most important strategic planning policies:

- Local policy PP7;
- Local policy SPL1;
- Local policy SPL2;
- Emerging Neighbourhood Plan policy GDP.

This is a main harm of the development that should attract significant weight in the overall planning balance.

6.193 Against this harm the benefits to the local and wider economy, the benefits to the food distribution sector in particular, and direct and indirect job retention/creation would be substantial, and very significant weight is given to these benefits.

This is inconsistent with the weight given to the above public benefits in the heritage balance. The heritage balance rightly accepts that those benefits that would be forthcoming on any other site can attract no more than moderate weight. There is no justification for an alternative approach to be taken in relation to the planning balance.

6.194 The harmful heritage elements will be outweighed by public benefits and is therefore neutral in the planning balance.

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Due to the officer's prior conclusion - in relation to the heritage balance - that the public benefits of the development would outweigh the "less than substantial" heritage harm, the "less than substantial" heritage harm has not been weighed in the overall planning balance.

This is inappropriate.

Paragraph 202 of the NPPF provides, *"where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use."*

Whilst heritage harm should be weighed against public benefits, the presence of public benefits does not negate or reverse a finding of heritage harm. A heritage harm will still comprise a heritage harm even if it is found, in relation to the heritage balance, to be outweighed by public benefits.

Paragraph 199 of the NPPF is clear that, *"great weight should be given to the asset's conservation [...] this is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance."*

Of the three public benefits identified in the heritage balance, two attract moderate weight and one attracts very modest weight.

It is agreed, furthermore, that the two moderate benefits would be forthcoming on any other site, including sites that gave rise to no heritage harms, less than substantial or otherwise.

It is only the very modest public benefit that is arguably specific to this site in Ardleigh<sup>6</sup>. Alone, this very modest public benefit would be insufficient to outweigh the finding of "less than substantial" heritage harm.

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<sup>6</sup> It is disputed that the site's location close to the A12 comprises a "public benefit" given that the applicant's existing facility operates out of Harwich successfully and without issue. The applicant has provided no evidence to suggest that the facility's relocation closer to the A12 would provide any tangible public benefits. Whilst it is likely that the modest additional proximity to the A12 will result in a larger profit margin for the business owners, this is a private benefit.

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Case law - *City of Edinburgh Council v Secretary of State for Scotland* [1997] 1 W.L.R. 1447 - has established that the planning balance should include the due weighting of every element of harm and benefit associated with a development.

Whilst this does mean that the public benefits of a scheme should be weighed in the overall planning balance, it also means that any heritage harm must be weighed in the overall planning balance too. This is irrespective of whether, in relation to the heritage balance, the public benefits are felt to outweigh the heritage harm.

It would be inappropriate and inaccurate to consider the scheme's heritage impact to be a "neutral" factor in the planning balance given that the same moderate public benefits and more<sup>7</sup> would accrue on an alternative, more sustainable site (located in accordance with the spatial strategy) with harm of any extent to statutory heritage assets avoided entirely.

6.195 [...] There are also current locational infrastructure shortfalls which will make sustainable means of travelling (such as walking and cycling) to and from the site unattractive to workers and users of the site, however mitigation is proposed and will be secured as part of conditions and a section 106 legal agreement. All these elements are neutral in the planning balance.

The LPA has found elsewhere (6.144) that due to the site's location and the nature of the use, the vast majority of users and visitors to the site would use the private car for transport.

In mitigation and to promote sustainable transport, it is proposed that the applicant will put in place a workplace travel plan.

However, no details of the travel plan have been forthcoming. The purpose of a travel plan is to promote and encourage sustainable travel.

In this location, there is obviously a large question over whether a travel plan - even a

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<sup>7</sup> the social, environmental and economic benefits associated with the retention or introduction of a major employer within a larger and more sustainable urban settlement with a captive workforce would be far greater

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suitably ambitious travel plan - would actually be capable, in any practicable sense, of promoting and encouraging sustainable travel.

For example, the LPA finds at paragraph 6.145 that the developers' contributions have the potential to make Old Ipswich Road less unattractive for cyclists and walking. "Less unattractive" is not encouraging and strongly implies that the route would still be unattractive to walkers and cyclists.

For this reason, the Parish Council considers it is highly likely - irrespective of the specific details of the Travel Plan - that the vast majority of users and visitors to the site would make use of the private car.

The onus is on the applicant to demonstrate otherwise and, in the absence of a draft travel plan or similar - no compelling evidence that the site's severe locational infrastructure shortfalls can be overcome or mitigated has been provided.

This matter is not, therefore, neutral in the planning balance. An additional disbenefit of the scheme is thus the significant harm arising from the site's unsustainable location and sustainable transport deficiencies which is likely to give rise to a heavy reliance on the private car for travel. This is in firm conflict with local policies SP6 and CP1, emerging Neighbourhood Plan policy TP and paragraphs 104, 105, 106, 110, 112 and 113 of the NPPF.

6.196 Ultimately and on balance, the weight given to the substantial benefits as outlined above is considered to very marginally outweigh the significant weight given to the landscape and character harm, as well as the identified harm to residential amenity.

Ardleigh Parish Council disagrees with the application of the planning balance which omits various important harms and policy conflicts. The overall planning balance is considered to lie as follows:

<u>Harms</u>	<u>Benefits</u>
Less than substantial harm to statutory heritage assets - great weight in accordance with paragraph 199 of the NPPF	Benefit to local and wider economy; the food distribution sector in particular - moderate weight



Unsustainable open countryside location in conflict with the recently adopted spatial strategy of the Local Plan (PP13, PP7, SPL1, SPL2) - significant weight having regard to the primacy of the development plan	Substantial direct and indirect job creation - moderate weight
Likely reliance of the vast majority of site users and visitors on the private car, with no legitimate evidence that the lack of sustainable transport options could be appropriately mitigated for with a Travel Plan - significant weight	
Landscape harm (including substantial harm to the landscape character, biodiversity, setting and public enjoyment of the forthcoming Public Open Space on land directly adjacent) - significant weight	
Harm to local character & appearance - significant weight	
Harm to residential amenities - significant weight	
Permanent loss of best and most versatile agricultural land to an urban and non-compatible use - significant weight	
Harm to bats - a protected species which is present within and close to the site - as a result of 24/7 lighting, the details (and necessary mitigation) for which have not been established - very significant weight having regard to <i>Conservation of Habitats and Species Regulations 2017</i>	
Relocation of c. 150 warehouse jobs from the sustainable and more deprived urban settlement of Harwich to the unsustainable and more affluent rural countryside surrounding Ardleigh - significant weight	

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The development is in fundamental conflict with various important strategic and non-strategic development plan policies and there are no material planning considerations that would indicate a decision should be made other than in accordance with the development plan.

The decision-makers are urged to give primacy to the policies of the recently adopted development plan and refuse permission for this non-compliant speculative development for which there is no evidenced unmet need and which, on the LPA's own assessment<sup>8</sup>, is "very finely balanced".

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<sup>8</sup> which, most significantly, omits to give necessary weight to the substantial strategic policy conflicts arising from the site's unsustainable location in the open countryside surrounding a Smaller Rural Settlement