

EAST HERTS COUNCIL

EXECUTIVE – 2 FEBRUARY 2016

REPORT BY THE LEADER OF THE COUNCIL

REQUEST FOR AREA DESIGNATION FOR NEIGHBOURHOOD  
PLANNING: HERTINGFORDBURY

WARD(S) AFFECTED:      HERTFORD RURAL SOUTH

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**Purpose/Summary of Report**

- To enable the consideration of an application for the designation of a Neighbourhood Area.

<b><u>RECOMMENDATION FOR EXECUTIVE:</u> that:</b>	
<b>(A)</b>	<b>the application for the designation of a Neighbourhood Area, submitted by Hertingfordbury Parish Council, be supported.</b>

1.0 Background

1.1 Hertingfordbury Parish Council submitted an application for the designation of a Neighbourhood Area to the Council on 19<sup>th</sup> November 2015. Agreement to the designation of a Neighbourhood Area is required by the Council as Local Planning Authority (LPA) before a Neighbourhood Plan can be formulated. In the report, East Herts District Council is identified as 'The Council' and Hertingfordbury Parish Council is 'HPC'.

1.2 The application was made in the form of a letter from Hertingfordbury Parish Council with an attached plan setting the area to which the application relates. The letter and plan form **Essential Reference Paper 'B'** to this report.

## 2.0 Consultation

2.1 The Council has undertaken the appropriate consultation with regard to the application submission. The consultation ran from 26<sup>th</sup> November to 24<sup>th</sup> December 2015, which was advertised online on the EHDC neighbourhood planning pages and in the local newspaper.

2.2 Comments have been received in response to the area designation application. Formal objections to the area designation have been received from Nabarro, on behalf of Tarmac; these are summarised below.

2.3 The objections received on behalf of **Tarmac** are in regard to the **Birchall Garden Suburb (BGS)** and **Panshanger Park** sites. Suggested amendments to the area designation have been put forward to exclude Panshanger Park and Birchall Garden Suburb sites from the neighbourhood plan area designation. These have been illustrated at **Essential Reference Paper 'C'**.

2.4 A summary of the issues and reasons to exclude these sites, are:

- the impact the neighbourhood plan area designation will have upon the planning processes of EHDC and Welwyn Hatfield Borough Council in relation to the emerging BGS site in the emerging Local Plans;
- the conflict between the proposed area boundary with the strategic cross boundary planning priorities;
- the risk of conflict between the District Plan and neighbourhood plan;
- the on-going development and future restoration of Panshanger Park;
- the appropriateness of the area designation with regard to the land uses, connectivity, character of the parish; and
- the ability of the Parish Council to adequately resource the undertaking of a neighbourhood plan.

2.5 As part of the comments, a recent decision by Epping Forest District Council to exclude land adjacent to Harlow in response to a neighbourhood area request by North Weald Parish Council for reasons of prematurity and uncertainty over the direction of growth in this area, has also been included in the consultation

submission and can be viewed at ERP 'C'. Also, a decision made in the Royal Courts of Justice regarding the decision of (*the application of Daws Hill Neighbourhood Forum*) v *Wycombe DC* [2014] was submitted.

- 2.6 Further comments have been received from **Welwyn Hatfield Borough Council** (WHBC) they consider that there is a risk of added complexity by granting neighbourhood plan status to the entire parish boundary as the Birchall Garden Suburb site is being promoted jointly by EHDC & WHBC through their respective Local Plan processes. Another concern is the entitlement of Parish Councils to 25% of any Community Infrastructure Levy (CIL) monies, where a CIL is in place and a neighbourhood plan has been adopted and this may not be directed to infrastructure to support BGS.
- 2.7 Representations have been received from Gascoyne Cecil Estates in response to the proposals and comments from Tarmac regarding the BGS site. Gascoyne Cecil Estates has identified that part of the site is in their ownership. Gascoyne Cecil Estates do not support their land being excluded from the neighbourhood plan area designation and are generally supportive of the neighbourhood plan.
- 2.8 Comments have been received from **Hertfordshire County Council** regarding minerals and waste planning matters. The proposed neighbourhood plan area sits entirely within the Sand and Gravel belt as identified in the Hertfordshire Minerals Local Plan 2007. The sites, Panshanger Quarry and Water Hall Quarry Complex, are both identified in the existing Hertfordshire Minerals Local Plan, to be used to meet the county's need for land-won aggregate. Panshanger Quarry is an active extraction site with permission to extract sand and gravel until December 2030. Water Hall Quarry is currently inactive however permission has been granted until February 2017, for sand and gravel reserve extraction. The site is used as an inert landfill site, at Bunkers Hill, and has permission for this activity until December 2017.
- 2.9 In regard to waste, HCC identify that Cole Green Service Station, Water Hall Quarry Complex and HWRC Cole Green are safeguarded under Policy 5: Safeguarding of Sites in the Waste Core Strategy & Development Management Policies document. In order to ensure there is a strategic network of waste management

provision within the county, HCC will oppose any development proposals that are likely to prejudice the use of safeguarded areas for waste management.

- 2.10 HCC do not object to the area designation application, however request that minerals and waste matters be taken into account during the neighbourhood plan process, as the Minerals and Waste Local Plan forms part of the Development Plan.
- 2.11 A meeting was held between representatives of the Parish Council, representatives from Tarmac, officers from Welwyn Hatfield Borough Council and East Herts, 11<sup>th</sup> January 2016. This was held to allow the Parish Council to set out their reasons for developing a neighbourhood plan and for the Council to further understand the objections received during the consultation.
- 2.12 All received comments can be viewed at **Essential Reference Paper 'C'**. The objections and concerns will be dealt with in the following section of the report.

### 3.0 Considerations

- 3.1 Two main areas of consideration to be taken into account when determining an application for the designation of a Neighbourhood Area are set out in Schedule 9 of the Localism Act 2011. One of these is that the authority determining the application must have regard to the desirability of maintaining the existing boundaries of neighbourhood plan areas already designated.
- 3.2 No weight needs to be given to this consideration in this case as no other Neighbourhood Areas are currently designated in Hertingfordbury parish.
- 3.3 The other area of consideration is the desirability of designating the whole of the area of a parish council as the Neighbourhood Area.

### Site Boundaries

- 3.4 The consideration centred on this issue has been raised from the consultation responses from Tarmac (on behalf of BGS land interests) and from WHBC. WHBC and Tarmac have both

suggested excluding the BGS site from the neighbourhood planning area due to the added level of complexity as the site is being promoted as a joint strategic site in both planning authorities emerging Local Plans.

- 3.5 In regard to the above issues, joint working continues between WHBC and Tarmac, the landowners and other stakeholders. BGS plays an important role in delivering EHDC and WHBC's strategic requirements/needs. Further work will be progressed as part of the District Plan and will be a strategic policy in the emerging District Plan. The Council will endeavour to work on strategic matters such as master planning, density and scale of development, Green Belt and other issues with stakeholders through the District Plan process. For these reasons, the Council does not foresee the development of a neighbourhood plan to have a negative impact upon the delivery of this site.
- 3.6 National planning policy states that '*neighbourhood plans must be in general conformity with the strategic policies of the Local Plan...Neighbourhood plans should reflect these policies and neighbourhoods should plan positively to support them.*' (Para. 184, NPPF) It is anticipated that the neighbourhood plan will work in conjunction with the emerging policies of the District Plan. It is the role of the planning authority to ensure any neighbourhood plan is in conformity with the strategic policies of the Local Plan. As neighbourhood planning activity grows nation-wide, it is recognised that neighbourhood plans can be developed alongside emerging Local Plans. It is within the interests of HPC to bring the neighbourhood plan forward with the emerging District Plan.
- 3.7 As part of the consultation, the decision in the High Court (*on the application of Daws Hill Neighbourhood Forum) v Wycombe DC [2014]*) was submitted to the Council (can be seen at ERP 'C'). This decision identified, by law, that the neighbourhood planning legislation entitles Council's to exclude areas from neighbourhood area designation. This endorsed Wycombe District Council's decision to exclude strategic sites from the Daws Hill Neighbourhood Forum area. This decision identifies that the Council may amend a neighbourhood planning area to exclude strategic sites, where it is deemed suitable. The circumstances, however, are different to those presented here and are not considered material in the consideration of this neighbourhood planning area designation. The circumstances were that the

planning applications were at an advanced stage and Wycombe DC deemed the neighbourhood plan ineffective in influencing this site as the neighbourhood plan was at commencement.

- 3.8 In this instance, it is considered suitable that the parish council want to be involved in the forward planning processes of this strategic site through the means of a neighbourhood plan. Neighbourhood plans are in place to shape development on the community level; however, any work undertaken by the neighbourhood planning group is not considered to hinder on-going District Plan progress and may inform future proposals for this site. It will be the Council's role to ensure constructive partnership working between relevant stakeholders.
- 3.9 The reference to the recent decision by Epping Forest District Council (EFDC) to exclude certain areas from the area designation has been examined. North Weald Parish Council requested area designation to cover the entire parish, which is located adjacent to Harlow and is being considered as a strategic growth site. EFDC chose to exclude part of the area designation adjacent to Harlow as there are outstanding issues including the level of housing and employment growth, Green Belt designation, infrastructure as well as others which have not been decided yet. A key difference here is that EFDC were at a less advanced stage in terms of identifying strategic sites for development. As a result of the EFDC decision, the Parish Council questioned the decision of being treated differently to other neighbourhood area requests and has since considered pursuing legal challenge to the decision.
- 3.10 The decision is a relevant case to take account of; it is recognised that many strategic matters are still to be agreed. However, the BGS site has been identified in the draft District Plan and significant work has taken place to identify its deliverability and viability going forward.
- 3.11 WHBC's concern regarding the potential impact of having a neighbourhood plan to only cover the EHDC part of the joint strategic is recognised. It is acknowledged that neighbourhood planning would form part of the Development Plan, once adopted. It is the role of the Council to ensure the neighbourhood plan and its policies are consistent and in conformity with the NPPF and the Local Plan policies in place. The Council will seek to ensure

the neighbourhood plan policies do not reduce the coherence of the BGS site overall by working with the Parish Council throughout the neighbourhood plan process.

- 3.12 Consideration has been given to the proposals presented from Tarmac to the Council from the consultation; whilst there could be some merit in excluding these sites (Panshanger Park and BGS), this disregards the general ethos of Localism. Neighbourhood plans present an opportunity for positive working with an active group in the community with access to local knowledge. Consultation and community engagement is an inherent part of the planning system and engagement would be required as part of progressing with this site regardless. Neighbourhood planning has been introduced as part of the Localism Act for communities to use to be engaged in the plan-making process. Therefore, by excluding this site, the Council could be at risk of alienating the community from involvement in the process.
- 3.13 It is also important to note that the proposed neighbourhood plan area represents the parish council boundary. BGS and Panshanger Park form part of the area, however this does not form the entire scope of the neighbourhood plan. The Council is cognisant of the character of the parish, the rural nature of the villages and the issues of connectivity the A414 creates. It remains within the parish council's right to relate the neighbourhood plan to the historical parish boundary as this is a known, established area.

#### Neighbourhood plan process

- 3.14 The neighbourhood plan process requires consultation as part of developing the plan. The process enables the Council (and other stakeholders) to review at various stages and to comment prior to adoption. Independent Examination is also required. Therefore sufficient safeguards are considered to be in place to ensure there is conformity and all views are taken into consideration.
- 3.15 It is also appropriate to note that the LPA, or any other party, cannot preclude the content and direction the neighbourhood plan will take. It cannot be assumed therefore that the intention of the neighbourhood plan will be to conflict with the emerging District Plan.

- 3.16 It is the Parish Council's responsibility to adequately resource the neighbourhood plan as it progresses reflecting the scale and scope suitable to the scale of a neighbourhood plan. The Council will provide support in terms of advice and guidance throughout the plan-making progress. Therefore little weight can be given to this consideration.

#### Panshanger Park

- 3.17 The Council is aware of the complexity of the Panshanger Park site and the agreements in place. HCC Minerals and Waste have identified the main issues in relation to waste and minerals sites and have not objected to the neighbourhood plan area designation. It is recognised that neighbourhood plan policies cannot cover matters related to waste and minerals sites. HCC will continue to be consulted upon as the neighbourhood plan progresses.
- 3.18 Tarmac refer to the future proposals for the Park. HPC has already been involved with the consideration of the future of the Park and therefore any concern that a NP may now delay or jeopardise this is not considered to be a risk which any significant weight can be attached.

#### Other matters

- 3.19 A further matter was raised by WHBC with regard to the monies communities are entitled to if the Community Infrastructure Levy (CIL) is introduced. WHBC highlight the risk that monies need to deliver vital infrastructure as part of the BGS site may be diverted elsewhere. At this stage, the Council has not made a decision on whether to adopt a CIL, therefore it is too early to identify whether this will affect development.
- 3.20 At the current stage of the emerging District Plan it is considered suitable to bring the neighbourhood plan area designation forward for approval.

#### 4.0 Conclusion

- 4.1 Having considered the issues raised during the consultation, whilst there are outstanding strategic issues still to be resolved through the emerging District Plan, this should not necessarily



prevent neighbourhood plans progressing. As identified in national policy and practice guidance, neighbourhood plans can be developed alongside emerging Local Plans and should reflect the strategic principles.

4.2 Moreover, neighbourhood planning is an integral part of the planning system with legislative backing through the Localism Act. The LPA is charged with determining applications for the designation of Neighbourhood Areas. In this case, designation of a parish for neighbourhood planning purposes.

#### 5.0 Implications/Consultations

5.1 Information on any corporate issues and consultation associated with this report can be found within **Essential Reference Paper 'A'**.

#### Background Papers

None

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