

PLANNING SUPPORTING STATEMENT

DEMOLITION & PARTIAL
REINSTATEMENT OF FIRE-DAMAGED
INDUSTRIAL PREMISES

BALDOCK INDUSTRIAL ESTATE
LONDON ROAD BALDOCK SG7 6NG

17 May 2025

Gateley LEGAL

1. INTRODUCTION

- 1.1 This statement is submitted in support of a planning application (**the Application**) for the restoration of fire-damaged industrial buildings on the long-established industrial site at London Road Baldock (**the Industrial Site**).
- 1.2 The post-war history of activity at the Industrial Site is understood to begin with the Services Electronics Research Laboratory (**SERL**) having been established there in 1945 (with another SERL facility at Harlow). It was the research department for contract valve development. SERL were a specialist material manufacturer in military electronics. In 1976, SERL merged with RRE and SRDE and it was renamed Royal Signals and Radar Establishment (RSRE)¹.
- 1.3 For planning purposes however the Industrial Site appears to have remained known as the “former S.E.R.L. site” and it is referred to under that name in the on-line records of North Hertfordshire Council (**NHC**) including reference to the following two decisions within the planning history :
 - 1.3.1 “Request made pursuant to circular 49/63 (Disposals of Surplus Government Land) as to whether, in the event of an application for planning permission having been made, such permission, would have been granted for the use of the land for light industrial purposes” (81/00226/1); and
 - 1.3.2 “Change of use from research laboratories to industrial. Former S.E.R.L site London Road Baldock SG7...Ref. No. 82/0611/1 ...Status Conditional Permission”.
- 1.4 Already a manufacturing centre whilst operated by SERL effectively as an agency of the armed services, the Industrial Site appears then to have evolved into a private sector facility by the 1980s with the benefit of a planning permission. The decision notice is not available on the NHC website but the term “industrial” used in the summary description would have been understood in the early 1980s in the context of the Use Classes Order 1972 which listed at Class III “ Use as a light industrial building for any purpose“ and Class IV “ use as a general industrial building for any purpose” followed by “special” industrial use classes V to IX.
- 1.5 The Industrial Site therefore has a long history of industrial activity, the principle of which use was authorised by a grant of planning permission nearly half a century ago.
- 1.6 The current proposal does not entail any *material change of use* of the Industrial Site. Planning permission is sought only for operational development in order to demolish and partially reinstate built-space which was affected by a substantial fire on the 11 July 2023 (**the Fire**) when widespread damage occurred.
- 1.7 When therefore the current policies in the adopted development plan and in other current planning-relevant documents such as Hertfordshire County Council (**HCC**)’s Developer Contributions Guidance (**DCG**) the policies and the guidance can only be applied to the operational development for which planning permission is being sought – they cannot be applied to the proposal as if it were a new scheme involving a material change of use whose impacts as a new land use.
- 1.8 Instead all that the insurance-backed reinstatement schemes for fire-damaged premises will generally be seeking is the right to re-construct and re-engineer the damaged structures and external engineered areas to mitigate the economic, social and environmental damage caused by that damage.
- 1.9 In the Government’s research paper “Economic and Social Cost of Fire” (29.06.2023) it is noted that the cost caused by fire annually in the form of property damage was approximately £ 2 billion. It defines “property damage” as the cost of damage to properties as a result of, fire, water, and smoke damage following a fire incident. It includes direct damage to the property itself from the incident, and also wider associated damages, such as to contents, stock, machinery, and business interruption.
- 1.10 These harmful effects are all material considerations respecting which the Planning System has an important role in mitigating by authorising reinstatement works as efficiently as practicable.

¹ Source : The website of the Science Museum Group as at 04.04.2025

- 1.11 The Application is supported by a suite of studies and reports including a Design & Access Statement (**DAS**) in which the following floorplan of the pre-existing built space appears :



- 1.12 It is confirmed that the operational development (“reading” the floorplan from left to right) largely comprises the following principal elements :

1.12.1 The demolition and reconstruction of the damaged industrial built space in the area shaded blue (being the former units 18, 19, 20, 21, 22, 23, 25, 25a, 27, 28, 29, 30, 31-33, 34, 34a, 35, 36, 37 & 38; and

1.12.2 The erection of a party wall to join the reconstructed built space in the area shaded blue with the area shaded green (units 3, 25 & 26) (the existing building in the green shaded area having survived the fire in relatively good condition)

together with all necessary sub-surface, ground level and above-ground level works to reinstate the industrial site to a fully-functioning industrial facility for a range of industrial uses so as to enable the restoration of the lost output resulting from the Fire.

- 1.13 The demolition of the former units 39, 41, 42, 43 & 43a to slab level and the fencing off of the area shaded grey is envisaged – it is inferred that this is to take place in accordance with the permitted development right to demolish and it is outside the scope of the Application.

- 1.14 We have been provided with a copy of the helpful pre-application guidance (**PAG**) bearing reference 24/01552/PRE kindly provided by the local planning authority (**LPA**). The PAG highlighted that : “ ...the Local Planning Authority and Highway Authority may take a more reasonable and practical approach in deciding whether to assess the planning application against current Local Plan planning policies, parking standards and guidance on developer contributions given that the proposal is, by and large, a rebuild of a fire damaged building. That said, a robust case as to why a more flexible approach should be taken with regard to these matters must be clearly set out in the planning statement accompanying the application” (emphasis added).

- 1.15 This statement therefore addresses that issue directly in **section 2** below in which the relevant legal position and certain of the relevant national policy considerations and factors are summarised for the assistance of the LPA and the Highway Authority (**HA**).

- 1.16 A planning decision-taker has a duty to decide all planning applications in accordance with the development plan, unless material considerations indicate otherwise (section 38 (6) of the Planning & Compulsory Purchase Act 2004).
- 1.17 Having set out the *general* case for the necessary flexible approach to how development plan policy is applied where the development essentially involves the reinstatement of fire-damaged premises in section 2, we have therefore then addressed the application of *specific* policies in **section 3**, before reviewing other material considerations in **section 4** below.
- 2. REINSTATEMENT OF FIRE-DAMAGED PREMISES : THE LEGAL AND PLANNING BASIS FOR THE FLEXIBLE APPROACH**
- 2.1 The fundamental point is that the lawful use of the Industrial Site remains for planning purposes as it was before, notwithstanding the damage effected by the Fire. The underlying justification for this conclusion is essentially legal.
- 2.2 In *Welwyn Hatfield Borough Council v Secretary of State for Communities and Local Government and another* [2011] 4 All ER 851 Lord Mance confirmed at paragraph 26 of the judgment (emphases added) : “[26] These cases, although prominent in counsel's submissions, concern a very different problem, and in my view offer no real assistance in the present context. In each case the essential question was whether prior rights of user had been lost, not whether the land or building could still be said to be in or of use for any purpose. More to the point are cases on abandonment, which is possible in relation to prior use (*Hartley v Minister of Housing and Local Government* [1970] 1 QB 413, [1969] 3 All ER 1658, [1970] 2 WLR 1; *Secretary of State for the Environment v Hughes* (2000) 80 P & CR 397, [2000] 1 PLR 76, [2000] EGCS 9), though not in relation to rights acquired under a planning permission still capable of being implemented according to its terms (*Pioneer Aggregates (UK) Ltd v Secretary of State for the Environment* [1985] AC 132, 143B-E, [1984] 2 All ER 358, 82 LGR 488)....”.
- 2.3 There are logically only two possibilities as far as the legal status of the pre-existing industrial use of the Industrial Site is concerned. First, it may be lawful pursuant to the lawful implementation of the 1982 planning permission referred to in paragraph 1.3.2 above. In that instance there cannot be “abandonment” of that lawful use as a result of fire-damage or anything else – (please see above “...not in relation to rights acquired under a planning permission...”).
- 2.4 Second – it may be that the lawful use of the Industrial Site is not rooted in that 1982 planning permission (for example because it was not implemented for whatever reason) in which case by virtue of the decades of use for what would now be classed as Class E (g), B2 or B8 purposes such use would have become lawful by operation of section 171 B of the Town and Country Planning Act as a use against which enforcement action can no longer be taken due to effluxion of time.
- 2.5 In this second type of case, it is possible in principle for abandonment to occur and the “legal tests” for whether or not that is the case are set out in the case of *Hughes* referenced above.
- 2.6 In that case Lord Justice Kennedy confirmed that the four factors which a decision-taker had to take into account in assessing whether or not a use had been abandoned were : (i) the physical condition of the building; (ii) the length of time for which the building had not been used for the relevant purposes (residential in that case) ; (iii) whether it had been used for any other purposes; (iv) and the owner's intentions.
- 2.7 Kennedy LJ discussed the significant role that the 4th factor – the owner's intentions – could play. He stated amongst other things (emphasis added): “ Evaluating all four factors, the inspector was, in my judgment, entitled to conclude, as she did, that residential user had been abandoned. That may not have been the intention of Mr Giddings any more than it was the intention of Mr Hughes; but the intentions of the site's successive owners, although relevant, were not and could not be decisive, because, at the end of the day, the test must be the view to be taken by a reasonable man with knowledge of all of the relevant circumstances. That is, as it seems to me, what the authorities suggest, and it is a conclusion that, as it seems to me, accords with common sense, otherwise a labourer's cottage that an emigrant and his family left 40 years ago, and that has been in ruins for years, cannot cease to be regarded as a residence so long as its owner in America or Australia cherishes the dream that some day he

will return to live there. There has been, in such a situation, in my judgment, a clear abandonment. Contrast the situation where, for example, there has been a fire and the owner is simply getting together the means to replace the dwelling over a limited period of time or to restore it to its former glory. The objective observer in the latter situation, not knowing of the owner's intentions, might temporarily conclude that the use of the property as a residence had been abandoned, where, in reality, it had not, because the intention factor would be determinative the other way".

- 2.8 When therefore the common sense approach is taken towards the 4th test as the Court of Appeal states that it must be, the "fire-damage" cases are examples of situations in which the owner's intentions are "determinative the other way" i.e. determinative that there has been no abandonment of the use. The owner of the Industrial Site is clearly intent on reinstating it to operability to mitigate the adverse effects of the Fire and NHC has an important role to play in facilitating that.
- 2.9 The position in respect of the Industrial Site is therefore that as with the majority of fire-damage cases the underlying lawful use of the site for industrial purposes is not affected by the Fire because either ; (a) if that lawful use is not based on an implemented planning permission then it has clearly not been abandoned because the 4th criterion for assessing whether or not abandonment has occurred could not be satisfied (since the Owner's evident intention to reinstate the building is "...determinative the other way..." in Kennedy LJ's words) or (b) if that lawful use is based on an implemented planning permission (such as the 1982 planning permission authorising "industrial" use of the industrial Site) then it cannot be abandoned as a matter of law anyway (see Mance LJ in the Welwyn Hatfield case cited above ("...not [possible] in relation to rights acquired under a planning permission...").
- 2.10 The consequence is that no material change of use would result from the resumption of industrial activity in the reinstated built space – and the impacts of the use as such, are not therefore within the scope of the Application.
- 2.11 It is therefore not only appropriate but legally necessary that a flexible approach should be adopted towards the Application since impacts of the use of the Industrial Site are not material planning considerations.
- 2.12 It is the operational development – that is to say the consideration of the design and construction and engineering of the physical works to reconstitute the fire-damaged premises which comprise the development.
3. **THE DEVELOPMENT PLAN**
- 3.1 A planning decision-taker has a duty to decide all planning applications in accordance with the development plan, unless material considerations indicate otherwise (section 38 (6) of the Planning & Compulsory Purchase Act 2004).
- 3.2 The relevant elements of the statutory development plan are:
 - 3.2.1 the Baldock, Bygrave and Clothall Neighbourhood Plan (Referendum Version 2021) (the **BBCNP**); and
 - 3.2.2 the North Hertfordshire Local Plan 2011-2031 (the **NHLP**).
- 3.3 The role of – and the importance that must be attached to - a neighbourhood plan such as the BBCNP, is itself the subject of national planning policy in the NPPF. This states at paragraph 21 (in respect of the presumption in favour of sustainable development) that: "The application of the presumption has implications for the way communities engage in neighbourhood planning. Neighbourhood plans should support the delivery of strategic policies contained in local plans or spatial development strategies; and should shape and direct development that is outside of these strategic policies".
- 3.4 The NPPF goes on to state at paragraph 29 (emphasis added): "Neighbourhood planning gives communities the power to develop a shared vision for their area. Neighbourhood plans can shape, direct and help to deliver sustainable development, by influencing local planning decisions as part of the statutory development plan...."

- 3.5 The HLP contains strategic policies which support the Development in the manner set out below, and it does not contain any such policy with which the Development would be in conflict.
- 3.6 The Development is employment-related and utilises 100 % previously-developed land within an existing settlement -Baldock. Paragraph 4.12 of the NHLP (emphasis added) confirms that : “ Based on the policies and allocations of this plan, it is anticipated that approximately four in every five new homes delivered over the plan period will be built within the adjusted settlement boundaries of the towns. These will remain the primary focus for employment, retail and other development...”
- 3.7 Policy SP3: Employment in the HLP provides where material as follows (emphasis added) :“The Council will proactively encourage sustainable economic growth, support new and existing businesses and seek to build on the District’s strengths, location and offer.
- We will
- a) Allocate an adequate supply of employment land to meet the needs of the Functional Economic Market Area over the plan period to 2031. The allocations as shown on the Policies Map are:
- i. east of Baldock BA10 (19.6ha); and
- ii. west of Royston RY9 (10.9ha);
- b) Safeguard Employment Areas within the District’s main settlements, as shown on the Policies Map, to enhance and protect their employment potential;
- c) Work with landowners, developers and, for sites on the edge of the District, adjoining authorities to identify an appropriate amount of employment land to be included through the masterplanning process in strategic housing sites;
- d) Permit an appropriate range of offices, research and development, light industrial or B class employment uses within these areas; ...”.
- 3.8 The applicant wishes to work with NHC to secure an expedited planning permission on the basis that the Industrial Site is in a Employment Area in which NHC is committed to giving “support.. new and existing businesses...” by approving the replacement built space and related demolition, construction and engineering as soon as practicable.
- 3.9 To do so would be wholly in accordance with Policy SP3. As a result of the Fire, the availability of industrial floorspace *has reduced* within a designated Employment Area causing job loss and dispersal to less-sustainable locations.
- 3.10 That is the opposite of what Policy SP3 seeks to achieve - instead of increasing and enhancing the “district’s strengths, locations and offer” the fire-damaged premises in a relatively open/accessible site to the southern side of the Tesco superstore across a two way vehicular carriageway, undermine those strengths, are not usable for the desirable employment purposes promoted by the Policy at this designated Employment Site, and diminish the offer and attraction of this part of Baldock to residents and visitors including shoppers at Tesco who may come from outside the town.
- 3.11 The fire-damaged premises are visually unattractive, difficult to keep secure from criminal or anti-social activity, and detrimental to the quality and character of the environment in this part of the settlement.
- 3.12 It is important in the context of policy SP3 that planning permission is granted for the demolition and reinstatement of 3,900 sq m of built space which can then be made available again for the same range of employment – generating uses it had before.
- 3.13 Paragraph 4.22 of the NHLP (lower case text to policy SP3) confirms that : “ the Council wants to see sustainable economic growth within North Hertfordshire.” The Fire has undermined this objective – the Application restores lost-industrial capacity and accords with this objective. The sustainable economic growth at which the Council aims will not be achieved if barriers are placed in the way of restoring such lost capacity.

- 3.14 Noting the preponderance of the District's working population who work in Stevenage, Welwyn Hatfield, and London (paragraph 4.27) the NHLP goes on to emphasise (para 4.28) : " Trend-based forecasts reflect these patterns and anticipate continued increases in out-commuting from North Hertfordshire over the plan period. Unchecked, this would lead to increased pressure on transport infrastructure that is already under strain at peak periods. *This Plan therefore makes employment provision for offices, research and development, light industrial, general industry and storage and distribution at above modelled levels.*"
- 3.15 The harmful effects of lost capacity resulting from fire or other causes further undermines the achievement of the strategy underpinning the employment policy in the NHLP unless timely restoration of that capacity is facilitated by the local planning authority. The Application seems authority to effect such restoration.
- 3.16 Furthermore and specifically in respect of Baldock, paragraph 4.29 confirms that ; " The settlements of Hitchin, Letchworth Garden City and Baldock are very close together. There is a significant amount of commuting between these settlements". This is confirmed in the BBCNP : " [3.3] However, Baldock presently has a relatively low amount of employment land per person". Baldock's employment base is relatively small compared to its population, so many residents commute to these and other centres (such as Stevenage, Cambridge and London)".
- 3.17 This relative under-provision per person has been exacerbated by the Fire – the Application proposes important restoration of lost capacity to mitigate the under-provision within the settlement".
- 3.18 Paragraph 4.30 notes in respect of the allocation east of Baldock : " Significant employment allocation for certain E class uses (office, research and development, industrial processes), B2 (industrial) and B8 (storage and distribution) class uses will be developed out at the east of Baldock, supporting the proposed increase in residential development in the town (see Policy SP8). The allocation benefits from proximity to existing employment uses as well as existing and planned residential development. It has access to the strategic road network via the A505 Baldock Bypass." (emphasis added).
- 3.19 The potential increase in residential development was commented on in the BBCNP as follows : " 3.11 The new North Hertfordshire Local Plan proposes that 3,298 homes are built in and around Baldock between 2011 and 2031, together with a new employment area to the north of Royston Road (Figure 2). This will not happen all at once, and indeed is likely to take much longer than estimated in the Local Plan. Major sites take time to build – often much longer than anticipated – and the intention of Hertfordshire County Council is to phase the developments on its land (which includes all of the sites at the edge of the town). Even so, the rate and scale of change is likely to be much greater than Baldock has experienced in the past. This will create challenges, but also opportunities".
- 3.20 Irrespective of the timeframe over which such growth would take place, it is directly contrary to the aspirations of the BBCNP and the HLP to leave unrestored significant industrial capacity lost to the Fire, on brownfield land within Baldock. Instead of keeping pace with population growth that lost capacity represents a step backwards – it must be restored as soon as reasonably practicable.
- 3.21 The Council's objectives for Baldock are therefore directly harmed by the Fire – lost employment capacity within the settlement is the opposite of what the NHLP is seeking to achieve and the Application offers an early opportunity to restore this in anticipation – amongst other things – of population growth during the plan period.
- 3.22 Policy SP9 (Design) affirms that : " The Council considers good design to be a key aspect of sustainable development. We will: a) Support new development where it is well designed and located and responds positively to its local context;...". This position is reinforced through the lower case text in paragraph 4.121 as follows : " Design is central to good planning. The achievement of high quality, sustainable design is required by Government guidance. Planning policies should promote high quality, inclusive design in layouts and buildings in terms of function and impact. Design which does not make the most of opportunities to improve the character and quality of an area should be refused"

- 3.23 The Application proposes good quality industrial space built to today's standards of sustainable construction and in conformity with the Building Regulations as they now are. This restoration of severely fire-damaged buildings will be a direct improvement to the character and appearance of the area, in terms of visual appearance and street scene, restoration of active frontage and other positives.
- 3.24 It is important to acknowledge that it will also result in better-quality industrial space (subject always to insurance and funding parameters) than existed there before the Fire. A safer more resilient and sustainable industrial building will result with a significant contribution towards the quality of the immediate environment at and in the vicinity of the Industrial Site.
- 3.25 The need to restore and improve the built environment by authorising the Development as soon as practicable, is reinforced by its proximity to the Tesco Building. The BBCNP identifies this as being of : " Local architectural interest: special architectural design and traditional craftsmanship.[and of] Local historic interest: important to the local industrial history of Baldock. [and indicates that this] Acts as an important focal point and landmark within the town". The dilapidated fire-damaged structures detract from this as the Industrial Site is immediately opposite one face of the Tesco building with only intervening carriageway.
- 3.26 Policy T2 states that ; " Planning permission will be granted provided that: a) ... b) Parking for non-residential development is provided having regard to the standards for non-residential development set out in the relevant Supplementary Planning Document; c) Proposals have regard to relevant Supplementary Planning Documents, strategies or advice and; d) Applicants clearly identify how they provide for all likely types of parking demand and demonstrate that parking will be safe and of a design and layout that will function satisfactorily. Variations from these standards will only be considered where applicants can demonstrate that the accessibility, type, scale, mix and use of the development; the availability of and opportunities for public transport; local car ownership levels; and on-street conditions justify such variations."
- 3.27 The Application crucially does not : (a) seek to change the existing lawful use of the Industrial Site ; or (b) seek to alter the pre-existing level of car-parking at the Industrial Site as it was *before the Fire*.
- 3.28 There is no proposed change to the " accessibility, type, scale, mix and use of the development" and this justifies variation from the parking standards – strictly-speaking those standards are not applicable to the Application insofar as it relates to operational development only without any material change of use.
- 3.29 Furthermore the availability and opportunities for public transport use remain as before. The area in which the Industrial Site is situated is dominated by the Tesco Extra site – this offers over 650 parking spaces and appears to permit 3 hours free parking. This also justifies variation from the parking standards.
- 3.30 The bus services which are available to customers wishing to visit the Tesco site are also available to those working at or otherwise visiting the Industrial Site. They include services 90 and 91. The 90 service runs from Royston to Letchworth via Ashwell, while the 91 service also connects Royston and Letchworth but uses a different route. Services 55, 98, and 37 also serve the area.
- 3.31 Services 91 (Royston) and 37 (Buntingford) appear to operate on weekdays between 0846 hrs and 1946 hours (considered as a combined timetable) using a bus stop on the High Street near Pinnocks Lane, adjacent to The Boot public house.
- 3.32 Services 37 (Stevenage), 91 (Letchworth) and 98 (Hitchin) appear to operate from a bus stop opposite The Boot public house.
- 3.33 When the LPA granted planning permission (reference 20/01098/FP) for extension and change of use of the Boot Public House following its closure, the Council described its location as follows : " The former public house The Boot which ceased trading in November 2019, is a two storey building with an existing parking area for 6 cars to the side of the property located on High street just outside the town centre area opposite Tescos. The property is surrounded by residential properties. It shares boundaries with 71a High street, 83 High Street and a number of residential properties on Pinnocks Lane" (emphasis added).

- 3.34 The availability of significant public transport accessibility therefore also justifies variation from the parking standards.
- 3.35 Finally on-street conditions themselves justify variation from the parking standards; the Development would recreate the pre-existing general situation in parking terms, with two aprons of parking space available on the long frontages of the building each permitting single row of spaces. The available off-set between the carriageway and the front of the building would accommodate cars, vans and light lorries consistent with the character of the sub-divided industrial units that would be created /recreated within the building.
- 3.36 There was no significant difficulty arising in respect of car-parking impact on the local highway network before the Fire and no reason to consider that there would be after the Fire – damaged industrial capacity is restored as a result of the Development. This also justifies a degree of variation from the standards accordingly and the adopted policy expressly recognises that there will be such variation.

The Development Plan as a Whole

- 3.37 It follows that the Development is in accordance with the development plan when it is considered fairly and as a whole.

4. NATIONAL PLANNING POLICY & OTHER MATERIAL CONSIDERATIONS

The NPPF : the Development as a Whole

- 4.1 The latest iteration of the NPPF was issued in December 2024 (and slightly amended subsequently). This application seeks planning permission for a sustainable development for the purposes of the NPPF.

The Presumption in Favour of Sustainable Development

- 4.2 Paragraph 11 of the NPPF confirms that “*Plans and decisions should apply a presumption in favour of sustainable development...*” and for decision-taking this means “... c) *approving development proposals that accord with an up-to-date development plan without delay...*”
- 4.3 Since the Development as a whole can accord with all the relevant policies of the development plan (please see section 4 above) according to paragraph 11, planning permission should be granted.
- 4.4 The presumption in favour of development in paragraph 11 of the NPPF is engaged and the proposal merits timely approval accordingly.
- 4.5 Furthermore paragraphs 7 and 8 of the NPPF confirm where material : “ 7 The purpose of the planning system is to contribute to the achievement of sustainable development, including the provision of homes, commercial development and supporting infrastructure in a sustainable manner....8 Achieving sustainable development means that the planning system has three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives): an economic objective – to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure..”.
- 4.6 Fire-damage to commercial premises is very harmful to the UK economy – please see above. The restoration of lost industrial capacity is fully consistent with the economic objective as a strand of sustainable development.
- 4.7 This is reinforced by paragraph 86 : “ Planning policies and decisions should help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development...”(emphasis added).
- 4.8 This NPPF policy should therefore also be given significant weight in favour of the Development.
- 4.9 Crucially, policy 125 provides in express terms : “ Planning policies and decisions should: ...; (c) give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs, proposals for which should be approved unless

substantial harm would be caused, and support appropriate opportunities to remediate despoiled, degraded, derelict, contaminated or unstable land;(d) promote and support the development of under-utilised land and buildings...".

- 4.10 100 % of the Development would be sited on previously-developed land as defined in the NPPF; "Land which has been lawfully developed and is or was occupied by a permanent structure and any fixed surface infrastructure associated with it, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed). It also includes land comprising large areas of fixed surface infrastructure such as large areas of hardstanding which have been lawfully developed...". Brownfield land is equated with previously-developed land in the glossary to the NPPF.
- 4.11 The NPPF therefore lends significant weight in favour of the Development over and above the support for it which is to be found within the adopted development plan.

5. **OTHER MATERIAL CONSIDERATIONS**

- 5.1 The Industrial Site has a long-standing lawful use for industrial purposes and could be used for such purposes without planning permission. Furthermore pursuant to the General Permitted Development Order 2015 the Industrial Site is already benefited by the permissions granted by part 7 of Schedule 2 including Class H (the erection, extension or alteration of an industrial building or a warehouse).

- 5.2 Those existing use rights and permitted development rights are a "fall-back" position and a further material consideration weighing in favour of the grant of planning permission for the Development.

- 5.3 In *Gambone v Secretary of State for Communities and Local Government* [2014] EWHC 952 (Admin) Mr Ian Dove QC (as he then was), sitting as a deputy judge of the High Court, reviewed a number of authorities placed before him dealing with considerations which had been identified in earlier authorities as a "fall-back" argument. He concluded:

"26. The fall-back argument is in truth no more or less than an approach to material considerations in circumstances where there are, or may be, the opportunity to use land in a particular way, the effects of which will need to be taken into account by the decision maker. That involves a two stage approach. The first stage of that approach is to decide whether or not the way in which the land may be developed is a matter which amounts to a material consideration. It will amount to a material consideration on the authorities, in my view, where there is a greater than theoretical possibility that that development might take place. It could be development for which there is already planning permission, or it could be development that is already in situ. It can also be development which by virtue of the operation of legal entitlements, such as the General Permitted Development Order, could take place.

27. Once the question of whether or not it is material to the decision has been concluded, applying that threshold of theoretical possibility, the question which then arises for the decision maker is as to what weight should be attached to it. The weight which might be attached to it will vary materially from case to case and will be particularly fact sensitive..."

- 5.4 In respect of the Industrial Site it is clearly preferable that the Development is authorised by planning permission in response to the Application, rather than restoration being carried out pursuant to the GPDO15 but the existence of the limited rights to do so under the GPDO15 and the significant existing use rights are a material consideration insofar as a sensible grant of fresh planning permission for the specific Development detailed in the Application would produce a more sustainable development rather forcing the landowner to rely on a combination of permitted development rights and lawful use to try to recover value from the Industrial Site after the Fire.

- 5.5 The National Planning Practice Guidance (NPPG) comments on paragraph 125 (c) of the NPPF as follows : " How does policy 125(c) (substantial weight to brownfield land proposals) apply to decision making? Paragraph 125(c) of the National Planning Policy Framework states planning policies and decisions should give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs, proposals for which should be approved unless substantial harm would be caused. When determining such proposals, decision makers will need to take account of this policy alongside other policies within the Framework taken as a whole. As an example, where a proposal would cause less

than substantial harm to the significance of a designated heritage asset, paragraph 215 (which requires the public benefits of the proposals to be weighed against the less than substantial harm) would still need to be applied. Where relevant, decision makers will need to provide a clear articulation of how paragraph 125(c) has been demonstrably considered and applied alongside other policies”.

5.6 The adopted development plan has identified a need for employment development within Baldock including in order to simply keep pace with projected population growth over the plan period of the NHLP (please see above). The Industrial Site is a 100 % brownfield opportunity.

5.7 The concern expressed in the NPPG respecting impact on heritage assets does not arise. On the contrary, the fact that the Tesco Building is a locally designated asset in the BBCNP weighs in favour of the grant of planning permission since the Development will greatly improve the current appearance and condition of the Industrial Site.

5.8 There is therefore no reason to give anything less than significant weight to the value of re-using brownfield land in determining this Application since granting planning permission will enable this positive planning outcome in the interests of all concerned.

6. **CONCLUSION**

6.1 The Industrial Site has a long history of industrial activity, the principle of which use was authorised by a grant of planning permission nearly half a century ago.

6.2 The current proposal does not entail any *material change of use* of the Industrial Site. Planning permission is sought only for operational development in order to demolish and partially reinstate built-space which was affected by the Fire.

6.3 Restoring the lost industrial capacity is a highly desirable outcome. It accords with the policies of the NHLP including SP3 (employment), SP9 (Design), and relevant supporting policies in the BBCNP specific to Baldock.

6.4 It is not contrary to policy T2 because that policy expressly permits variation from parking standards, and there are strong justifications for this including good bus service accessibility, the proximity of a very large car-parking area at the neighbouring Tesco site, the practical effectiveness of the aprons of single-row parking spaces which would be recreated as part of the Development, and the fact that what the Development would deliver is restoration of a previous workable state of affairs.

6.5 Development proposals which accord with the development plan benefit from the statutory presumption in favour of the grant of planning permission. That presumption can be rebutted by material considerations but there are no such considerations which weigh against the Development.

6.6 On the contrary the key considerations in the NPPF also weigh in favour of the grant of planning permission for this economically sustainable proposal on a brownfield site with decades of history of industrial use.

6.7 Paragraph 11 of the NPPF directs that planning permission for proposals that accord with the plan should be granted without delay and there are no considerations which fall with the exceptions to that national policy.

6.8 Furthermore the NPPF's policies on brownfield land re-use are always of significant weight in their own terms and this proposal involves 100 % brownfield land re-use.

6.9 Finally it is important to acknowledge that the Development would restore needed industrial capacity lost as a result of a fire and the ability to do so through insurance-backed funding is itself an important economic consideration. Public confidence in both the planning system and in the system of building insurance within the UK could be undermined if such applications for consent to carry out restoration projects were being refused with any frequency.

- 6.10 In Westminster City Council v Great Portland Estates plc [1985] AC 661, 670 Lord Scarman drew attention to the relevance to planning decisions, on occasion, of personal considerations. He stated (emphasis added) : "Personal circumstances of an occupier, personal hardship, the difficulties of businesses which are of value to the character of a community are not to be ignored in the administration of planning control. It would be inhuman pedantry to exclude from the control of our environment the human factor. The human factor is always present, of course, indirectly as the background to the consideration of the character of land use. ...".
- 6.11 Local landowners and businesses who are the victims of the Fire in commercial terms deserve the support of the local planning authority and their personal situation is itself a material consideration in favour of the approval of the Development in planning terms. There is a public interest in giving due weight to the hardship they have suffered and are suffering as a result of the Fire; as a matter of law this too is a material consideration in favour of granting approval for the Development.
- 6.12 There are no interests of acknowledged planning importance which would weigh against the approval of the Development in this case.