

Examination of the Welwyn Hatfield Local Plan

Council's Hearing Statement for Matter 1:

Legal Soundness & Duty to Co-operate

7 September 2017

(For Hearing Session 21-22 September 2017)



Examination into the Welwyn Hatfield Local Plan

Matter 1: Legal Soundness & Duty to Co-operate

21-22 September 2017

1) Has the DPD been prepared in accordance with the Local Development Scheme?

Welwyn Hatfield response

- a) Yes, the Welwyn Hatfield Local Plan Proposed Submission Document (2016) has been prepared in accordance with the Local Development Scheme (ORD/3) agreed by Cabinet on 4th April 2017. This is demonstrated more fully in the Legal Compliance Self-Assessment Checklist (ORD/4 – Table 1 row 1; and Table 5 row 1), which confirms that the LDS has been regularly updated throughout plan preparation. The dates set out for different stages in the preparation of the Plan have been met, including consultation on the Proposed Submission between 30 August and 24 October 2016. ORD/4 (Table 5 – row 1) confirms that the Plan was submitted in accordance with the timescales set out in the LDS.
- b) A number of objections were raised, in relation to compliance with the Local Development Scheme during the proposed submission stage of the plan making process. But the issues raised and the changes sought relate to the soundness of the Plan, its supporting evidence base and other legal matters.

2) Is the DPD in general accordance with the Statement of Community Involvement and its public consultation requirements?

Welwyn Hatfield response

- a) Yes, the Local Plan is in general accordance with the Statement of Community Involvement (SCI) date (ORD/1 – Section 3) and its public consultation requirements. The Council's legal compliance self-assessment (ORD/4 – Tables 1-5) shows that consultation has followed the principles and requirements set out in the SCI.
- b) The Regulation 22 Consultation Statement (SUB/1) and its appendices (SUB/1a to SUB/1g) provide details of the consultation undertaken during plan preparation. These documents demonstrate that what the Council did, how it consulted and who it consulted, in compliance with the public consultation requirements in Section 4.1 – 4.2 of the SCI (ORD/1).
- c) The Council has considered those representations received during the proposed submission consultation expressing concern that the requirements of the SCI have not been met. These raise a number of issues some of which do not relate to the requirements of the SCI. A number of respondents consider that there was not meaningful engagement at an early stage. The key changes requested by respondents relevant to the requirements of the SCI can be summarised as follows:

- Demonstrate how the outcomes of previous consultation have been taken into account in accordance with the SCI.
 - Re-consult to engage with the public in less technical terms, ensuring that all residents are informed- including those outside the borough affected by development at Symondshyde- and that hard to reach groups are better engaged.
- d) For the following reasons the Council considers that the Local Plan has been prepared in general accordance with the SCI.
- Consultation statements have been published after each stage of consultation showing the issues raised and how all representations are taken into account. The Council must balance local opinion with responses from statutory consultees and its obligations under national planning policy, in order for the plan to be found sound. It may well be impossible to satisfy all respondents but this does not constitute a failure to comply with the SCI.
 - Early engagement commenced in 2007 at the Pre-Issues and Options stage and all adjoining authorities and other key stakeholders in the SCI have been consulted. The Pre-Issues and Options Consultation Statement (SUB/1g) highlights the extensive community engagement carried out at pre-production stage. Subsequently, the consultation statements (SUB1a-f) set out the various consultations undertaken at the plan preparation stage. Representations at various stages have promoted different and conflicting distribution strategies including requests for the Council to consider options for new settlements. The site at Symondshyde was promoted in response to the Local Plan Consultation Document (2015) by the landowner, as were a number of other new sites. The Council notified members of the public and other consultees of the existence of the new sites and held two awareness raising events in October and November 2015 where officers were available to answer questions on the sites. The site was subsequently included in the Proposed Submission version of the Local Plan and subject to consultation.
 - The Council acknowledge that the Local Plan is complex. However, in accordance with the SCI, summary guides have been produced and local events have been held for anyone with an interest to attend and ask questions. Equally, the Council has ensured that community representatives and those individuals within and outside the borough who are registered on the consultation database have been directly notified of consultation events.
 - Measures set out in the SCI to increase engagement with 'hard to reach groups' (holding consultation events, producing user-friendly summaries of the proposals, publicising the proposals through a variety of media including social media, the radio etc.) have been carried out, so there is not considered to be any issue in terms of compliance with the SCI.
 - It is the Council's policy not to directly notify every resident by letter of a consultation event. Instead it uses a variety of measures to raise awareness including articles in the Council magazine 'Life' which is distributed to every

household and advertisements in the local newspaper. Whilst residents outside the borough do not receive Life Magazine, the Council has ensured that community representatives (such as Parish Councils and Community Groups) were directly notified of consultations. This approach is consistent with the SCI and no further consultation is deemed necessary. The large number of responses received about Symondshyde from outside the borough means that there is a general awareness of the proposals in the Plan.

- e) In summary, the Council is satisfied the proposed changes identified by respondents are not required because the Local Plan has been developed in accordance with the SCI and therefore meets the legal test.

3) Has the DPD been subjected to Sustainability Appraisal? Are its conclusions sound and have they been taken into account in the DPD?

Welwyn Hatfield response

- a) Sustainability Appraisal has been carried out at each stage in the production of the plan as set out in the Overview Topic Paper (TPA/1) by the Council's consultants LUC. The main SA Report to accompany the Local Plan is the August 2016 Draft Local Plan Proposed Submission Sustainability Appraisal (SUB/3), along with the Sustainability Appraisal Errata (SUB/7) and supporting documents (SA/6a – Annex 1, SA/6b – Appendices, and SA/6c – Non-Technical Summary).
- b) The SA process is sound as it is in conformity with relevant legislation and guidance, including the SEA Regulations and guidance included in the Planning Practice Guidance (PPG). Table 1.1 of the SA (SUB/3) shows where the requirements of the SEA Regulations have been met in the SA. The Council is satisfied that reasonable options for the level and distribution of growth and the allocated sites have been considered. Section 6 of the SA report 2016 (SUB/3) describes the findings of the SA of the Proposed Submission Local Plan and summarises the reasonable alternatives considered in the SA. Sites that were considered to be reasonable alternatives have been assessed in the SA (Annex 1). The Council's rationale for identifying reasonable alternatives and reasons for selection or rejection of alternatives is detailed in Section 5 and Appendix 5 of the SA Report (SUB/3).
- c) In accordance with the PPG all reasonable alternatives were assessed in the same level of detail, as all were assessed against the objectives and decision-making criteria of the SA Framework, and for site alternatives using the same assumptions (as presented in Appendix 2 of the 2016 SA Report (SUB/3)). Each version of the plan was subject to SA, which enabled the SA to be an iterative process that informed decisions taken by the Council with regards to the Local Plan and its contents and thus it was an integral part of the process, as required by the NPPF¹.
- d) Appendix 1 of the 2016 SA Report details the consultation responses received in relation to each previous round of SA and how these were taken into account in subsequent iterations of the SA. During the consultation on the SA of the Draft Proposed Submission Local Plan, the Council received 36 representations on the

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SA². A further 144 comments were received on the legal compliance of the SA. LUC considered these and provided advice to the Council on any points that had implications for the SA. A small number of comments identified typographical and minor errors in the SA, which were addressed via publication of an Errata Sheet in April 2017 (SUB/7). These changes did not identify any additional significant effects and therefore it is considered that the SA Report as published remains valid. A number of representations related to the soundness of the Plan rather than the SA itself, other comments include concern about the adequacy of the assessment and, whether all the reasonable alternatives had been identified and properly assessed. A full summary of the issues raised during the consultation and the response from the Council is set out in Appendix H1 of the Regulation 22 Statement (SUB/1).

- e) Natural England and the Environment Agency did not make any comments relating to the SA of the Proposed Submission Local Plan. The response from Historic England refers to the SA to support one of its comments and makes no suggested changes to the contents of the SA.
- f) The SA Consultants (LUC) worked closely with the Borough Council officers throughout the plan preparation process. This has enabled the SA to play an influential role throughout, from influencing the overall strategy to the selection of sites for inclusion in the Proposed Submission Local Plan. At each stage of the Local Plan preparation and SA process, LUC has provided Welwyn Hatfield Borough Council with recommendations for changes to the Local Plan in order to improve its likelihood of delivering sustainable development. For example, the SA of the Emerging Core Strategy identified that the proposed focus of development on the two main towns of Welwyn Garden City and Hatfield could lead to some of the villages not being able to meet their needs. As a result, and in response to consultation comments, the Proposed Submission Local Plan provides for a greater proportion of development at the villages, whilst still retaining an urban focus.
- g) The Proposed Submission Local Plan used the SA findings to inform the site selection process, alongside other evidence based studies, to identify suitable sites for allocation. Appendix 5 of the SA (SA/5) sets out the Council's reasons for the inclusion or exclusion of each site option from the Local Plan, which draw on the results of the SA (along with other factors).
- h) In addition, the Employment Site Selection Background Paper 2016 (ECO/8, 8a) and the Housing Sites Selection Background Paper 2016 (HOU/20, 20a) explain how the SA informed the Council's selection of employment and housing sites, particularly in terms of considering the significant positive and negative effects arising from each option. The SA has also informed the monitoring framework³ in the Local Plan.
- i) In summary, the SA is considered sound and the Council has met its legal requirements.

² Some of these were multiple responses from the same groups or individuals.

³ Table 7.1 of SUB/3, e.g. Objective 2.2, page 179 – 2nd and 3rd bullet points informed monitoring indicators EN9 and EN10 (Table 20, page 222, Welwyn Hatfield Draft Local Plan Proposed Submission – SUB/6)

4) Has a Habitat Regulations Assessment been prepared? Are its conclusions sound and have they been taken into account in the DPD?

Welwyn Hatfield response

- a) The DPD was subject to HRA and submission document SUB/2 presents the Draft Local Plan Proposed Submission Habitats Regulations Assessment Report (2016). This HRA concluded that the Local Plan would not lead to adverse effects on the integrity of any European sites either alone or in-combination with other plans. The HRA was undertaken in line with best practice guidance.
- b) During the consultation on the HRA of the Draft Proposed Submission Local Plan, the Council received 5 representations on the content of the HRA only two of them felt the HRA was not prepared properly relating to two specific sites proposed for development in the Plan. A summary of the issues raised during the consultation and the response from the Council is set out in Appendix H1 of the Regulation 22 Statement (SUB/1).
- c) Natural England's response to consultation on this document stated that the HRA is 'well-evidenced and logically presented' and supported the conclusions of the HRA. As such, the HRA conclusions are considered to be sound.
- d) In a draft version of the HRA sent to the Council in June 2016, LUC recommended additional wording to provide additional safeguards in support of Policy SP13: Infrastructure Delivery. This recommendation has been accepted by Welwyn Hatfield Borough Council, and suitable wording inserted into the Proposed Submission Local Plan. As a result, there are no outstanding recommendations arising from the HRA.

5) Has the DPD been prepared in full accordance with the relevant parts of the Planning and Compulsory Purchase Act 2004 and the T&CP (Local Plan) (England) Regulations 2012 as amended?

Welwyn Hatfield response

- a) Yes, the Welwyn Hatfield Local Plan Proposed Submission Document (2016) has been prepared in general accordance with the Planning and Compulsory Act and the T&CP (Local Plan) (England) Regulations 2012. The Legal Compliance Self-Assessment Checklist (ORD/4 – Tables 1 -5) provides further information on how we have met these legislative and regulatory requirements.
- b) A number of representations were received relating to non-compliance with the regulatory requirements for consultation. In their view, representors considered that the Council had not undertaken early, meaningful, effective consultation with the relevant individuals/organisations (including those in neighbouring areas) and that their views have not informed the Plan. Hence, they were suggesting that the consultation process should be repeated.
- c) The 2012 Regulations set out two key stages for consultation - Regulations 18 and 19. Regulation 18 relates to consultation during the preparation of a Local Plan

where the requirement is to consult on what the Local Plan ought to contain. Regulation 19 relates to consultation on the proposed submission document. It is the NPPF and not the Regulations which refers to early and meaningful consultation in paragraph 155 where it makes reference to such engagement with neighbourhoods, local organisations and businesses with a view to as far as possible agreeing a collective vision and priorities for sustainable development in the area. Consultation on the preparation of the Plan has been ongoing and extensive since 2007 as is demonstrated by the Regulation 22 statement and its appendices (sub/1, 1a-1g).

6) Has the DPD had regard to appropriate national policy?

Welwyn Hatfield response

- a) Yes The Council is satisfied that the Local Plan Proposed Submission Document (2016) has had regard to National Planning Policy Framework (2012) throughout the plan making process.
- b) The Soundness Self-Assessment Checklist (ORD/5) provides further information on how specific sections of the Plan are considered to be generally consistent with National Policy.

7) Has the Council fulfilled the requirements of the duty to cooperate?

Welwyn Hatfield response

- a) **The requirements of the duty to cooperate:** The duty to cooperate (DtC) is a legal duty on local planning authorities, county councils (in England) and public bodies to engage constructively, actively and on an ongoing basis to maximise the effectiveness of Local Plan preparation in the context of strategic cross-boundary matters. Paragraphs 156 and 178 of the NPPF are relevant and guidance is set out in national Planning Practice Guidance (PPG) '*Duty to cooperate*'⁴.
- b) The PPG emphasises the importance of ensuring the involvement of infrastructure providers in Local Plan preparation to ensure the proper planning of key infrastructure such as minerals, waste, transport, energy, water and education. Cooperation should produce effective policies on cross boundary matters and actions may include the preparation of joint policies, undertaking joint research and evidence gathering, and entering into formal agreements, such as a memorandum of understanding which evidences an agreed position ensuring that an effective strategy will be in place for strategic matters when Plans are adopted. Cooperation should continue until plans are submitted for examination and beyond, into delivery and review. Authorities should adopt a pragmatic approach in deciding the area over which cooperation is needed and who to work with, depending on the particular issues.
- c) Before submitting a plan, an authority should have explored all available options for delivering the planning strategy within their own area and have approached other authorities with whom it would be sensible to work. Local planning authorities are not

⁴ NAT/2: Specifically: <https://www.gov.uk/guidance/duty-to-cooperate>

obliged to accept the unmet needs of other planning authorities if they have robust evidence that this would be inconsistent with the policies in the NPPF, for example, policies on Green Belt or other environmental constraints.

- d) **How the Council fulfilled the requirements:** The Council's Duty to Cooperate Statement (DTC/3) describes the local context for cooperation on strategic matters and the activities carried out at key stages of plan preparation. Consistent with the national guidance on the DtC, the Council has taken a pragmatic approach relevant to the particular issue. DTC/3 describes where Welwyn Hatfield has been working, and continues to work, as part of large strategic groups to deal with matters that affect multiple areas and DtC bodies. DtC activity with key partners on a range of strategic cross-boundary matters including housing market areas, housing need, employment, land supply, Green Belt, retail development, infrastructure, climate change, minerals and waste, the natural and historic environments is also described together with the outcomes that were achieved.
- e) To assist the examination, a further DtC Statement has been prepared which sets out in a simple format a summary of strategic matters and outcomes with each DtC body and other relevant bodies (DTC/3a – EX12).
- f) These statements are supplemented by the Council's extensively evidenced response (EX04) to the Inspector's preliminary questions (EX02) on the DtC. In particular, EX04 describes the extensive, ongoing and constructive activity around infrastructure provision (education, highways, water, waste water, and strategic green infrastructure)⁵, housing market areas and the OAN in a highly complex local context. It clearly identifies the shortfall that has arisen between the housing target in the WH Local Plan and the OAN (at the time of submission and subsequently through a further review of the OAN).
- g) EX04 confirms that all authorities within the HMA with recently submitted plans are already releasing land from the Green Belt to meet their own needs. Even those authorities with land beyond the Green Belt have concluded (East Herts Green Belt Topic Paper TPA/3⁶, and the North Herts Housing and Green Belt Background Paper HOU1⁷) that there would be a significant shortfall in housing provision without releasing land from the Green Belt and the exceptional circumstances exist to justify amending Green Belt boundaries, consistent with the aims of achieving sustainable development. No other authority within the HMA is able to assist with the Welwyn Hatfield shortfall at the current time.
- h) A series of MoUs have been entered into with a number of DtC bodies, confirming the current position and identifying how Welwyn Hatfield will work with others to investigate solutions going forward. This includes those authorities who are at the early stages of plan preparation so that even though they may already have adopted Core Strategies, as they work towards reviewing and preparing new plans, the unmet housing needs in Welwyn Hatfield have been identified and acknowledged. Joint working across Hertfordshire will also explore the options for accommodating growth in the longer term.

⁵ Also evidenced in the Infrastructure Topic Paper TPA/5 and the Infrastructure Delivery Plan (INF/20)

⁶ East Herts Green Belt Topic Paper: <https://www.eastherts.gov.uk/TPA>

⁷ <https://north-herts.gov.uk/files/hou1-housing-and-green-belt-background-paperpdf>

- i) EX04 also refers to the ongoing activity with infrastructure providers and public bodies on the development of the evidence base which has informed the selection of sites. It identifies the joint allocation in two recently submitted Plans of a Strategic Development site which crosses the administrative boundary between two local authority areas (Welwyn Hatfield and East Herts). It identifies agreement with others around education, Green Belt boundaries and the retention of a country park. Evidence of joint working has been provided around matters such as employment provision, the review of the Green Belt, Gypsy and Traveller need assessments, retail development, infrastructure provision, minerals and waste and the conservation and enhancement of the natural and historic environment.
- j) Eight signed MoUs were submitted as part of the evidence of DtC activity as part of EX04. These are the culmination of ongoing activity between Welwyn Hatfield and:
- East Herts DC and Hertfordshire County Council (in respect of Birchall garden Suburb) (DTC/1 – also in EX04 Part 1);
 - North Herts DC (DTC/2 – also in EX04 Part 1);
 - Hertsmere BC (DTC/4 – also in EX04 Part 1);
 - East Herts DC (DTC/5 – also in EX04 Part 1);
 - The Hertfordshire Local Enterprise Partnership (DTC/6 – also in EX04 Part 1);
 - Stevenage BC (DTC/7 – also in EX04 Part 1);
 - Hertfordshire County Council (as Minerals and Waste authority) (DTC/8 – also in EX04 Part 1); and
 - Broxbourne BC (DTC/9 – also in EX04 Part 1).
- k) Consistent with national planning guidance on the Duty to Cooperate (Paragraphs 011 and 012), activity has continued to confirm agreed outcomes and address outstanding issues with:
- Highways England and Hertfordshire County Council (as Highways Authority) – an MoU has recently been signed between these bodies and WH (DTC/10 – EX13);
 - Hertfordshire County Council (as education authority) – liaison between the authorities and a landowner is continuing relating to the draft wording of the MoU on secondary school provision. Discussions are taking place with HCC relating to their representations at Reg. 19 stage concerning primary school provision to serve south Hatfield.
 - Historic England – further discussions have taken place with Historic England relating to the strategic sites and their impact on heritage assets. Discussions on a draft MoU and a Statement of Common Ground continue; and
 - St Albans City and District Council – further discussions have taken place with St Albans City and District Council to address their concerns. DTC/3A sets out the latest position. Their representation states that their Duty to Cooperate concerns relate to the soundness of the Welwyn Hatfield Plan and not to DtC as a matter of legal compliance. Further Duty to Cooperate meetings have sought to clarify their concerns.

- l) The Council's evidence demonstrates that there have been ongoing discussions with St Albans throughout the preparation of the Welwyn Hatfield Local Plan. Furthermore the implications of growth have been considered by strategic groupings such as the A1 Consortium and the A414 group, and the county-wide transport modelling carried out to inform the Local Transport Vision and the Hertfordshire Water Study.
- m) WHBC has provided evidence to St Albans demonstrating how the Green Belt Review has been used in the selection of sites and how the HELAA has used different density assumptions based on the type of site and known constraints. St Albans has raised the issue of Welwyn Hatfield's shortfall with the South West Herts authorities (as has Welwyn Hatfield). Both authorities are working together to secure the future of Ellenbrook country park.
- n) Outstanding issues with St Albans City and District Council primarily relate to housing market boundaries - although both authorities recognise there is a relationship; the evidence of need for housing and employment; the target in the respective local plans; and the allocation of Symondshyde.
- o) Whilst the representation suggested there should be a joint policy on Symondshyde it is not clear what relevance this would have to the St Albans Local Plan as it does not straddle the local authority boundary or require any infrastructure delivery within the administrative area of St Albans.
- p) The Council has demonstrated its willingness, and with other key partners to commit, through written agreements, to continue to work together in order to achieve effective solutions where it has not been possible to find solutions at the current time. The local circumstances are highly complex with all Hertfordshire (and the relevant North London boroughs) facing the reality or the possibility of releasing significant amounts of land from the Green Belt in order to meet their development needs.
- q) The proposed strategy has a number of parallels with the Luton Local Plan, which has recently reported⁸ with the Plan being found sound (subject to a number of modifications). Similar to Luton, Welwyn Hatfield has a District Plan which was adopted over a decade ago (in 2005) and only covered a period to 2011. It is therefore important that a plan is put in place as soon as possible which brings forward a supply of land for housing and other uses to provide a more robust basis for development management decisions and providing greater certainty for developers, local people and other parties, including those making decisions on infrastructure⁹.
- r) Similar to Luton, the housing capacity within Welwyn Hatfield is below the OAN. In Welwyn Hatfield's case, the shortfall at the time of the Reg. 19 consultation was between 616 and 1,433. Recent evidence indicates that the shortfall has increased to over 3,000. In Luton's case, the shortfall was of the order of 9,300¹⁰.

⁸ <https://www.luton.gov.uk/Environment/Lists/LutonDocuments/PDF/Local%20Plan/Luton-Local-Plan-final-Inspectors-report.pdf>

⁹ Paragraph 104 of the Luton Local Plan Inspector's Report

¹⁰ Luton Main Modification MM09:

<https://www.luton.gov.uk/Environment/Lists/LutonDocuments/PDF/Local%20Plan/Luton-Local-Plan-final-report-appendix-main-modifications.pdf>

- s) At the time of submission, there was no firm agreement between Luton and other authorities within the Luton HMA about how, where or in what quantity Luton's unmet needs should be provided for. Instead, there was agreement to move towards a more definitive position, considering strategic options for meeting housing needs (including Luton's unmet needs) arising from a Growth Options Study with each authority reaching conclusions about accommodating Luton's unmet needs as their own plans progress, having regard to national policy, their own constraints and the extent of their own needs.
- t) Considering the question of whether the Plan should have been delayed until a firmer position had been arrived at, the Inspector concluded that there was some logic in the *exporting* authority preparing its plan so that neighbouring authorities would be aware of the extent of unmet need when preparing their plans. Progress on growth options were some way off and Luton's decision to submit before further progress had been made was not deemed to be unreasonable and did not indicate a failure under the duty. Luton had raised the issue of unmet need with its neighbours and discussions had focussed on how this matter could be taken forward and resolved. This was considered acceptable.
- u) These are similar steps to those taken by Welwyn Hatfield. Whilst there is no firm agreement between Welwyn Hatfield and neighbouring authorities as to how, where or in what quantity Welwyn Hatfield's shortfall might be addressed, a series of MoUs set out the commitment of Welwyn Hatfield to work with others to explore the opportunities for addressing the unmet need. To delay the Plan until a more definitive position could be reached would have a significant impact on the ability of the Council to have an up to date plan in place to bring forward a supply of land for housing and other uses and provide certainty for others.