

# Bengeo Neighbourhood Area Plan 2018- 2036

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## **Submission Version**

A Report to East Herts District Council on the Examination of the  
Bengeo Neighbourhood Area Plan

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11<sup>th</sup> December 2020

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## Executive Summary

My examination has concluded that the Bengo Neighbourhood Area Plan should proceed to referendum, subject to the Plan being amended in line with my recommended modifications, which are required to ensure the plan meets the basic conditions. The more noteworthy include –

- Deleting the policy to create a community garden, as the works would not require planning permission.
- Restricting the Important Views policy to the designation of the eight views.
- Rationalising the nature conservation policy so as not to replicate District Plan policy.
- Adding a requirement that proposals should minimise air quality impact.
- Deleting the policy dealing with Assets of Community Value.
- Changing the community facilities funding policy to tie in with contributions raised by District Plan Policy CFLR7.
- Bringing the policy relating to non-designated heritage assets into line with the Secretary of State's approach as set out in the NPPF.
- Making the cultural facilities policy a generic policy of support within the plan area.
- Removing the blanket requirement for all applicants to submit a Transport Assessment and relating sustainable transport related contributions to those collected pursuant to the District Plan Policy TRA1.
- Removing elements of the design and layout policy, restricting the scope of the policy only to residential development and removing the requirement that the HERT4 development needs to provide school parking.
- No longer making support for the development of brownfield sites conditional upon meeting policy requirements.
- Removing the conditionality regarding support for local business development.

The referendum area does not need to be extended beyond the plan area.

## Introduction

1. Neighbourhood planning is a process, introduced by the Localism Act 2011, which allows local communities to create the policies which will shape the places where they live and work. The Neighbourhood Plan provides the community with the opportunity to allocate land for particular purposes and to prepare the policies which will be used in the determination of planning applications in their area. Once a neighbourhood plan is made, it will form part of the statutory development plan alongside the adopted East Herts District Plan. Decision makers are required to determine planning applications in accordance with the development plan unless material considerations indicate otherwise.
2. The neighbourhood plan making process has been undertaken under the supervision of Hertford Town Council. A Community Steering Group was appointed to undertake the plan's preparations on behalf of the Town Council.
3. This report is the outcome of my examination of the Submission Version of the Bengeo Neighbourhood Area Plan. I will from this point onwards, tend to refer to the plan as the Bengeo Neighbourhood Plan, to be consistent with the approach in the submission document. My report will make recommendations based on my findings on whether the Plan should go forward to a referendum. If the plan then receives the support of over 50% of those voting at the referendum, the Plan will be "made" by East Herts District Council.
4. It will be appreciated that in the light of the COVID 19 crisis, a referendum cannot be held until at least May 2021. However, upon East Herts District Council issuing of the Decision Statement, under Regulation 18 of the Neighbourhood Planning Regulations, indicating how it intends to respond to my recommendations, the plan as modified, can be accorded *significant weight* in development management decisions, until such time as a referendum is held.

## The Examiner's Role

5. I was appointed by East Herts District Council in mid - September 2020, with the agreement of Hertford Town Council to conduct this examination.
6. In order for me to be appointed to this role, I am required to be appropriately experienced and qualified. I have over 42 years' experience as a planning practitioner, primarily working in local government, which included 8 years as a Head of Planning at a large unitary authority on the south coast, but latterly as an independent planning consultant and director of my neighbourhood planning consultancy, John Slater Planning Ltd. I am a Chartered Town Planner and a member of the Royal Town Planning Institute. I am independent of East Herts

District Council and Hertford Town Council and I can confirm that I have no interest in any land that is affected by the Neighbourhood Plan.

7. Under the terms of the neighbourhood planning legislation, I am required to make one of three possible recommendations:
  - That the plan should proceed to referendum on the basis that it meets all the legal requirements.
  - That the plan should proceed to referendum, if modified.
  - That the plan should not proceed to referendum on the basis that it does not meet all the legal requirements
8. Furthermore, if I am to conclude that the Plan should proceed to referendum, I need to consider whether the area covered by the referendum should extend beyond the boundaries of the area covered by the Bengeo Neighbourhood Plan area.
9. In examining the Plan, the Independent Examiner is expected to address the following questions
  - Do the policies relate to the development and use of land for a Designated Neighbourhood Plan area in accordance with Section 38A of the Planning and Compulsory Purchase Act 2004?
  - Does the Neighbourhood Plan meet the requirements of Section 38B of the Planning and Compulsory Purchase Act 2004 - namely that it specifies the period to which it is to have effect? It must not relate to matters which are referred to as “excluded development” and also that it must not cover more than one Neighbourhood Plan area.
  - Has the Neighbourhood Plan been prepared for an area designated under Section 61G of the Localism Act and has been developed and submitted by a qualifying body?
10. I am able to confirm that the Plan, if modified in accordance with my recommendations, does now only relate to the development and use of land, covering the area designated by East Herts District Council, for the Bengeo Neighbourhood Plan, on 27<sup>th</sup> June 2017.
11. I can also confirm that it does specify the period over which the plan has effect, namely the period from 2019 up to 2033.
12. I can confirm that the plan does not contain policies dealing with any “excluded development”.
13. There are no other neighbourhood plans covering the area covered by the neighbourhood area designation.
14. I am satisfied that Hertford Town Council as a parish council can act as a qualifying body under the terms of the legislation.

## **The Examination Process**

15. The presumption is that the neighbourhood plan will proceed by way of an examination of written evidence only. However, the Examiner can ask for a public

hearing in order to hear oral evidence on matters which he or she wishes to explore further or if a person has a fair chance to put a case.

16. I am required to give reasons for each of my recommendations and also provide a summary of my main conclusions.
17. Firstly, I am satisfied that I can properly examine the plan without the need for a hearing.
18. I carried out an unaccompanied visit to Bengoe on the morning of 5<sup>th</sup> October 2020. I started in the town centre before driving around the plan area, looking at all the sites proposed for designation, including all the viewpoints. I stopped and walked a number of the sites proposed for designation for Local Green Space status including walking much of Byway 8 to take in Bengoe Field. I was also able to appreciate the important relationship between the open spaces and the built environment, both within the town and in the surrounding countryside.
19. Following my site visits, I prepared a document seeking clarification on a number of matters, which I sent to both the Town Council and East Herts District Council, entitled Initial Comments of the Independent Examiner, dated 7<sup>th</sup> October 2020. I received a response from East Herts District Council on 22<sup>nd</sup> October 2020 and a response from the Town Council on 26<sup>th</sup> and 28<sup>th</sup> October 2020. These responses have been placed on the respective websites.

## **The Consultation Process**

20. Following the designation of the Bengoe Ward Electoral Division of Hertford Town Council, as the neighbourhood area by the District Council, the first public engagement was held at Bengoe School on 20<sup>th</sup> June 2017, which was attended by over 100 members of the public. Volunteers recruited at this event formed the basis of the Community Steering Group, which oversaw the preparation of the plan and it established five working groups to develop neighbourhood plan policies, based on a number of themes. In parallel the Town Council appointed a Working Party, formed of the four ward councillors, to supervise, on its behalf the production and quality of the plan.
21. A neighbourhood plan website was set up which enabled the public to be kept informed of the work on the neighbourhood plan.
22. The business community was consulted, initially through a coffee morning and subsequently by a questionnaire, that produced 24 responses.
23. A questionnaire was delivered to every house in the ward and this survey was publicised through a range of different media which produced 779 responses. These were used to inform the development of the objectives and the policies in the draft plan.
24. A survey for school children was also conducted at the two primary schools and this generated 108 responses.
25. Two public events were held to publicise the objectives and draft policies in the plan. This was held over the weekend of 7<sup>th</sup> and 8<sup>th</sup> July 2018 and took the form of an exhibition, which in total was attended by 163 people.

26. The plan's latest version of the draft policies was consulted upon over the weekend of 23<sup>rd</sup> and 24<sup>th</sup> March 2019 which was attended by over 220 attendees and which generated 756 written comments.
27. All this activity culminated with the preparation of the Pre-Submission version of the neighbourhood plan which was the subject of an eight - week consultation, known as the Regulation 14 consultation, which ran from 15<sup>th</sup> July to 15<sup>th</sup> September 2019. This consultation included 2 drop-in sessions, attended by 23 residents. In total, 72 residents made comments on the pre- submission version, plus 9 other consultees responded. These are fully set out in Appendix 20 of the Consultation Statement, which both records the comments made and the resultant changes made to the plan as a result of consultation responses.
28. I am satisfied that the Town Council has actively sought the views of local residents and other stakeholders and their input has helped shape the plan.

### **Regulation 16 Consultation**

29. I have had regard, in carrying out this examination, to all the comments made during the period of final consultation which took place over an 8-week period, between 16<sup>th</sup> July 2020 and 10<sup>th</sup> September 2020. This consultation was organised by East Herts District Council, prior to the plan being passed to me for its examination. That stage is known as the Regulation 16 Consultation.
30. In total, 49 responses were received, from Natural England, Historic England, Thames Water, Affinity Water, Hertfordshire County Council, Hertford Civic Society, Hertfordshire Garden Trust, National Grid, GT Railway, Hertfordshire Constabulary, Herts and Middlesex Wildlife Trust, Sports England and from 36 local residents.
31. I have carefully read all the correspondence and I will refer to the representations where it is relevant to my considerations and conclusions in respect of specific policies or the plan as a whole.

### **The Basic Conditions**

32. The Neighbourhood Planning Examination process is different to a Local Plan Examination, in that the test is not one of "soundness". The Neighbourhood Plan is tested against what is known as the Basic Conditions which are set down in legislation. It will be against these criteria that my examination must focus.
33. The five questions, which seek to establish that the Neighbourhood Plan meets the basic conditions test, are: -
- Is it appropriate to make the Plan having regard to the national policies and advice contained in the guidance issued by the Secretary of State?
  - Will the making of the Plan contribute to the achievement of sustainable development?
  - Will the making of the Plan be in general conformity with the strategic policies set out in the Development Plan for the area?

- Will the making of the Plan breach or be otherwise incompatible with EU obligations or human rights legislation?
- Will the making of the Plan breach the requirements of Regulation 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017?

## **Compliance with the Development Plan**

33. For the purpose of this neighbourhood plan, the overarching strategic policy context is provided by the East Herts District Plan, which was adopted in October 2018. That contains the strategic policies of the development plan, for the consideration of one of the above basic conditions. The other part of the development plan covering this area is the Hertfordshire County Council Minerals and Waste Local Plan, which deals with what are county matters, which are defined as “excluded development” which are beyond the scope of what a neighbourhood plan can address.
34. Bengeo is not specifically referred to in the District Plan, although the urban part of the neighbourhood area falls within the county town of Hertford, which features strongly. The spatial strategy proposes a number of urban extensions to the district’s larger towns, which are established by Policy DPS3. One of these sites, HERT4, referred to as Land North of Hertford, is expected to deliver a minimum of 150 dwellings in the period up to 2033. This allocation will contribute towards the overall housing requirement for the district, which is a minimum of 18,458 new homes.
35. Beyond the urban boundary the countryside lies in the Green Belt, where the relevant policy is set out in Policy GBR1.
36. Chapter 7 of the plan document, specifically relates to Hertford. In total the plan requires the town to deliver a minimum of 950 new homes, inclusive of the strategic allocation and windfall sites.
37. Policy HERT4 is specific to the residential allocation site and it is proposed to be developed in two phases, with around 50 dwellings to be built north of Salcombe Road by 2022 and another 100 homes to be built west of Wadesmill Road between 2022 and 2027, dependent upon the satisfactory phased extraction of mineral deposits on the neighbouring site.
38. The policy requires the site be masterplanned and the development requires the provision of additional infrastructure including an upgrade to the sewerage system, flood mitigation and SUDS, contributions to highway mitigation and the encouragement of sustainable transport measures, landscaping within and on the periphery of the site to provide a defined recognisable boundary to the Green Belt.
39. In terms of the plan’s housing policies, Policy HOU1 introduces a requirement for an appropriate mix of housing on schemes of five or more additional units. Policy HOU2 requires development to make efficient use of land for housing, at the same time as being informed by the underlying character of the area. It recognises that higher densities will be favourably considered, closer to the town centre. Affordable housing thresholds are set out in Policy HOU3.



40. Policy DES1 requires the preparation of master plans on what it describes as “significant” development proposals. Policy DES2 deals with the protection of the district’s landscape character and more detailed proposals for landscaping are set out in Policy DES3.
41. High design expectations are set out in what is a comprehensive design policy, Policy DES4. Sustainable transport issues are promoted in Policy TRA1 including the improvement of pedestrian links, cycle paths, public transport including the creation of new routes and other off site mitigation measures.
42. Vehicle parking standards are covered by Policy TRA3 which refers in itself to the currently adopted Vehicle Parking Provision at New Development SPD.
43. Community facilities are protected by Policy CFLR8. Policy NE1 deals with the protection of designated nature conservation sites and for non-designated sites or features of nature conservation interest, the policy points, in Policy NE2, to all proposals needing to seek to achieve a net gain in biodiversity. Policy NE4 looks for the protection or enhancement of the green infrastructure network.
44. Policies HA1 and HA2 cover respectively, designated and non-designated heritage assets. Flood risk management is covered by Policy WAT1 which refers to protecting from inappropriate development the functional floodplain. Air quality is covered by Policy EQ4. The requirements regarding the seeking planning obligations are covered by Policy DEL2 which sets out the three tests contained in Reg 122 of the Community Infrastructure Levy Regulations.
45. My overall conclusion is that the neighbourhood plan, apart from where I have noted in the commentary on individual policies, is in general conformity with these strategic policies in the East Herts District Plan.

### **Compliance with European and Human Rights Legislation**

46. East Herts District Council issued a Screening Opinion, in a report dated 10<sup>th</sup> January 2020, which concluded that a full strategic environmental assessment, as required by EU Directive 2001/42/EC, which is enshrined into UK law by the “Environmental Assessment of Plans and Programmes Regulations 2004”, would not be required.
47. The Council, as competent authority, in the same report also screened the plan under the Conservation of Habitat and Species Regulations. This report also considered the neighbourhood plan in terms of the impact on the nearest European protected sites, which are the Lee Valley SPA / Ramsar site and the Wormley- Hoddesdonpark Woods SAC and it concluded that there were no significant impacts and the plan could be screened out.
48. I am satisfied that the basic conditions regarding compliance with European legislation, including the newly introduced basic condition regarding compliance with the Habitat Regulations, are met. I am also content that the plan has no conflict with the Human Rights Act.

## The Neighbourhood Plan: An Overview

49. I must firstly commend the Town Council and the Community Steering Group on the quality and quantity of the submission documents. The plan is well set out and is an easy read. It makes good use of photographs and the mapping is clear. As a document I find that it is fit for purpose.
50. The plan in a number of policies seeks to designate particular areas for protection, whether it be as local green space, important views, non-designated heritage assets or community facilities to be protected. This is an important role that allows neighbourhood plans to reflect what is important to the community in terms of their environment. I am satisfied that all the individual designations are appropriate and have been justified.
51. It is important to appreciate that the neighbourhood plans are the opportunity for the community to prepare the planning policies which will be used to determine planning applications. The Town Council has already included within the plan document – Appendix I an Action Plan, a list of non-planning related projects and actions, which will not form part of the development plan. That is in line with approach recommended by the Secretary of State. However, there are instances, where I have had to remove policies or parts of policy, which address matters which fall beyond being a policy necessary to determine a planning application, such as speed limits, changing the status of rights of way or covering matters that do not constitute development or are covered by other legislation or regulations.
52. The plan places great weight on encouraging sustainable transport measures. That is in line with the thrust of District Plan transport policies as well as reflecting up to date Secretary of State policy. It is part of the plan's strategy which seeks to address traffic congestion in the area. The plan advocates the use of planning obligations in a number of policies. Since 2010 they have been strict rules imposed as to where planning obligations can be taken into consideration when determining a planning application. These are set out in regulation and are referred to in paragraph 56 of the NPPF. These state
  - “planning obligations must only be sought where they meet all the following tests
  - necessary to make the development acceptable in planning terms
  - directly related to the development
  - fairly related in scale and kind to the development.”
53. The District Plan incorporates this wording into its Planning Obligation policy, Policy DEL2. I fear that the plan has, in places, seen the requirement for developer contributions from all development as a means to fund specific items where there is no direct relationship between the facility seeking funding and the actual development. The situation would be very different had the District Council adopted a Community Infrastructure Levy (CIL) Scheme. Where CIL is

in place, it allows 25% of receipts, which can come from a wider range of developments, to be available to the Town Council to spend on the projects that it supports without having the constraints of the three legal tests.

54. Another area where the neighbourhood plan is not adding additional detail or a particular local dimension to the plan is where it is essentially repeating the requirements set out in the District Plan. There is no value in duplicating existing policy which will already be covering the plan area and this is be contrary to NPPF policy as set out in paragraph 16 f.
55. Notwithstanding these comments, the plan overall seeks to protect assets which are important to the community, whether it be the area's green spaces, heritage assets, wildlife sites or the parts of the countryside which are important for its views. The plan sets expectations for high standards of design, where development takes place and consistently encourages sustainable transport and making better use of facilities for walking and cycling. It encourages business development to take place as well as encourage the development of improved cultural facilities in this part of Hertford. As such, I conclude that the plan taken as a whole, does help with the delivery of sustainable development especially in conjunction with the District Plan.
56. My recommendations have concentrated particularly on the wording of the actual policies against which planning applications will be considered. It is beyond my remit as examiner, to comprehensively recommend all editorial changes to the supporting text. These changes are likely as a result of my recommendations, in order that the plan will still read as a coherent planning document.
57. Following the publication of this report, I would urge the Town Council and East Herts planners to work closely together to incorporate the appropriate changes which will ensure that the text of the Referendum Version of the neighbourhood plan matches the policy, once amended in line with my recommendations. There will also need to be editorial matters to resolve such as policy numbering, as a consequence of my recommended changes.

## **The Neighbourhood Development Plan Policies**

### **Policy HBN1: Local Green Space (LGS) Designation**

58. Paragraph 100 of the NPPF sets out the only circumstances where LGS status would be appropriate, namely where the green space is in relatively close proximity to the community it serves, where it is demonstrably special to the local community and holds a particular significance and is local in character and is not an extensive tract of land.
59. The site which has generated the most representations in this plan, particularly in support, but also in terms of land owner opposition, relates to the designation of Site LGS1 – land at Bengeo Field. This includes a representation submitted by Bidwells, on behalf of the Trustees of Ware Park Estate- the landowners.

60. The land in question is an agricultural field and lies to the north of one of the Local Plan's housing allocation sites – HERT4, which is to provide a minimum of 150 new homes. The site is bounded along the western boundary by a public bridleway, which somewhat unusually, already has the status of an asset of community value (it is the subsoil that is actually designated). This designation already reflects the importance the community places on this public right-of-way and the perception of the threat to its continued amenity.
61. The land is within the Green Belt. The fields to the west of the byway are currently a preferred area for mineral extraction, as set out in the adopted Minerals Local Plan, but in the latest version of the Hertfordshire Mineral Local Plan Review, the continuation of that preferred status is no longer being proposed.
62. The Secretary of State in his Planning Practice Guidance (PPG) states that LGS designation is a way to provide special protection against development of green areas of particular importance to local communities. Furthermore, it goes on to state that on sites in the Green Belt, consideration needs to be given to whether any additional local benefit would be gained by LGS designation. It goes to give an example, "to help identify areas of particular importance to the local community".
63. It is clear from the public's comments made whilst the plan was initially being prepared, which have been confirmed by the ten letters submitted as Regulation 16 representations, that the community places great importance on the protection of this field from development.
64. I am reinforced in my assessment of its importance, by the conclusions drawn by the Planning Inspector, when he considered a recent minerals appeal on this land. His conclusions were supported by the Secretary of State when he dismissed the appeal. In that decision he describes the landscape as "a resource and visual amenity of considerable importance because of its proximity to the urban area."
65. On my site visit I witnessed for myself, the unusually high number of people who were over a lunchtime, enjoying the use of the byway, including those walking the dog, running and cycling. Their enjoyment would have enhanced by the attractiveness of the countryside, especially the Bengo Field and its wide horizons. It is clear that these people who were using the right of way, were doing so from their homes rather than coming from further afield. I was impressed by the open views across the site, particularly to the east across the valley, and northwards to "The Lonely Oak". I consider that the open nature of the site, provides an attractive foreground to the wider longer distance views. Whilst not formally designated, it nonetheless is a valued landscape from the residents' perspective.
66. Whilst the site may be in private ownership and in agricultural use, it is still in my opinion that a field can qualify as a green space and that this particular green space is clearly special to the local community. Despite its Green Belt status, I still conclude that this field, including the right of way, warrants designation as

an LGS, in view of the amenity that it provides to many people and for its special role as readily accessible open countryside, which abuts the urban edge of Hertford. The Bengo Field is itself not an extensive area of land.

67. I have no comments to make on the other seven sites which are designated as LGS and I consider that the policy wording set out in the policy reflects national policy for such areas. Accordingly, I conclude that the policy meets basic conditions.

### **Policy HBN2: Community Garden**

68. A neighbourhood plan policy is required to only relate to the use and development of land which can be used to determine a planning application.

69. In my Initial Comments document, I questioned the District Council whether the landscaping of the site, to create a community garden, would in their opinion constitute development, under the terms of Section 55 of the Town and Country Planning Act 1990. The Council confirmed my view, that as both the current use and the proposed use as a community garden, would be, what it describes as “amenity land” and no change of use would be involved. The work is to create a community garden, which would involve additional planting, installing birdfeeders, composting boxes and a bug hotel, with perhaps a bench seat, would not require planning permission.

70. In response to my Initial Comments, the Town Council offered an amended policy, introducing a statement that residential development on the site will be refused. That is a very different policy, from that which had been submitted and consulted upon. I would suspect that due to the site’s limited size and its position relative to other buildings, would mean that it would not, in any event, be a viable residential plot. It could however be incorporated in to the curtilage of the adjacent bungalow as garden land. Issues of land ownership are not a planning matter.

71. As submitted, the policy is effectively allocating a site for something that does not need planning permission. As such, I recommend that the policy be deleted, but the aspirations of the policy to create a community garden could be retained with plan document, as a project set out in the Action Plan in Appendix 1.

#### ***Recommendation***

***That the policy be deleted.***

### **Policy HBN3: Important Views**

72. The District Plan includes a policy, namely Policy DES2- Landscape Character which covers much of the same ground as I and II. Paragraph 16f of the NPPF states that the policies “must serve a clear purpose, avoiding unnecessary duplication of policies that apply to particular area”. This policy is entitled “Important Views” and I consider that is the locally distinctive element to the policy that adds value to the local plan policy.

73. In terms of representations Bidwells have again objected to this policy on the grounds that Green Belt designation is sufficiently robust. I consider that it is perfectly appropriate for the community to introduce planning policies to recognise the importance of important views and many neighbourhood plans have such a policy. Furthermore, Green Belt designation does not necessarily rule out the erection of all new buildings, for example agricultural buildings would be an appropriate form of development, but if poorly located, could adversely affect a valued view. This policy allows that impact on a valued view to be taken into consideration, which if necessary, could allow any adverse impact to be mitigated.
74. I am satisfied that subject to the policy being restricted to protect the specific views and not duplicating existing policy, then the amended policy meets basic conditions.

#### **Recommendation**

##### **Delete I and II**

***Replace the first sentence in III with “The following views as shown in Appendix D are designated Important Views and if a Landscape and Visual Impact Assessment and / or Landscape Sensitivity and Capacity Assessment, as required by Policy DES2 of the East Herts District Plan, reveals a harmful impact on those views as a result of the proposal, the development will only be permitted where appropriate mitigation measures can be delivered”***

#### **Policy HBN4: Nature Conservation**

75. The first paragraph of the policy requires that “all development”, irrespective of the scale or nature of the development, “should seek to conserve and enhance biodiversity”. It would apply, as submitted, even to a change of use or a minor domestic extension. That is too onerous a requirement. District plan policy, *refers to achieving a net biodiversity gain, where it is feasible and proportionate to do so*. On other sites, the requirements of District Plan Policy NE2(ii) is that the proposal should apply the mitigation hierarchy of avoidance, mitigation and compensation, which is in line with the Secretary of State policy set out in the NPPF. As such I consider that criteria i) does not follow Secretary of State advice and policy nor that set out in the local plan and so does not meet the basic conditions. I recommend that this part of the policy be deleted. Reference to the need for an applicant to comply with the relevant local plan policy, Policies NE1 and 2 can still be referred to in the supporting text.
76. The next part of the plan places a requirement of the schemes in the area which has been coloured purple on the Herts Environmental Records Centre’s Environment Network Map i.e. existing habitats not currently qualifying under Section 41 NERC Act – which are high priority areas for ecological restoration along the River Beane valley and along the Lea and Rib Valley. I consider that such a policy will be in line with the aspiration set out in paragraphs 170 and 171 of the NPPF. During the drafting of this report, I had email correspondence with the Town Council’s neighbourhood planning consultant regarding some

mapping issues and she, having contacted The Wildlife Trust, proposed a further amendment which would further clarify the policy, to reflect the Trust's preferred position, by the addition of the additional constraint "If development is unavoidable in areas coloured purple..."

77. I am minded to accept that amendment, which changes the emphasis from being pro- development within the purple area, to one where the presumption would be against most development. I consider that position is likely to be justified in the context of the delivery of sustainable development, not least because these sites are predominately in areas at risk of flooding where there is a general presumption against most development, but the policy does allow exceptions by stating "where development is unavoidable".
78. The policy's support for the creation of new natural areas and wildlife habitats or the enhancement or expansion of existing provision is in line with national and local plan policy.
79. The final requirements refer to what information should be submitted with the planning application which involve the removal of unprotected trees. A neighbourhood plan policy cannot require a particular document or information to be provided with the submission of a planning application. That is the role of the District Council's Local Validation List. The policy can presume against the loss of unprotected trees unless their removal is justified. A tree can only be effectively protected by the imposition of a Tree Preservation Order. The inclusion of text encouraging the replacements with native species is an appropriate response to the loss of unprotected trees.

### **Recommendations**

#### **Remove I**

**In II replace "Developments located" with "If development is unavoidable" and after "Plan Area" insert "as shown in Figure 22"**

**In IV, delete the first sentence and insert at the end of the second sentence "where the development results in the unavoidable loss of trees on the site"**

### **Policy HBN5: Improving Air Quality**

80. PPG advice is that air quality is a material consideration in areas of poor air quality. This is echoed in District Plan Policy EQ4. I consider that this policy should go further and not just mitigate against increases in the air pollution, it should also require proposals to minimise their air quality impact. That would reflect national policy on air quality.
81. Whilst the requirements of (iv) may be desirable, financial contributions can only be taken into consideration when determining planning applications, if they meet the three criteria set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010. Therefore, examples such as contributions towards "Turn Off Engines" signs could only legally be sought, even if it is a policy that *encourages*, in the areas that are likely to attract additional waiting traffic outside schools, shops and similar locations.

### ***Recommendations***

***In I, after “should” insert “minimise and”***

***At the end of IV insert “where the development is likely to increase waiting traffic in such locations”***

### **Policy HBC1: Assets of Community Value**

82. This policy refers to Assets of Community Value (ACV), which are a localism provision, separate to, but which runs in parallel to neighbourhood planning powers. The designation as an ACV only last for three years and it would be inappropriate to protect specific premises, which may have lost their ACV status. In any event, this policy already covers the same properties which are referred to and are protected by Policy HBC2 as they are community facilities. The Town Council in its response to my Initial Comments note, accepted that on reflection, these facilities could be protected by Policy HBC2 and it would agree to a recommendation that this policy be deleted.

### ***Recommendation***

***That the policy be deleted***

### **Policy HBC2: Enhanced Community Facilities**

83. I have no comments to make on the first paragraph and the list of the services set out, which cover a range of community facilities including within the policy the protection of public houses which are now a sui generis land use.

84. I am not satisfied that the provisions regarding section 106 contributions being required for GP services and enhanced youth facilities within existing community facilities, is sufficiently justified by the submitted evidence. Having regard to the three tests for planning obligations, which I previously set out, it would need to be demonstrated that there is a lack of capacity in the existing facilities, which will be worsened as a result of pressures imposed by the new development. I am not satisfied that based on the current level of evidence; the legal requirements have been met. I note that the District Plan includes a policy, Policy CFLR7- Community Facilities which addresses the requirements for on-site provision or where a financial contribution for off- site facilities, either for new contributions to be negotiated where appropriate, including those required to fill the gaps in young persons’ provisions.

### ***Recommendation***

***In II, delete all text after the first sentence and insert “Contributions towards enhanced youth facilities and accessible GP services, collected pursuant to Policy CFLR7 in the District Plan, will be welcomed to address any shortfall in the existing provision within the plan area, which would be exacerbated as a result of the development”.***

### **Policy HBC3: Listed Buildings and Structures**

85. I have no comments to make on this policy



## Policy HBC 4: Non-Designating Buildings and Structures

86. Neighbourhood plan policies are quoted in full in documents beyond the actual neighbourhood plan document. An example is that they could be referred to in planning decision notices and in appeal documentation. I propose that the second sentence which states “More information on each of these is in Appendix G” should be moved to the supporting text.
87. In terms of the policy put forward for these buildings, the level of protection offered, is that development is required to preserve or enhance their significance and that of their setting. This is a higher level of protection than that advocated by the Secretary of State for this status of heritage assets which, as set out in paragraph 197 of the NPPF, requires a balanced assessment by the decision maker, having regard to the scale of any harm or loss and the significance of the asset.
88. I will propose an amendment to bring it more closely into alignment with the Secretary of State’s approach to ensure that it meets the basic conditions.

### *Recommendations*

***Delete the second sentence of I and move to supporting text***

***In II delete all text after “provided” and replace it with “that the scale of any harm or loss is balanced against the significance of the asset”.***

## Policy HBC5: Cultural Facilities

89. Whilst the supporting text refers to a preferred location for the expansion of Hertford Arts Hub, the policy does not allocate a site for this expansion. The first part of the policy refers not to the use, but to protecting the heritage of existing buildings and the need for any development or expansion to be in keeping. If cultural facilities are not to proceed necessarily in respect of the two sites quoted, it may be that in another location, it would not be appropriate for a new building to have to have regard to the heritage of existing buildings.
90. The text and the website refer to concept plans for the conversion of the Old Hertford Brewery and the Old British School into a high-quality gallery. In the former case, proposals for these listed buildings will be judged against requirements of Policy HBC3, and in the latter case, Policy HBC4, in as much as the Old British School is proposed to be a non-designated heritage asset.
91. If new cultural services were to be located elsewhere, as will be possible under the terms of the policy, then the District Plan Policy DES4 which deals with the design and layout of new development which would be the relevant policy for non-residential development in the plan area.
92. Again, the issue of transport is also covered by other policies in the plan dealing with sustainable transport, in particular Policies HBT2 through to HBT5.
93. The policy as submitted, seems by unspoken implication, on the one hand to be very site specific, when it was referring to issues such as the provision of secure, cycle parking for residents and visitors, but the policy is actually generic in terms of its possible application. I am treating it as a policy which aims to support the development and expansion of cultural facilities within the plan area.

Detailed aspects of the design/transport arrangements are already covered by other policies in the development plan, which would apply to any proposals that come forward, whether as suggested in the supporting text at the Old Brewery site or the Old British School, or elsewhere in the plan area. Any planning application would be considered against any relevant policy in the development plan. Whilst this could be referred to in the supporting text in this instance, I will include reference to subject to compliance with other policies in the development plan, to reflect the concerns of the Town Council.

#### **Recommendation**

##### **Replace the policy with**

***“Proposals for the development or expansion of cultural facilities will be supported subject to compliance with other relevant policies in the development plan.”***

#### **Policy HBT1: Traffic Congestion and Road Safety**

94. The policy, as submitted, implies that a transport assessment will be expected to be submitted in respect of *all* development proposals, irrespective of the nature of the proposal or its location, although the policy concedes, the scope of the assessment can be proportional to the scale of the proposal. As drafted, it could be a proposal for a change of use or other minor development, which will be expected to, at least, submit some formal traffic assessment. This moves the expectation of the need for the assessment of the proposal from the decision maker, to the applicant. It imposes a much lower threshold of development which needs to be subject to transport assessment, than is expected by the Secretary of State in the NPPF, where transport assessments are required to assess the likely impact of development *whether development will generate significant amounts of movement*. I consider that to impose these obligations on every development proposal in Bengeo would be an over onerous requirement. I appreciate the traffic issues are high on resident’s agenda but the preparation of such assessments requires specialist input, in terms of assessing the traffic likely to be generated by developments, when assessed in combination with other developments in the area, on congestion at specific junctions. That would be a disproportionate response to the congestion issues the area experiences.
95. The Secretary of State, in paragraph 108 of the NPPF, sets a higher threshold for considering the impact of development on the road network, by stating that schemes should only be “prevented or refused on highway grounds where the residual cumulative impact on the road network would be severe”. He does encourage applicants to promote sustainable transport modes, as does this neighbourhood plan and I acknowledge that much of the plan area is within walking distance of the town centre and the two railway stations.
96. The seeking of Section 106 contributions is included in the policy, but as previously referred to, such financial contributions can only be sought if it passes the three tests set out in Regulation 122. I consider that the need for

financial contributions is already set by strategic Sustainable Transport Policy TRA1 in the District Plan.

97. The policy goes on to refer to three specific road safety improvements, although these are not an extensive list. I believe that this particular list goes beyond being a policy which could be used to determine a planning application. The imposition of speed limits is a matter which is the responsibility of the County Council as Highway Authority, rather than the local planning authority- it would be covered by a Traffic Regulation Order. I do accept that these priorities could be quoted as examples of suitable measures, in supporting text rather than the actual policy, for delivering road safety improvements. Similarly, enforcement of access restrictions would be a similar highway enforcement issue, which will be outside the control of the applicant. However, the Town Council can lobby for the use of Section 106 funds to meet the plan area's requirements so long as it can demonstrate that it meets the 3 legal tests.
98. I do not have any concerns regarding the second element of the policy, supporting sustainable transport solutions and encourage the installation of electric car charging points.
99. Similarly, the requirement for new schools to include a school travel plan raises issues as to the reasonableness of the policy. I believe that it would not be an imposition that would be proportionate, if it were to be imposed on a school extension, unless that extension were to facilitate an increase in the school role, as the construction of the extension is unlikely to generate additional traffic, if it was to be a qualitative improvement in educational facilities on the site.

### **Recommendations**

***In I, delete the first sentence.***

***In the second sentence, delete "significant", and after "developments", insert "that will generate significant amounts of transport movement"***

***In the third sentence after "impact but" insert "where possible"***

***Delete the rest of I, including bullet points after "cyclists"***

***Move bullet points to text***

***In III after "school extensions" insert "which will result in an increase in the capacity of the school"***

### **Policy HBT2: Encouraging More Walking**

100. I commend this policy which seeks to improve connectivity for walking and the objective of encouraging pedestrian movement. However, it is unlikely to be a practical proposition for the smaller "major schemes", i.e., say those developments just above 10 units, as they are unlikely to be sited on large enough sites to need to establish their own networks. I do consider that the largest developments, such as the District Plan allocation site HERT4 or what the District Plan refers to as "significant developments" would have been of a scale to justify incorporating these principles. It could be appropriate for some smaller development, such as new residential or commercial developments to

contribute to off-site cycle improvements, as a package of sustainable transport measures. This is could be facilitated by District Plan Policy TRA1.

101. The stipulation that residents with reduced mobility and visual impairment should be invited to contribute to the design of new pedestrian routes, whilst good practice, is essentially a procedural/ process matter, which could be promoted by its inclusion within the Action Plan, but is not appropriate for it to be a requirement to be included as a planning policy used to determine planning applications. It would not be reasonable to refuse an application for an acceptable scheme, merely because this engagement had not taken place.
102. I do not consider an expectation for all major development to contribute to specific footpath improvements set out in the first bullet point, is unlikely to meet the three Regulation 122 tests. It would be better to have these routes to be put forward as examples of possible footpath improvements. Similarly, the potential to upgrade footpaths to bridleways is not really a matter that relates to the determination of planning applications, as changing the status of a right-of-way, is covered by matters set out in separate legislation but the works could fund improvement to allow their status to be changed.
103. I have no comments on the final element of the policy.

#### **Recommendations**

***In I, replace "major" with "significant"***

***In the third sentence of I, after "contributions" insert "collected under the provisions of Policy TRA1 of the District Plan" and replace "should" with "could"***

***In the first bullet point of I, replace "Footpaths" with "rights of way network, which could include"***

***In the second sentence of the first bullet point, after "upgraded" replace the rest of that sentence with "to be capable of allowing cycling"***

***Delete III***

#### **Policy HBT3: Encouraging More Cycling**

104. Again, the development of improved cycle routes is a policy to be encouraged but again, it is only likely to be a practical proposition for some major development such as the large allocation sites e.g., HERT4 or what the District Plan refers to as "significant developments". Similarly, it could be appropriate for some larger major development to contribute to wider cycle improvements as a package of sustainable transport measures sought by District Plan Policy TRA1.
105. I do not however consider that requiring developments anywhere in the plan area to have to contribute to specific requirements such as to provide secure current cycle racks at Hertford North station car park would necessarily meet the three tests for planning contributions, nor would the contributions for the delivery cycle training pass the test to make a development acceptable in planning terms. However, these specific projects could be funded by a more generic contributions to sustainable transport options.

### **Recommendations**

***In the second sentence of I, after “contributions” insert “collected under the provisions of Policy TRA1 of the District Plan” and replace “should” with “could”***

### **Policy HBT4: Public Transport**

106. It is not within the gift of a developer to “maintain and develop high-quality bus and community transport services” on all major sites. What is reasonable is that on the larger developments, the layout and design of the road should allow for access by public transport. I consider that would be in line with the Secretary of State policy set out in paragraph 104 of the NPPF.
107. I have no objections to the inclusion of the second element to the policy, where travel plans are prepared, they could possibly include incentives to drive changes in travel habits, such as travel vouchers.
108. In terms of section 106 funding, as set out in III, again the seeking of contributions to extending public transport to be able to serve new developments, could be appropriate for developments that are not currently adequately covered by public transport, through a subsidy paid via a Section 106 contribution, if that is justified by a Transport Assessment and it meets the 3 statutory tests.

### **Recommendations**

***In I, replace all the text in the first sentence up to “major developments and” with “The masterplanning of significant new residential development should allow, where it would be appropriate, the development to be capable of being served by local public transport services which”***

***In III, after “S 106” replace “funding” with “contributions collected under the provisions of Policy TRA1 of the District Plan,”***

### **Policy HBT5: Parking**

109. I have no issues with the support offered to proposals that seek to increase off street parking in areas where there is insufficient parking.
110. However, a proposal which delivered on street parking to the requisite car parking standards should not be expected to have to also fund measures to address an existing deficiency. However, if offsite parking was not available, then such a contribution, to address the current issues, which would be exacerbated by the development taking place, could be justified, if it was used to make the development acceptable in planning terms.

### **Recommendation**

***In the second sentence of I, after “contributions” insert “collected under the provisions of Policy TRA1 of the District Plan,” and replace “should” with “could”***

## **Policy HBH1: Housing Supply**

111. I have noted the Trustees of Ware Estate's objections relating to the inclusion of paragraph 4.68 which refers to the possibility of in the future extending LGS1 designation into part of the site covered by HERT4. I do not believe that the supporting text constitutes an expression of planning policy, as it would be dependent upon there being a revision to the strategic site allocation in a formal review of the District Plan and a separate review of the Neighbourhood plan. Such changes would need to go through the statutory development plan making procedures which would offer the landowners plenty of opportunities to offer comments on the potential change of the status of the site from housing to local green space.
112. I have no comments to make on the wording of the policy which seeks to address housing need in the plan area. It seeks to encourage developers to address sectors where there is unmet provision, in terms of size, type and affordability of new housing.

## **Policy HBH2: Design and Layout**

113. I am treating this policy as guidance which relates to housing development proposals as it is located within the Homes and Development part of the document. Apart from possibly criterion i), all the requirements seem to be directly related to residential schemes and does not really directly relate to other forms of development, where existing District Plan policy, especially Policy DES4, can continue to provide a policy context for dealing with design and layout matters.
114. Building for Life 12 is a guidance document for the design of new housing. I do not consider that strict compliance with the criteria should necessarily be the basis of approving or refusing a planning application. That would be too rigid a policy. It nevertheless is a vehicle for highlighting components of good practice when assessing proposals. I will change the emphasis to encouraging the adoption of the principles set out in the guidance for the assessment of the design quality of a new development where appropriate.
115. I consider that it is important that Policy DES4 of the District Plan, which is a more comprehensive design policy, should continue to be the starting point for the assessment of all new development, but which should be read in conjunction with this policy and I will make that clear in my recommendation, to add to the clarity of the policy.
116. Turning to other requirements of the policy, I do not accept, from what I saw from my site visit that traffic volumes, apart from some of the main busy routes, will be sufficiently high, to require, as an overarching design principle, that new building should be set back to minimise impact of noise on occupants. In many cases the more pressing need should be to reflect the existing pattern of development or the need to provide adequate off-street parking. I would propose that a caveat be introduced by referring to sites in high noise climate where it is justified by an acoustic report.

117. In terms of parking standards, I am surprised the policy is explicit in setting out a blanket requirement for two off-street parking spaces plus visitor parking irrespective of the likely level of occupancy, it is the same whether it applies to a one bed / studio flat or a five-bed executive house. The plan does countenance imposing a lower parking requirement, if it is showing other policies are successful in reducing car usage. However, such a policy will be difficult / impossible to use in practice, as how would a decision-maker faced with a planning application, know whether these policies have been successful, without some specific assessment criteria.
118. I have reviewed the districts parking standards, which already provide guidance for the plan area. The categories where they are lower, is in terms of one bed dwellings, with the standard is 1.5 spaces rather than 2 spaces (to be rounded up) and the three- bedroom units where it is 2.5 spaces to be rounded up to 3 spaces for a four- bed house. In view of the problems of on street parking within the plan area, I do not see the lower standard for the larger units could be justified, as the objective is to avoid additional parking pressures overloading local roads. I will therefore propose that this element of the policy, has not been supported by evidence and so is not in accordance with Secretary of State advice and therefore does not meet the basic conditions.
119. In view of the variety of housing densities across the plan area, I cannot see how using one particular, albeit successful development in its own context close to the town centre, should be the model to be replicated across the plan area. I consider that local plan policy DES4a) provides more appropriate guidance in terms of development reflecting their local context.
120. I do not consider that the aspiration set out in proviso i) can be delivered in a development management context. It is too vague a policy and I do not believe that a decision maker would be able to ascertain whether a planning application measures up to the aspirations. Similarly, I cannot see how an applicant could demonstrate that that the expectations of meeting “the best national standards, taking account of the latest peer reviewed research on the impact of climate change, to optimise energy and water conservation and mitigate flood risk”, are met.
121. In terms of the allocation site HERT4, the requirement to include a site for on-site parking for Bengo Primary School is not an appropriate policy for a neighbourhood plan to be imposing on what is a strategic housing allocation in an adopted local plan, especially as this expectation would be added after the masterplan the southern section of the site closest to the school site has been approved. The implication of setting aside housing land for this purpose would result in the site not being able to yield the expected number of new homes and this would in turn put pressure on other sites. The parking issues associated with the school are not a consequence of the housing development and it would be inequitable to impose that requirement at this stage where planning consents have already been issued. I will recommend that this part of the policy be

deleted as it would undermine the delivery of a strategic policy within the adopted local plan.

#### **Recommendations**

***At the start of I, insert “In addition to meeting the requirements set out in District Plan Policy DES4, residential”***

***In a) replace “meet” with “follow the principles set out in the”***

***At the end of b) “in those locations subject to high levels of road traffic noise”***

***Delete d), f) and i)***

***Delete II***

### **Policy HBH3: Landscape Design**

122. It is not justified, at this stage, to introduce an additional policy which imposes additional landscaping requirements in respect of this strategic site. Having said that I consider that the policy could be used to encourage proposals that support what are five aspirations and I will amend the wording accordingly.

#### **Recommendation**

***In II, replace “should” with “are encouraged to”***

### **Policy HBH4: Brownfield Development**

123. There is an existing general presumption in the NPPF which supports the use of the previously developed land, also known as brownfield sites. This neighbourhood plan imposes a conditionality for that support, so that it is dependent upon meeting the three criteria set out. I do not consider that the principle of development brownfield sites needs to be dependent upon securing a significant improvement on the visual appearance of the site or buildings, as making efficient and effective use of brownfield sites rather than greenfield sites should be sufficient justification is its own right. Matters relating to protecting the amenities of neighbours and compatibility with the design and heritage of nearby buildings will be covered by other policy in the development plan. I will refine the policy so that it encourages the development of brownfield land and especially schemes that support the types of uses set out the final paragraph of the policy.

#### **Recommendations**

***Delete I***

***In II, after “Proposals” insert “for the development of brownfield sites will be supported, especially those”***

### **Policy HBB1: Local Business Development**

124. Again, the neighbourhood plan’s support for the development or redevelopment of business premises is dependent upon the application meeting three criteria. Whilst these may be desirable outcomes, I do not believe that the policy is justified by making support for new local business development, dependent upon a scheme having to meet the requirements as set out in the 3 bullet points,



some of which may be impossible or would be non-viable, to deliver e.g., providing new and enhanced or community facilities as part of a business-related development.

125. I will remove these elements from the policy, but they can be included within supporting text by way of encouragement / support.
126. The policies in the second part of the policy are already covered by appropriate policies in the development plan e.g., Policy DES4 of the District Plan.
127. The final part of the policy seeks to ensure that within the St Andrews Quarter there is a mix of national and independent retailers. Whilst this may be a laudable aspiration, as the Town Council now acknowledges, it is beyond the scope of the planning system to restrict the occupation of particular buildings. The role is to control the use of the premises, rather than the company/ business that occupies them.

### ***Recommendation***

***Delete all the text after “supported”***

## **The Referendum Area**

128. If I am to recommend that the Plan progresses to its referendum stage, I am required to confirm whether the referendum should cover a larger area than the area covered by the Neighbourhood Plan. In this instance, I can confirm that the area of the Bengo Neighbourhood Plan as designated by East Herts District Council on 27<sup>th</sup> June 2017 is the appropriate area for the referendum to be held and the area for the referendum does not need to be extended

## **Summary**

129. I congratulate Hertford Town Council and the Community Steering Group on reaching this important stage in the preparation of the neighbourhood plan. I appreciate that a lot of hard work has gone into its production and the Town Council can be proud of the final document, which is really professionally presented. It is a plan that concentrates on a range of issues that are clearly important to the local community. The plan will, in conjunction with the District Plan, provide a sound basis for determining planning applications in Bengo into the future.
130. To conclude, I can confirm that my overall conclusions are that the Plan, if amended in line with my recommendations, meets all the statutory requirements including the basic conditions test and that it is appropriate, if successful at referendum, that the Plan, as amended, be made.

131. I am therefore delighted to recommend to East Herts District Council that the Bengo Neighbourhood Area Plan, as modified by my recommendations, should proceed, in due course, to referendum.

JOHN SLATER BA(Hons), DMS, MRTPI  
John Slater Planning Ltd  
11<sup>th</sup> December 2020