

**Welwyn and Hatfield Borough Council**  
**Draft Local Plan - Examination in Public**

**Stage 1 Hearing Session - 21 September 2017**

**Legal Soundness and Duty to Co-operate**

**Statement on behalf of Promoters at Welham Green – Hill Residential, Landform Estates Ltd and Potterells Farm Partnership\***

**Appendix 1: Report to Cabinet Housing and Planning Panel 16 March 2017**

\* This joint statement has been submitted to the Stage 1 Hearing session on behalf of various promoters at Welham Green. Each party has its own duly made representations, but have common interests. This statement does not prejudice the ability of these promoters to submit further statements, either jointly or independently, to future matter sessions.

**1 INTRODUCTION**

1.1 This Hearing Statement has been prepared jointly on behalf of Promoters at Welham Green:

- Hill Residential who has an interest in land South of Welham Manor (WeG3)
- Landform Estates Ltd who control Skimpans Farms, Bulls Lane (WeG6)
- Potterells Farm Partnership who has an interest in land at Potterells Farm (WeG15)

1.2 The sites have each been assessed as being suitable, available and achievable for residential development in Welwyn and Hatfield Borough Council's (WHBC) Housing and Employment Land Availability Assessment (HELAA) 2016. Sites WeG1, WeG10 and WeG12, also at Welham Green, have been similarly assessed as being suitable for residential development in the HELAA. The Council has not proposed the allocation of sites WeG1, WeG3, WeG6, WeG10, WeG12, and WeG15 to provide new housing in the Draft Local Plan that was submitted to the Secretary of State on 15 May 2017 for independent examination.

- 1.3 In the Draft Local Plan, the Council has proposed limited growth at Welham Green restricting it to 92 homes, including 80 dwellings at Marshmoor (WeG4b) and 12 gypsy and travellers pitches at Foxes Lane (GTLAA01). As set out in the Housing Sites Selection Document (June 2016), the Council resisted further allocations at Welham Green *inter alia*, on the grounds of the limited capacity at the existing primary school, which is a 1FE. Following the Regulation 19 consultation on the Draft Local Plan Submission Document the Council, at a Cabinet Housing and Planning Panel Meeting on 16 March 2017 (See Appendix 1), subsequently introduced insufficient secondary school capacity in the area (paragraph 4.20) as a further reason not to provide for additional growth at Welham Green.
- 1.4 The Promoters previously submitted individual representations in respect of WHBC's Regulation 19 consultation on the pre-submission version of the Local Plan (October 2016). In support of the representations the Promoters jointly promoted the provision of additional primary school capacity at Welham Green, through a Common Position Statement that the parties at sites WeG1 (Nicon Development Ltd), WeG10 (Mrs Martha Weisser-Mason) and WeG12 (Mr D Collins) also entered into. This supported the Promoters' position that additional residential sites at Welham Green need not be constrained by primary school capacity as land was identified under the control of the Promoters for either a 1FE or 2FE Primary School, and therefore the sites should be released from the Green Belt and allocated for housing through the new Local Plan.
- 1.5 Whilst the Promoters continue to engage with the parties at sites WeG1, WeG10 and WeG12 this Stage 1 Statement is not jointly submitted with them for the purposes of this examination hearing session.

## **2 MATTERS AND QUESTIONS - RESPONSE**

- 2.1 On consideration of the matters and questions that the Inspector has set out for Stage 1 Legal Soundness and Duty to Cooperate (EX10), the Promoters have concerns with the extent that the Local Plan has had regard to appropriate national policy (Question 6) and the approach to the duty to cooperate (Question 7).

### **Has the DPD had regard to appropriate national policy?**

- 2.2 The proposed housing requirement of 12,000, against an identified Objectively Assessed Need (OAN) range of 12,500 to 13,433 (at the time of Submission), represents a significant shortfall of 1,433 units against the upper range. Indeed, the Strategic Housing Market Assessment update 2017, which uses the most recently published 2014-based Sub-National Household Projections, suggests that 15,067 new homes are now required. Whichever scenario, WHBC is under-providing against its OAN. Therefore, the Local Plan does not satisfy the requirements of NPPF paragraph 47 to meet in full the objectively assessed needs for market and affordable housing.
- 2.3 The Council has used education capacity constraints, both primary and secondary, to restrict additional growth at suitable sites in sustainable locations. Importantly, this is symptomatic of the Council's failure to properly plan for the necessary infrastructure, including education capacity, which is required to meet the growth needs of the borough over the plan period. The Council has not taken a, "*proactive, positive and collaborative approach*" to meeting the requirement for additional school places that would enable the growth needs of the borough to be met in line with NPPF paragraph 72. This has included a failure to properly consider known reasonable alternatives, including the potential for additional primary school capacity at Welham Green.

### **Has the Council fulfilled the requirements of the duty to cooperate?**

- 2.4 The current situation, whereby the proposed housing requirement was initially being constrained by the Council on a stated lack of primary school capacity and more recently on the basis of secondary school provision, and the emerging Local Plan's failure to provide for that additional capacity through a robust strategy demonstrates the failure of WHBC and Herefordshire County

Council (HCC) (as LEA) to properly cooperate as is required by PPG Paragraph 014 (Reference ID: 9-014-20140306).

- 2.5 The 'duty to co-operate' extends beyond an assessment of housing land supply and includes a consideration of infrastructure and other matters that should both inform and determine the spatial strategy. Infrastructure provision can shape boundaries and the catchment areas for facilities are likewise cross boundary.
- 2.6 Housing growth will inevitably increase the need for services and facilities, including education. Indeed, the community's acceptance or resistance to new development is often reflective of the impact of services and facilities that are perceived as already being 'over capacity'. NPPF at paras 72 and 162 makes it clear that the local plan review is the process by which education and infrastructure must be planned and delivered.
- 2.7 The evidence in support of Paragraph C in WHBC's response (EX04) to Question 20 in the Inspector's Preliminary Questions on Duty to Cooperate (EX02) includes HCC's Development Scenario Assessment – School Places (31 May 2016). In the report HCC put forward the relocation and expansion of the existing 1FE St Mary's to a 2FE as Option 2a (paragraph 8). They clearly state that it is the responsibility of WHBC to consider site selection in determining which option for primary school provision to pursue.
- 2.8 However, it appears that WHBC did not assess Option 2a. Not only is there a lack of detail of such a dedicated assessment having taken place but also the timescale of four working days between the issue by HCC on 31 May 2016 to WHBC and the publication of their Housing Site Selection Paper on 6 June 2016 ahead of the CHPP meeting on 13 June 2016, where it was considered, make any sensible assessment impossible. It was paragraph 16.8 in the Housing Sites Selection Background Paper that highlighted, "No site has been identified in Welham Green (*for a new 2FE primary school*) and limited primary school capacity in Welham Green is currently a restraint on further housing growth". At the very best there would only have been a handful of working days for WHBC to carry out such an assessment on receipt of the HCC report. Officers have confirmed to us that no such assessment, however cursory, took place.
- 2.9 On secondary school provision, emerging Policy SP14 confirms the Council's position that a site for a third secondary school will need to be identified, "*if available evidence indicates that a site for a third secondary school to serve the borough is required*".

- 2.10 Paragraph J in WHBC's response (EX11) to Question 15 of the Inspector's Preliminary Questions on Matter 2 Overall Provision for Housing and Job (EX03) WHBC confirms that the HCC has not been able to identify a suitable site for a third additional secondary school site following a 'search for sites'. This would be in addition to those already proposed as part of the strategic development sites (North West Hatfield - SDS5/Hat 1, and Birchall Garden Suburb - SDS2/WGC5).
- 2.11 Clearly, both WHBC and the LEA anticipate the need for additional secondary school capacity as they have conducted a 'search for sites'. Indeed, WHBC's Initial Draft Regulation 123 List (INF/18) reveals that the additional secondary school infrastructure would be funded, or part funded, through CIL. Whilst the need for a third secondary school has been established, the failure to identify a suitable site has not stopped WHBC proposing a housing requirement above that which could be accommodated by two secondary schools. The Council's approach at Welham Green, where it is restricting additional growth at suitable sites on the grounds of insufficient secondary school capacity, is clearly at odds with their approach elsewhere in the plan. There is no justification or grounds on which a different approach is being taken to growth at Welham Green.
- 2.12 In Paragraph M, WHBC indicate their intention to plan for infrastructure constraints through a review of the Local Plan. WHBC's commitment to a review of the Local Plan is that it can, "*respond flexibly to changing circumstances.*" Their assertion that the planned review is to allow time for, "*a change in circumstances*" is perverse when their commitment to a review stems from their failure to have planned properly for additional infrastructure in the first instance, especially where deliverable solutions, certainly on primary school capacity are known to exist. Welham Green being a case in point.

### **3 SUMMARY AND PROPOSED WAY FORWARD**

- 3.1 Clearly, the educational needs of the community, and indeed other facilities and services should be properly planned for in the Local Plan. The absence of a robust strategy to provide education capacity to meet local needs where necessary, raises serious concerns with the approach that has been pursued through the duty to cooperate between WHBC and the LEA which raise cross boundary considerations, especially on secondary education.
- 3.2 In short, the ability of WHBC to deliver housing to meet the OAN is being constrained by its own failure to properly plan and provide for appropriate levels of education – a self-fulfilling prophecy. The Promoters first raised this concern at pre-submission stage, but WHBC did not seek to make amendments in advance of formal submission for examination.
- 3.3 Ultimately, the plan has failed to consider reasonable alternatives and will not be effective in meeting the identified growth needs of the borough, contrary to national policy. Shortcomings with the approach to the Duty to Cooperate have contributed to this situation.
- 3.4 **Whilst there are shortcomings in the approach to Duty to Cooperate and the regard given to national policy the Promoters consider that the examination should proceed to the Stage 2 hearing sessions on the Overarching Strategy and associated policies where the relationship between the housing requirement, the spatial strategy for growth and approach to education should be considered in full. Ultimately, the Promoters consider that the plan can be found sound subject to modifications that provide a suitable approach towards education provision to help the OAN for new housing be met in full. Specific modifications can be discussed in the context of your detailed matters and questions for Stage 2.**