

**KINGSMEAD NEIGHBOURHOOD PLAN 2019-2033**

**SUBMISSION VERSION**

**REPORT OF EXAMINATION**

**By**

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**Independent Examiner**

**March 2023**

## **SUMMARY**

I was appointed by East Herts District Council (EHDC) with the support of Hertford Town Council (HTC) in January 2023 to undertake the examination of the submission version of the Kingsmead Neighbourhood Plan 2019-2033.

The neighbourhood area was designated by the local planning authority, EHDC, on 11 February 2020 for the whole of the Hertford Kingsmead Ward. The neighbourhood area is shown in Figure 1 of the Plan (page 3).

A Consultation Statement sets out the consultation which was undertaken. I am satisfied that the level of consultation amply met the relevant statutory requirements.

I decided that the statutory condition for holding a hearing did not exist, and the examination proceeded on the basis of the documents only, together with my visit to the area.

I conclude that, overall, the Plan is well-researched, well-evidenced, and clearly laid out and written. If made, the Plan will become a key part of the statutory development plan.

The high quality of the Plan has resulted in the very limited number of instances where I have recommended modifications. One of the major matters of local concern – perhaps the greatest topic of concern – was parking, traffic congestion and road safety. This led to a number of proposed policies under the heading of Sustainable Travel. I found that elements of this section (and policies) were not land use policies but would be better expressed as requested Actions. I recommend accordingly.

I recommend that, subject to my recommended modifications being made, the Plan should proceed to referendum.

I see no reason to recommend that the area covered by the referendum should differ from the neighbourhood area.



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## **Introduction**

1. I was appointed in January 2023 by East Herts District Council (EHDC) with the support of Hertford Town Council (HTC), the qualifying body, to undertake the examination of the submission draft (June 2022) of the Kingsmead Neighbourhood Plan 2019-2033 (the NP).
2. I am a King's Counsel with over 40 years' experience of planning law and practice. I am a member of the NPIERS Panel of Independent Examiners. I am independent of any local connections or interests, and have no conflicts of interest.

## **Kingsmead in context**

3. On 11 February 2020 EHDC designated, at the request of HTC, a neighbourhood area for the whole of the Hertford Kingsmead Ward. The NP area is shown on Figure 1 (page 3) of the NP.
4. Section 2 of the NP contains an excellent description of the neighbourhood area (paragraphs 2.1-2.9), together with the Challenges and Opportunities identified by the community (paragraphs 2.10-2.15). I do not attempt to summarise these sections here, but recommend that any reader of this Report should refer to them. The Challenges and Opportunities highlight the main areas of significant local concern, particularly parking, traffic congestion and road safety.

## **The Local Plan**

5. The statutory (adopted) Local Plan (LP) for the area is the East Herts District Plan October 2018. The LP period is 2017-2033. Appendix B of the Basic Conditions Statement (BCS) sets out how the NP Policies seek to achieve the strategic objectives of the LP. Appendix C of the BCS sets out how, in the view of the authors, the NP Policies are in accordance with the strategic policies of the LP. The statutory requirements in this respect are set out below.

### **Evolution of the NP**

6. The Neighbourhood Planning (General) Regulations 2012 set out a legal requirement at regulation 15 that the submission of a neighbourhood plan proposal to the local planning authority must include certain documents, amongst which is a “consultation statement”. The Consultation Statement (CS) – regrettably, undated – was duly published and submitted.
7. A summary of the consultation undertaken is set out in paragraphs 1.8-1.14 of the NP. Comprehensive details of the consultation are set out in the CS. Regulation 14 public consultation was carried out from 7 November 2021 – 11 February 2022. Responses were considered and informed the submission version. Regulation 16 public consultation was carried out between 22 September 2022 – 4 November 2022. Twenty three representations were made, all of which I have considered.
8. I am quite satisfied that the level of consultation amply met the relevant statutory requirements.

### **SEA and HRA**

9. Appendix A to the BCS exhibits a letter dated 28 March 2022 from EHDC to HTC recording the decision of EHDC that (a) an environmental assessment of the NP is not required as it is unlikely to have significant environmental effects, and that (b) the NP is unlikely to have a significant effect upon a Natura 2000 designation and therefore does not require a Habitats Regulations Assessment (HRA).
10. The above decision was supported by a report dated 28 February 2022, which noted that the NP does not allocate any additional sites or growth not accounted for in the LP. This report referred, in turn, to an SEA Screening Report dated December 2021 prepared for HTC by Grovesources Ltd.
11. I see no reason to doubt the legal validity of the above screening decisions.

### **The Examination Process**

12. I was appointed in January 2023. The examination formally commenced on 19 January 2023. I was supplied with hard copies of key documents (including the regulation 16 representations) and had electronic access to all other and background documents. I have carefully reviewed all of these.
13. On 24 January 2023 I informed the parties that the statutory conditions for the holding of a hearing did not exist, and that the examination would proceed on the basis of the documents only, and my visit to the area. I also provided a provisional date for the completion of the examination. I carried out an unaccompanied visit to the area on 20 February 2023.

### **Basic Conditions - General**

14. Schedule 4B paragraph 8 to the Town and Country Planning Act 1990 provides that a neighbourhood plan meets the Basic Conditions if it meets those specified in paragraphs (a), (d), (e), and (f). One further basic condition has been prescribed under paragraph 8(2)(g), as follows:

*“The making of the Neighbourhood Development Plan is not likely to have a significant effect on a European Site...or a European Off-shore marine site...either alone or in combination with other plans or projects”.*

15. As the courts have frequently emphasised, and as I do now, the role of a Neighbourhood Plan Examiner is tightly constrained. It is (apart from dealing with other statutory requirements referred to at paragraphs 18-23 below) confined to considering compliance with the basic conditions. The Examiner cannot consider anything else: paragraph 8(6). Therefore the Examiner is not able to consider whether – as would be the case for a local plan – the NP is “sound” (in accordance with paragraph 35 of the NPPF). Accordingly, the Examiner can only consider the content of the NP (the planning judgments made, the choices made, the views regarded as important etc.) insofar as those matters impact on the basic conditions. This inevitably limits, significantly, the

extent to which it is proper to respond to what I might call wider “planning merits” points made by representors.

16. I address the criteria in the basic conditions where relevant as I assess, below, the contents of the NP.

### **Other Statutory Requirements**

17. These are set out in the Town and Country Planning Act 1990 (as amended) and sections 38A-38C of the Planning and Compulsory Purchase Act 2004.
18. The NP was prepared and submitted for examination by a qualifying body: section 38A.
19. It has been prepared for an area designated under section 61G of the 1990 Act.
20. The NP meets section 38A(2) in that it sets out policies in relation to the development and use of land in the neighbourhood area. I find that this is so for the NP taken as a whole. I identify below certain instances where submission policies go beyond the scope of land use policies, and I have made appropriate recommendations to ensure statutory compliance.
21. Section 38B requires the NP to specify a period for which it is to have effect. In its submission form, the NP does not do so. I was informed that the plan period is intended to be 2019-2033 (the latter date being coterminous with the end date of the LP). I **Recommend** that modifications be made to specify this period on the front cover, and on the header to all pages of the NP. I also **Recommend** that an additional paragraph be inserted after paragraph 1.14 (with paragraph 1.15 becoming paragraph 1.16) to state that the period of the NP is 2019-2033.

Reverting to section 38B, the NP does not include provisions about development which is excluded development, and does not relate to more than one neighbourhood area.



### Assessment of NP

22. As indicated in paragraph 15 above, the remit of this examination is significantly more limited than is the case for a local plan examination, but is confined to compliance with the above statutory requirements. Where a particular policy and/or supporting text does not raise any such compliance issues I shall, save exceptionally, make no comment. My comments and consequent recommendations therefore generally relate to passages where Modifications are required.
23. I would like to pay tribute to two particular aspects of the NP, the first substantive and the second presentational. First, section 3 sets out the Vision and Objectives. These are clearly derived from the responses to consultation, and are clearly expressed. Second, the Figures (including plans and photographs) are all of an unusually high standard, being clear, legible, and immensely helpful guides to the context and Policies of the NP.
24. The Foreword at page 1 is signed by a named local resident. This person wishes to remove this attribution for personal reasons. I **Recommend** deletion of the signature.
25. Paragraphs 4.3-4.48 and Policy HKGE1 are devoted to green spaces, specifically Local Green Spaces (LGS). National policy in relation to LGS is set out in paragraphs 101-103 of the NPPF. Paragraph 102 provides:

*The Local Green Space designation should only be used where the green space is:*

- a) in reasonably close proximity to the community it serves;*
- b) demonstrably special to the local community and holds a particular local significance, for example because of its beauty, historic significance, recreational value (including as a playing field), tranquillity or richness of its wildlife; and*
- c) local in character and is not an extensive tract of land.*

Paragraph 103 provides:

*Policies for managing development within a Local Green Space should be consistent with those for Green Belts.*

26. Eleven LGS are proposed, LGS1-LGS11. Each LGS is clearly described and justified, with a plan for each. Appendix B contains further justification. Neither in the text nor at Appendix B is the area of each LGS provided. I sought clarification of this, expressing concern that some of the areas may constitute “extensive tracts of land”, and was provided with the following information:

LGS1	=	0.2 ha
LGS2	=	20.2 ha
LGS3	=	19.3 ha
LGS4	=	12.6 ha
LGS5	=	8.9 ha
LGS6	=	4.3 ha
LGS7	=	1.3 ha
LGS8	=	2.0 ha
LGS9	=	0.7 ha
LGS10	=	0.5 ha
LGS11	=	1.5 ha

27. EHDC/HTC stated: *LGS2, 3 and 4 are the largest local green spaces and originally it was considered that they could be sub-divided. However, the areas have clearly defined edges and it was judged that their scale was proportionate to the large area of population they serve, namely both Hertford Town Council area and the town of Ware (in excess of 50,000 people).*
28. I visited each LGS. I am satisfied that LGS1 and LGS5-10 adequately comply with the policy criteria. LGS2-4 range from 12.6ha to 20.2 ha. They are heavily protected from development by the LP (and national policy). Having visited the area, I am confirmed in my view that these are such extensive tracts of land that they should not qualify as LGS. I **Recommend** that LGS2, LGS3 and LGS4 be deleted from the NP, and that all consequential adjustments to the text, Policy, maps and plans be made.

29. LGS11 – Rush Green Roundabout – is stated (paragraph 4.47) to be “an unusual selection for a Local Green Space”. I agree and do not find that it meets the criterion in paragraph 102b of the NPPF. I **Recommend** that it be deleted from the NP, and that consequential adjustments be made to Policy HKGE1, the supporting text, the maps and plans, and Appendix B.
30. I further **Recommend** that the areas of all surviving LGS be specified in the relevant text and Appendix B.
31. I recognise that the community may not wish to lose, entirely from the NP, the research and descriptions attaching to the four deleted LGSs. I take the view that it would be an appropriate consequential adjustment for the relevant texts (as amended) to remain in the NP, probably before Policy HKGE1 (as modified). The essential condition for this is that the texts would make it clear that the spaces are not LGSs, but valued green spaces in the NP area.
32. Paragraph II of Policy HKGE1 is an appropriate development management policy for the LGS. Paragraph III provides:

*Development proposals close to designated Local Green Spaces could be conditioned to or contribute funding towards better management of these spaces or set up community stewardship.*

This is vague and imprecise. Further, it does not meet the test for planning conditions in NPPF 56. I **Recommend** that it be deleted.

33. Paragraphs 4.49-4.69 and Policy HKGE2 are devoted to Important Views. Eleven such views are identified, VP1-VP11. They are shown on the Policies Map and on more detailed Maps in Appendix A. Paragraph 4.50 states that an assessment of the views can be seen in Appendix B. However, Appendix B is, curiously and confusingly, titled Locally Cherished Views and only describes VP1 and VP2. I queried this with EHDC/HTC. I was informed that the title should have been updated to Important Views, and I **Recommend** this change. Further, two pages of Appendix B had been inadvertently omitted from the submitted NP. These two pages (which were sent to me) set out the justification

for VP3-VP11, in terms which support the text at pages 29-37. I **Recommend** that this error in Appendix B be corrected.

34. I endorse the selection of all the VP's, and the terms of the accompanying policy HKGE2.
35. Paragraphs 4.70-4.79 and Policy HKGE3 address Biodiversity. Paragraph I of the Policy requires (appropriately) delivery of net biodiversity gains across the NP area. Paragraph III refers to developments in a certain area which "...must, where appropriate, deliver net biodiversity gains (in accordance with the latest version of Defra's Biodiversity Impact Calculator and...". This detracts from the general scope of paragraph I, and could give rise to uncertainty. I **Recommend** that "must" in line 3 should be deleted and replaced with "should", and that the phrase "where appropriate [to]..and" be deleted. The relevant part of the Policy will then read "should contribute towards enhancing..." etc. (The effect of these changes is that the reference to biodiversity net gain in paragraph III is deleted, retaining the general reference in paragraph I).
36. Paragraphs 4.80-4.83 and Policy HKGE4 deal with Green Corridors. I endorse this section.
37. Paragraphs 4.84-4.85 and Policy HKGE5 deal with Green Infrastructure and Sustainable Urban Drainage Schemes (SUDS). Hertfordshire County Council (HCC) make the point (page 10 paragraph 3.3) that Sustainable Drainage Systems are compatible with all development sites whether urban or rural. I **Recommend** that the heading to the Policy is deleted and replaced with: Green Infrastructure and Sustainable Drainage Schemes (SuDS).
38. Paragraphs 4.86-4.88 and Policy HKGE6 address Recreational Spaces. Seven Protected Recreational Open Spaces are proposed, PROS1-PROS7. I endorse these proposals, and subject to what follows, the terms of the Policy. The qualification relates to paragraph III of the Policy. I raised a concern that, as drafted, this paragraph might be seen to encourage, for example, housing

development on open spaces. EHDC and HTC accepted the possible difficulty and suggested the following amendment to the Policy:

~~III. Development will be permitted in these spaces if it would not result in the loss of all or part of the spaces, and provided they are replaced.~~ Development that results in the loss of all or part of the spaces will only be permitted if they are replaced elsewhere, with better facilities and as accessible to the residents as the current recreational open spaces and/or the quality of those spaces is improved.

I endorse this change, and **Recommend** accordingly.

39. Paragraphs 4.89-4.91 and Policy HKGE7 address Air Quality. I endorse this section.
40. Paragraphs 4.92-4.104 address Community Assets, including Healthcare and Retail. Related Policies are HKCA1-HKCA4. Policy HKCA3 provides: *Proposals for new health care facilities could be funded from S.106 contributions from development, collected through District Plan policy CFLR2 and DEL2, or other funding mechanisms. Such facilities could include a satellite clinic from a Hertford GP or the expansion of the existing facilities at the Ware Day Centre.* I find that this policy is not a land use policy, but rather an aspiration or suggested action. I **Recommend** that it be deleted, but its terms (without a heading) should be converted to supporting text, to be added at the end of paragraph 4.98 (or, if preferred, as a new paragraph). Policy HKCA4 will be renumbered to HKCA3.
41. Subject to this Recommendation, I endorse the passages on Community Assets.
42. Paragraphs 4.105-4.155 and Policies HKBE1 and HKBE2 address Heritage Assets. I commend the research that has led to these interesting passages. In line 2 of paragraph I of the Policy, I **Recommend** that “Ancient” should be replaced with “Scheduled” before “Monuments”. I otherwise endorse this section.

43. Paragraphs 4.116-4.134 address Homes and Development, with related Policies HKBE3-HKBE7. These passages and Policies cover a wide range of topics. I endorse them all.
44. Paragraphs 4.135-4.160 and related Policies HKTP1-HKPT5 address various aspects of Sustainable Travel. In the consultation carried out prior to the formulation of the NP, one of the major matters of local concern – perhaps the greatest topic of concern – was parking, traffic congestion and road safety. As a general comment, elements of the Policies go beyond the scope of proper land use policies. Many of the aspirations – relating to roads and footpaths – can only be carried out by the highway authority. These aspirations can be retained in the NP, but only if separately identified by way of proposed action. Appendix C to the NP comprises a long and detailed Action Plan which reflects this point. The Action Plan already includes Projects or Tasks which are directed for the attention of the highway authority.
45. Turning to Policy HKTP1, paragraphs I, IV and V relate to development, and are therefore acceptable land use policies. Paragraph III is acceptable provided that it is expressed to relate to development, and I therefore **Recommend** the insertion of “within developments” after “New pedestrian route” in line 1. Without this addition, I **Recommend** deletion of paragraph III for the reason at paragraph 44 above. Paragraph II is an aspiration/action: I **Recommend** its deletion (with subsequent re-numbering) and its transfer (if so desired) to Appendix C.
46. Turning to Policy HKTP2, paragraphs I, IV and V are acceptable (V is incomplete on my copy). I regard “policies” relating to the preferred destination of S.106 funds as not constituting land use policies. I therefore **Recommend** deletion of paragraph II. Its terms could acceptably be added to supporting text and/or Appendix C. In relation to paragraph III, I make the same **Recommendation** as in paragraph 45 above.

47. Turning to Policy HKTP3 I endorse paragraphs I and II. As to paragraph III, I make the same **Recommendation** as in paragraph 46 above, i.e. its deletion and transfer to supporting text and/or Appendix C if desired.
48. Turning to Policy HKTP4 Parking, I endorse paragraphs I, III and IV. Paragraph V is incomplete. It relates to both new and existing development. EV chargers could be required in new development, but only encouraged or supported in existing development. On this basis, I **Recommend** deletion of this paragraph, and substitution with: *Sufficient electric car charging points will be required in new developments, both commercial (including car parks) and domestic. Provision of public charging points in existing car parks will be encouraged.* I **Recommend** that paragraph II be deleted for the same reason as in paragraph 46 above, and its transfer to supporting text and/or Appendix C if desired.
49. I endorse the terms of Policy HKTP5 – Traffic Congestion and Road Safety.
50. I note that several representations are concerned with the provision or improvement of footpaths and cycle routes. These are, of course, the responsibility of the highway authority. The NP could not and does not promote such works but at best – see above – can indicate a preference as to how S.106 funds might be spent. I also note a number of detailed concerns in the representations of HCC as highway authority, for example, as to parking, 20 mph speed limits and the like. It is appropriate, however, for the NP to set out local concerns and aspirations on these matters, recognising – as it does – that realisation of many of these matters is dependent on agreement with and action by HCC.
51. I endorse the terms of Policy HKBD1 – Support of Business Development.
52. Paragraph 4.166-4.169 and Policy HKBD2 address the Provision of Local School Places. The supporting lower case text – which also deals with access to schools – is acceptable. However, the Policy adds nothing to the normal role and function of the education authority – who would naturally be consulted by

EHDC on any significant housing proposal. It is therefore unnecessary and potentially confusing, and I **Recommend** its deletion.

### **Basic Conditions**

53. In my above review of the NP and its Policies, I have naturally had close regard to compliance with the basic conditions. I have **Recommended** a limited number of modifications, mainly where necessary to ensure a NP which deals with land use matters in the Policies and – having regard to national policy and guidance – is clear, and properly addresses national policy in relation to LGS.
54. I endorse the accuracy of the Basic Conditions Statement.

### **Conclusion**

55. I conclude that the NP is well-researched, well-evidenced, and clearly laid out and written. If made, the NP will become a key part of the statutory development plan. The very high quality of the NP has led to the need for a very limited number of necessary recommendations or modifications. I **Recommend** that, subject to those modifications being made, the NP should proceed to referendum.
56. I see no reason to recommend that the area covered by the referendum should differ from the neighbourhood area.

**Christopher Lockhart-Mummery KC**

**Examiner**

**March 2023**