

Stage 1: Legal Soundness and Duty to Cooperate

Issues and Questions for Hearing Session Examinations

- 1.1 This Hearing Statement has been prepared by Dandara Ltd (ID: 1041705) in response to the issues and questions raised by the Inspector for the Stage 1: Legal Soundness and Duty to Cooperate Hearing Session. This Hearing Statement should be read alongside Dandara Ltd's representations to the August 2016 Welwyn Hatfield Proposed Submission Local Plan (WHLP).
- 1.2 The Statement will only address issues and questions that relate to Dandara Ltd's representations to the August 2016 WHLP with specific focus on housing delivery and the failure to allocate sufficient land to meet objectively assessed housing need due to various deficiencies contained within the supporting site selection evidence base. Where possible, Dandara Ltd will seek to avoid replicating information and arguments put forward within representations to the August 2016 WHLP.

Legal Soundness Question 3 – Has the DPD been subject to a Sustainability Appraisal? Are its conclusions sound and have they been taken into account in the DPD?

- 1.3 Para. 165 of the National Planning Policy Framework (NPPF) states that *“a Sustainability Appraisal which meets the requirements of the European Directive on strategic environmental assessment should be an integral part of the Plan preparation process, and should consider all the likely significant effects on the environment, economic and social factors”*. Planning Practice Guidance (PPG) then advises that *“the Sustainability Appraisal plays an important part in demonstrating that the Local Plan reflects sustainability objectives and has **considered reasonable alternatives**”* (para: 016, ref ID: 12-016-20140306).
- 1.4 The PPG goes on to state that the SA process *“... is an opportunity to consider ways by which the Plan can contribute to improvements in environmental, social and economic conditions, as well as a means of identifying and mitigating any potential adverse effects that the Plan might otherwise have. By doing so, it can help make sure that the proposals in the Plan are **the most appropriate given the reasonable alternatives**. It can be used to test the evidence underpinning the Plan and help to demonstrate how the tests of soundness have been met. Sustainability Appraisal should be applied as an iterative process informing the development of the Local Plan”*.
- 1.5 Pg. 16 of the *‘Council Responses to the Inspector’s Preliminary Questions on Matter 1 – Duty to Cooperate’* dated 4th August 2017 acknowledges that *“... a more recent update to the Welwyn Hatfield SHMA (completed May 2017) indicated a revised (rounded) OAN of 800 dpa equivalent to 15,200 over 19 years, in light of the 2014-based SHNPs and other data. This would point to a more pronounced [housing] shortfall of around 3,200 over the Plan period”*. Despite this significant housing shortfall, the Council maintain that *“... it has done all it can at this point in time to meet the unmet needs of its area and will continue to work positively to address the shortfall”* (pg. 28).
- 1.6 Considering this significant housing shortfall, the SA should, as per NPPF para. 165, assess all reasonable alternatives that would allow the Council to achieve its OAN. Instead, the SA has, from the outset, excluded any meaningful consideration of the potential for villages ‘washed over’ by the Green Belt to accommodate development. Para. 5.100 of the 2016 SA states

that *“the towns and the villages which are excluded from the Green Belt are the most sustainable settlements and are therefore considered to offer the best opportunity for a sustainable pattern of development”*. The approach of the SA mirrors that of the 2016 HELAA which automatically excludes potential housing sites within the phase 1 sieve, without any detailed assessment, including against the five Green Belt purpose tests, which are not within or adjoining a settlement excluded from the Green Belt.

- 1.7 Neither the SA nor HELAA provide any evidence to justify the broad generalisation that all settlements ‘washed over’ by the Green Belt are automatically unsustainable. This is a fundamental failure of the SA because without specifically considering the sustainability credentials of each settlement within Welwyn Hatfield, the fundamental objective to *“... promote sustainable development by assessing the extent to which the emerging Plan, when judged against reasonable alternatives, will help to achieve relevant environmental, economic and social objectives”* (PPG, para: 001, ref ID: 11-001-20140306) has not been satisfied.
- 1.8 The inclusion or exclusion of settlements from the Green Belt has nothing whatsoever to do with sustainability and by automatically presuming, without any robust assessment, that all settlements ‘washed over’ by the Green Belt are automatically unsustainable locations for growth, results in the SA fundamentally misunderstanding and misapplying Green Belt policy contained within the NPPF and PPG. This approach is in direct conflict with the recognition within para. 5.82 of the 2016 SA that *“the sustainability advantages and disadvantages would be ‘dependent upon the locations where that development takes place’ ...”*.
- 1.9 Because of automatically excluding for consideration all sites which adjoin settlements ‘washed over’ by the Green Belt on the un evidenced assumption that they are automatically unsustainable, the SA has failed to satisfy one of its fundamental objectives of considering all ‘reasonable alternatives’. As demonstrated within paras. 3.3 to 3.5 of Dandara Ltd’s representations to the 2016 WHLP, the development of land off New Road in Stanborough would represent a proportionate addition to a village in an inherently sustainable location. If the SA and HELAA had robustly assessed the sustainability of all settlements within the Borough, recognising that the purpose of Green Belt policy is not to determine settlement sustainability, they could have identified additional sources of housing land supply which could have been considered as reasonable alternatives as the Local Plan developed.
- 1.10 There are a portfolio of deliverable and sustainable housing sites surrounding existing settlements ‘washed over’ by the Green Belt which have not been properly assessed nor considered through the SA and Local Plan preparation process. This is a fundamental soundness failure which has contributed to the Local Plan failing to achieve OAN amounting to 3,200 dwellings. This narrow focus is set out at para. 5.103 of the SA whereby *“... the primary focus for development will be Welwyn Garden City and Hatfield, with the secondary focus in and around the excluded villages, and through development of a new village at Symondshyde. Elsewhere development will be restricted”*.
- 1.11 The approach of the SA when assessing potential housing sites ‘washed over’ by the Green Belt is also inconsistent. Whereas the SA assumes, without evidence or justification, that all settlements ‘washed over’ by the Green Belt are automatically unsustainable, it simultaneously supports the proposed allocation of housing at Symondshyde which is a location not only ‘washed over’ by the Green Belt, but one at which no existing settlement

exists meaning any future development would be wholly isolated within a countryside location as well as dependent upon significant infrastructure delivery to make it sustainable.

- 1.12 Whereas the SA does not attempt to assess the sustainability of existing settlements ‘washed over’ by the Green Belt due to them being assumed unsustainable, the same document does assess the potential sustainability of housing at Symondshyde despite this being an isolated countryside location within the Green Belt. This assessment is wholly inconsistent with the approach adopted throughout the SA to settlements ‘washed over’ by the Green Belt which are rejected from any meaningful consideration on the grounds of unsustainability. This approach has resulted in inherent inconsistencies within the SA when assessing, or not assessing, housing sites and reasonable alternatives. As an example, the SA in para. 5.105 suggests that the sustainability credentials of Symondshyde are improved due to the site being “... *located close to employment areas within north west Hatfield*”. Land to the north of New Road in Stanborough, which was not subject to assessment within the SA, is not only associated with an existing settlement, but is also closer to employment areas within both north west Hatfield and Welwyn Garden City than land at Symondshyde. This is a specific example of why potential housing locations ‘washed over’ by the Green Belt cannot automatically be considered unsustainable without proper, evidenced assessment as undertaken for Green Belt land at Symondshyde.
- 1.13 The failure of the SA to assess a full range of reasonable alternatives has ultimately led to the development of a Plan and housing strategy which is unsound by virtue of failing to meet full OAN and proposing isolated development in locations such as Symondshyde that fundamentally conflict with NPPF policy including Green Belt.
- 1.14 The WHLP cannot be considered to satisfy the ‘consistent with national policy’ test of soundness as the accompanying SA does not robustly nor equitably assess potential alternative housing sites for allocation to allow the emerging Plan to meet objectively assessed housing need nor satisfy its Duty to Cooperate obligations. Neither is the WHLP ‘justified’ as the SA has failed to assess the emerging WHLP strategy against reasonable alternatives by rejecting, without proper assessment or objective criticism, all settlements ‘washed over’ by the Green Belt as inherently unsustainable. These deficiencies have cumulatively resulted in a Plan that fails the ‘effective’ test of soundness, being unable to deliver full housing need across its period and undermining the ability to proactively engage with neighbouring Authorities under the Duty to Cooperate.

Legal Soundness Question 6 – Has the DPD had regard to appropriate national policy?

- 1.15 Dandara Ltd will demonstrate where sections of the WHLP are considered to accord or conflict with appropriate national policy when the specific issues are raised by the Inspector under the relevant Hearing Session.
- 1.16 As an example, we have demonstrated under question three above where the 2016 SA is considered to conflict with policy contained within the NPPF and PPG including reference to the Local Plan being unable to meet full, objectively assessed housing need as required under para. 47 of the NPPF due to fundamental deficiencies within the assessment process underpinning the selection of housing sites.

Legal Soundness Question 7 – Has the Council fulfilled the requirements of the Duty to Cooperate?

- 1.17 Para. 47 of the NPPF requires Local Authorities to “... use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area”. As we have already explained above for legal soundness question 3, and set out in greater detail within our representations to the 2016 WHLP, it is not considered that the methodology underpinning the housing site selection process is robust nor sound with the Council failing to properly assess the total number of new homes that could be sustainably accommodated within the Borough in accordance with national policy. In particular, by automatically excluding all settlements ‘washed over’ by the Green Belt for potential housing development, the Local Plan has, in a single motion, discounted a swathe of potential housing sites without due assessment or sound consideration.
- 1.18 This fundamental deficiency within the site selection process underpinning the Local Plan has had a significant impact on Duty to Cooperate discussions with neighbouring Authorities. Whereas the claim of the Council on pg. 28 of their ‘Responses to the Inspector’s Preliminary Question on Matter 1 – Duty to Cooperate’ dated 4th August 2017 is that it “... has done all it can at this point in time to meet the unmet needs of its area ...” [following] “... extensive assessment of housing and economic land availability and a site selection process in order to identify the most suitable sites for development ...”, it is evident that this is not the case given that no land adjacent to settlements ‘washed over’ by the Green Belt has been subject to any assessment regarding its housing delivery potential and suitability.
- 1.19 This flaw within the site selection methodology is given heightened emphasis considering the claim on pg. 18 of the 4th August response that “no other Authority in the wider WH HMA is able to help address a Welwyn Hatfield shortfall at the current time”. Given that the Council themselves consider this shortfall to be a significant “... around 3,200 over the Plan period” (pg. 16), the outcome of these Duty to Cooperate discussions places even more emphasis on ensuring that the methodology underpinning the Local Plan site assessment process is robust and defensible, which is not the case with the 2016 WHLP submitted for examination. We strongly disagree with the Council’s supposition on pg. 23 to “... address infrastructure capacity issues and the shortfall in housing against the OAN” as part of an early review of the Plan on the basis that there are a range of small and medium scale sites which can deliver much needed additional housing over the short to medium term which have been excluded from proper assessment or consideration due to being adjacent to settlements ‘washed over’ by the Green Belt.
- 1.20 Similarly, the ‘Council Responses to the Inspector’s Preliminary Question on Matter 1 – Duty to Cooperate’ dated 4th August 2017 recognises that there will be unmet housing need arising from other Authorities within the WH HMA with pg. 28 stating “as Welwyn Hatfield does not have the capacity to meet its own needs in full, it would not be able to assist any other Authority within its HMA with a shortfall ...”. We would reiterate that the inability of the WHLP site selection methodology to robustly and soundly assess all potential housing sites within the Borough, including those adjacent to settlements ‘washed over’ by the Green Belt, has resulted in the Council being unable to meaningfully engage with neighbouring Authorities under the Duty to Cooperate as they have failed to establish how much housing could sustainably be accommodated within Welwyn Hatfield. Until the site selection methodology is consistent, robust and sound, the Council is not in a position to advise adjacent Authorities on whether they require assistance to accommodate unmet

housing need under the Duty to Cooperate or conversely, whether Welwyn Hatfield could accommodate unmet need arising from neighbouring Authorities.

1.21 The PPG is clear that:

*“The Duty to Cooperate requires Authorities to work effectively on strategic planning matters that cross their administrative boundaries. The Duty to Cooperate is not a duty to agree and Local Planning Authorities are not obliged to accept the unmet needs of other planning authorities **if they have robust evidence that this would be inconsistent with the policies set out in the National Planning Policy Framework**, for example policies on Green Belt, or other environmental constraints”* (para. 021, ref ID: 9-021-20140410).

1.22 The site selection process underpinning the housing target and locations contained within the WHLP is fundamentally unsound and cannot be considered to represent robust evidence consistent with NPPF policy that is a prerequisite of meaningful Duty to Cooperate engagement. By excluding all potential housing sites which are adjacent to existing settlements ‘washed over’ by the Green Belt on the un evidenced claim of unsustainability, the Council is neither in a position to ask neighbouring Authorities to accommodate unmet housing need arising from Welwyn Hatfield nor is in a position to reject requests of assistance to accommodate unmet need within the Borough.

1.23 The 2016 WHLP is considered to fail the ‘positively prepared’ soundness test as unmet housing needs arising from neighbouring Authorities are not proposed to be accommodated within Welwyn Hatfield due to land available to accommodate new homes being significantly depressed due to deficiencies within the evidence base which has automatically rejected a range of potential sites without proper assessment or consideration. The Plan cannot be considered to be ‘properly prepared’ as the Council has sought to engage under the Duty to Cooperate without robust evidence underpinning the emerging Plan which would allow a robust and sound conclusion to be drawn on whether Welwyn Hatfield requires unmet housing need to be accommodated elsewhere within the HMA or conversely, whether the Borough could assist neighbouring Authorities with addressing their own unmet housing need.