

**Chief Executive and Director of
Environment: John Wood**



East Herts District Council
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Pegs Lane
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SG13 8EQ

**Spatial Planning & Economy Unit
Minerals and Waste Team**
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spatialplanning@hertfordshire.gov.uk

Telephone : 01992 556404
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Contact : David Hodbod
My ref : SPEU/DH/NP

Emailed to planningpolicy@eastherts.gov.uk

Date : 21 December 2015

Dear Isabelle Hadow,

Re: Hertingfordbury Neighbourhood Plan Area Consultation

I am writing in response to the consultation regarding Hertingfordbury Parish Council's application for the designation of a Neighbourhood Plan Area to provide comments in relation to minerals and waste planning matters.

In terms of minerals matters, the proposed Neighbourhood Plan Area sits entirely within the Sand and Gravel belt, as identified in the Hertfordshire Minerals Local Plan (adopted March 2007). As such, the county council, as Minerals Planning Authority, would raise concerns for any unnecessary sterilisation of minerals from non-mineral development.

Due to the location within the sand and gravel belt, the area has a rich history of minerals extraction as well as extant planning permissions allowing extraction to continue. Panshanger Quarry and Water Hall are both identified by Policy 3 of the existing Hertfordshire Minerals Local Plan as sites which should be used to meet the county's need for land-won aggregate.

Panshanger Quarry remains an active extraction site and has permission to extract sand and gravel until 31st December 2030. Subject to the completion of a Section 106 agreement and the application being called-in by the Secretary of State, permission has recently been granted by the Hertfordshire County Council Development Control Committee for the importation of inert waste material to enhance the restoration of the site.

The Water Hall Quarry Complex is currently inactive in terms of extraction as sand and gravel reserves only exist beneath the plant site. It is unknown whether this material will be dug but the site has permission for extraction until 21 February

2017. The site is currently used as an inert landfill site, at Bunkers Hill, and has permission for this activity until 31 December 2017.

Landfilling has occurred historically at a number of other locations in the proposed designation area, at Cole Green, Redland Gravel Ltd, Holwell Hyde and the land at Holwell Court Farm.

The proposed Neighbourhood Plan Area contains one Allocated Waste Site, Land of Birchall Lane (AS008), as shown in Section 4.6 of the Waste Site Allocations document (adopted June 2014). The county council considers the Allocated Waste Sites to be the most suitable locations to manage the county's existing and future waste arising throughout the duration of the existing Waste Local Plan period.

The area also contains three waste operations safeguarded under Policy 5: Safeguarding of Sites in the Waste Core Strategy & Development Management Policies document (adopted November 2012). These are Cole Green Service Station (SA009), Water Hall Quarry Complex (SA018) and HWRC Cole Green (SA082). In order to contribute to a continuing strategic network of waste management provision within the county, the county council will oppose development proposals which are likely to prevent or prejudice the use of the safeguarded areas for waste management unless alternative or enhanced provision is made for a facility dealing with the equivalent waste capacity or where it can be demonstrated that the need for those facilities can no longer be justified.

Further details of applications and historic landfill data can be provided during the Neighbourhood Plan preparation.

When areas for development are identified during the preparation of the Neighbourhood Plan the county council should be consulted so that further detailed comments can be provided in relation to minerals.

Although Neighbourhood Plans cannot include policies that cover minerals or waste development, it should be noted that when the Parish Council develops its vision and objectives for shaping development and growth, minerals and waste matters will need to be taken into account as Minerals and Waste Local Plans form part of the Development Plan. As outlined above, this particular proposed Neighbourhood Plan Area contains a history of operations relating to the county council responsibilities and therefore the county council would like to be consulted at future stages in the production of the Neighbourhood Plan.

Yours sincerely

David Hodbod

Planning Officer - Minerals and Waste Policy



**WELWYN
HATFIELD**

Colin Haigh
Head of Planning

Reply to: address as below

Date: 22 December 2015

Direct Tel: [REDACTED]

Email: [REDACTED]

Isabelle Haddow
East Herts District Council
Wallfields
Pegs Lane
Hertford
SG13 8EQ
planningpolicy@eastherts.gov.uk

Dear Isabelle

Hertingfordbury Neighbourhood Plan

Thank you for consulting Welwyn Hatfield on the Hertingfordbury Neighbourhood Plan Area.

We note that the Parish Council have applied for the whole of their parish to be designated as the Neighbourhood Area. In normal circumstances we would have no concerns about a Neighbourhood Plan covering the whole parish area, but in this case we believe there are exceptional circumstances which should be taken into account. These relate to the land north of the A414 and west of Panshanger Lane that is being promoted as part of Birchall Garden Suburb, part of which would lie within the proposed neighbourhood plan area.

As you are aware, both your and our council are considering the merits of allocating this site in our respective local plans. This will be a complex process, not only because the site straddles our respective boundaries, but as it will also require the involvement of Herts County Council as the waste and minerals planning authority. Our concern is that the designation of a Neighbourhood Plan Area will add even more complexity to this process, with confusion over which development management policies would apply to which part of the site, even though the allocation itself would be a strategic matter.

It is also relevant that the Parish Council would be entitled to 25% of any CIL monies that might ultimately be levied on the development. Given the precarious viability of major sites to provide on-site facilities such as affordable housing and schools and to contribute towards off-site infrastructure improvements such as roads and utilities, there is a severe risk that development could be prejudiced. It is our understanding that the Parish Council would be under no obligation to spend such monies on infrastructure associated with the scheme from which it is derived.

Welwyn Hatfield Borough Council, The Campus, Welwyn Garden City, Herts AL8 6AE
DX 30075, Welwyn Garden City 1

Tel: 01707 357000

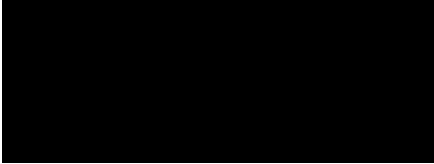
www.welhat.gov.uk



There are precedents for excluding development sites of this nature, where the High Court and Court of Appeal have ruled that it would be lawful for a Council to take such an approach.

East Herts District Council is therefore asked to give careful consideration to the merits of excluding Birchall Garden Suburb site from the Hertingfordbury Neighbourhood Plan area.

Yours sincerely



Colin Haigh
Head of Planning



N A B A R R O



East Hertfordshire District Council
Council Offices
Wallfields
Pegs Lane
Hertford
SG13 8EQ

16 December 2015

Our ref: GB/CTB/L1990/00055/BGS
Your ref:

Dear Sirs

OBJECTION by Tarmac to application by Hertingfordbury Parish Council to designate a Neighbourhood Area on grounds of conflict with the emerging Local Plans and with their proposal for Birchall Garden Suburb.

We represent Tarmac which has a significant interest in the land which is included in the proposed Neighbourhood Area and as such is an interested party for the purposes of the relevant legislation.

As a preliminary issue we note that the Hertingfordbury Parish Council is the applicant for the area designation. In the absence of any information as to the basis for the identification of the Neighbourhood Area or the principles upon which a Neighbourhood Plan is being promoted Tarmac reserves the right to make further representations as to the vires of the Parish Council's application.

Notwithstanding the large extent of Tarmac's interests, Hertingfordbury Parish Council has made no attempt to discuss the proposed Neighbourhood Area with Tarmac. The Neighbourhood Area as currently put forward is likely to frustrate and undermine the proper forward planning processes of both East Hertfordshire District Council and Welwyn Hatfield Borough Council.

In common with other recent proposals for Neighbourhood Area designation elsewhere, we consider that the proposed boundaries of this particular Neighbourhood Area are misconceived, and in conflict with strategic cross boundary planning priorities.

We would note, in particular, the decision in the High Court in *R. (on the application of Daws Hill Neighbourhood Forum) v Wycombe DC* [2014] EWCA Civ 228 (copy attached) when it was established that where a Parish Council is the relevant body making the application for designation of the area, the local planning authority must have regard to the desirability of designating the whole of the Parish Council's area as a Neighbourhood Area and made clear that:

"it is not required to designate the whole, and may exclude part, of the Parish Council's area, thus ensuring that it will not be included in any neighbourhood area".

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L1990/00055/83151263 v.3



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In the same case, Lord Justice Sullivan said that in addressing the question of appropriateness of the inclusion of land in a Neighbourhood Area in accordance with the requirements of Section 61G of the Town and Country Planning Act 1990:

"any decision by the local planning authority as to appropriateness must take into account the factual and policy matrix that exists in each individual case at the time that the decision is made".

In this case the proposed Neighbourhood Area encompasses the whole of the administrative area of Hertingfordbury Parish Council (except apparently the village of Hertingfordbury itself) including that part of the proposed Birchall Garden Suburb within East Hertfordshire District. We would note in particular that:

- The Birchall Garden Suburb site is the focus of considerable forward strategic planning and design by both Welwyn Hatfield Borough Council and East Hertfordshire District Council, including Green Belt review and strategic development allocations. These matters are not within the remit of a Neighbourhood Plan to address. They are larger than local in respect of the extent of their impacts and consequent communities of interest.
- The area is being actively promoted by both local authorities as the next chapter of development of Welwyn Garden City.
- This is acknowledged by both authorities in their respective emerging local plans. Both authorities are well advanced in their plan making. It is understood that both authorities are seeking to progress quickly with their local plans which are programmed to be adopted in 2017.
- Given that the process for adopting a neighbourhood development plan could take as long as 21 months, it is likely that the local plans for both authorities will have been adopted prior to any Hertingfordbury Neighbourhood Plan.
- In the event of conflict between the proposed neighbourhood plan and the local plans, which we strongly suspect would arise, this would lead to considerable time and resources being wasted by all parties.

These are all material considerations which the local authority should take into account when considering whether the Birchall Garden Suburb site should be included in the Neighbourhood Area to be designated.

We would also note significant parallels with the decision of Epping Forest District Council to designate a smaller area than sought by North Weald Bassett Parish Council – a copy of the District Council's report and minutes on the application are enclosed. Importantly, that District Council excluded a potential strategic site within the Green Belt (Latton Priory) being considered for allocation in an emerging Local Plan which was at an earlier stage of preparation than both the Welwyn Hatfield and the East Hertfordshire Local Plans. A further significant parallel is that the area excluded by that District Council was also demarcated by a major road (in that case, the M11) and not populous.

In our submission, insofar as a Neighbourhood Area is designated at all, that part of the proposed Neighbourhood Area encompassed by the part of the Birchall Garden Suburb site within East Hertfordshire should be excluded, specifically the north western part of the proposed Neighbourhood



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Area that is bounded by the A414 and Panshanger Lane as illustrated on the attached plan (pink shading).

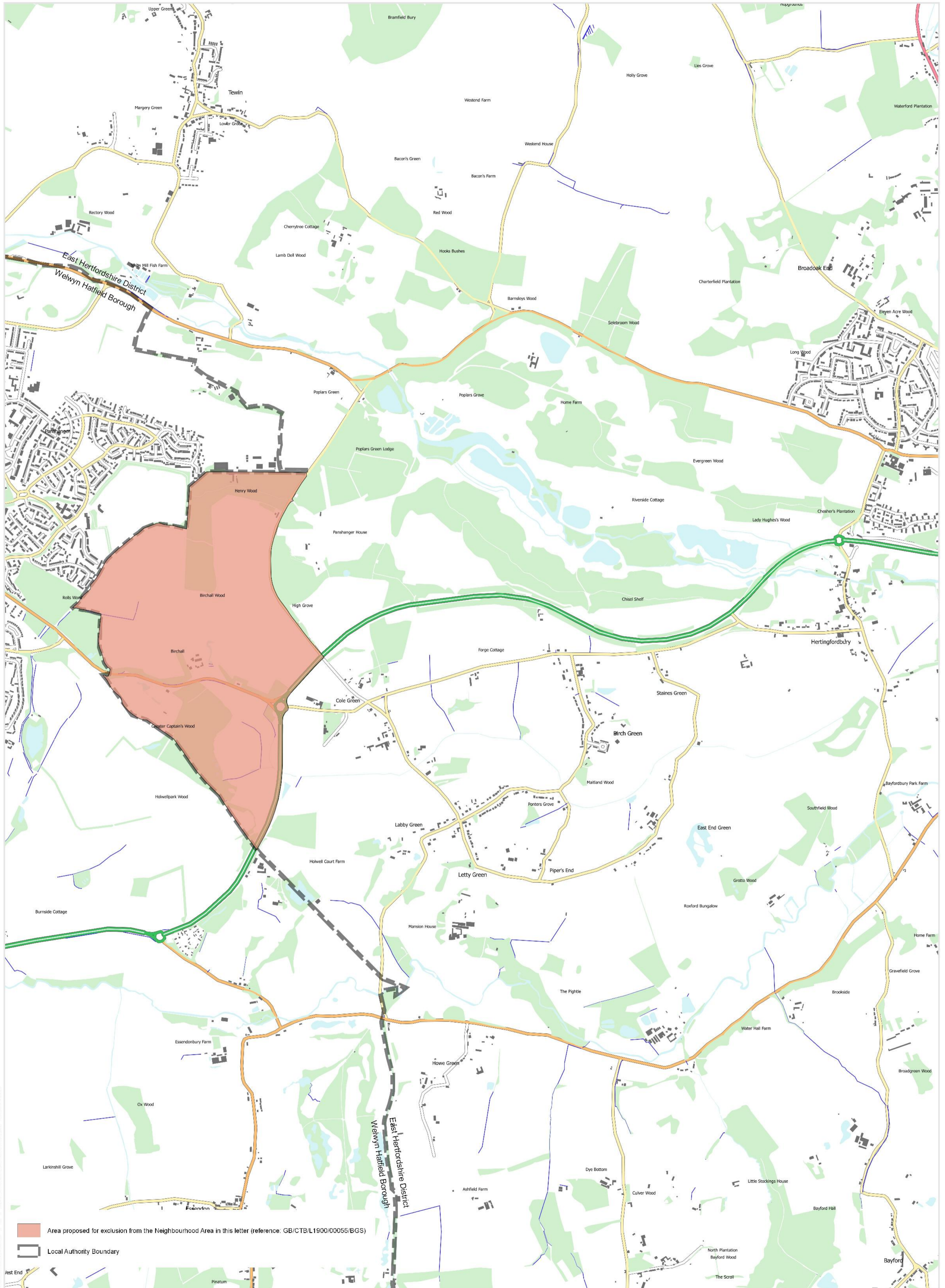
Separate representations are being made in connection with Tarmac's interest in Panshanger Park.

Please acknowledge safe receipt of this letter.

Yours faithfully

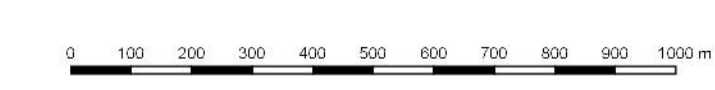


NABARRO LLP



Area proposed for exclusion from the Neighbourhood Area in this letter (reference: GB/CTB/L1900/00055/BGS)

Local Authority Boundary



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**Hertingfordbury Neighbourhood Area:
Area Proposed for Exclusion**

Drawn: MRP
 Designed: JWT
 Approved: JWT

Date: 16/12/2015
 Scale: 1:12,500 @ A2

User: LAMLEY J20
 Rev:



1:12,500 @ A2

Report to the Cabinet

Report Reference: C-075-2014/15

Date of meeting: 9 March 2015



**Epping Forest
District Council**

Portfolio: Planning Policy

Subject: North Weald Bassett Neighbourhood Area Designation

**Responsible Officer: Ken Bean (01992 564610)
Amanda Thorn (01992 564543)**

Democratic Services: Gary Woodhall (01992 564470)

Recommendations/Decisions Required:

(1) To agree the criteria for the assessment of applications for the designation of neighbourhood areas, including where it is proposed to designate an area with boundaries other than the area sought, for the purposes of preparing a Neighbourhood Plan as set out in Appendix 1;

(2) To agree that the application from North Weald Bassett parish for the designation of the whole parish for the purposes of preparing a Neighbourhood Plan should exclude an area to the west of the M11 for reasons as follows:

(a) A number of strategic cross boundary matters have been identified for this part of the parish which include, but are not limited to, Green Belt review, cross district boundary agreement of housing and job growth figures, and planning and delivery of key strategic infrastructure including transport measures;

(b) The matters identified in a) (above) are not within the remit of a Neighbourhood Development Plan to address;

(c) A comprehensive assessment of all of the possible sites around Harlow (in Epping Forest, Harlow and East Hertfordshire District Council areas) must be carried out to ensure that the most suitable site(s) (if any at all) are allocated for development and ensure that any development takes account of the wider impact and larger "communities of interest beyond the parish";

(d) The area proposed for exclusion is defined by existing physical and administrative boundaries, and does not cover an area of high existing population.

(3) To agree an amendment to the delegated authority to the Director of Neighbourhoods, in consultation with the Portfolio Holder, to designate areas where there have been no representations, to include the consideration of strategic and cross boundary matters prior to designation of an area for the purposes of preparing a Neighbourhood Plan.

Executive Summary:

An application for the designation of a Neighbourhood Area for the purposes of the preparation of a Neighbourhood Development Plan was received from North Weald Bassett Parish Council on 8 September 2014. This application, and the representation received in response to the advertisement of it, has prompted the Council to recommend the addition of a more detailed set of criteria to be applied to all subsequent applications, to assess each application for known and possible cross boundary matters of strategic importance which should be addressed via the Duty to Cooperate.

The location of North Weald Bassett Parish, immediately adjacent to Harlow's administrative boundary, and the possibility of strategic cross boundary growth via the Local Plans of Epping Forest, Harlow and East Hertfordshire District Councils, has caused the Council to question the desirability of designating the whole of the parish, for Neighbourhood Development Plan purposes, at this early stage in the preparation of the District Local Plan.

In considering the alternatives available, advice from Counsel has been received which confirms that the District Council has a broad discretion in determining whether it is desirable to designate the area which has been applied for. As a result, it is now determined that the north western part of the Parish, bounded by the M11 to the east, the administrative boundary with Harlow to the north, the Parish boundary to the west, and the London Road (B1393) and Rye Hill Road to the south, should be excluded from the Neighbourhood Area designation. (See attached map).

Reasons for Proposed Decision:

It is necessary to establish more detailed criteria to ensure consistent consideration of applications for neighbourhood areas, to ensure that strategic and cross boundary matters that should rightfully be addressed by the District Council under the Duty to Cooperate are identified and assessed prior to designation. To this end, the delegated authority previously provided to the Director of Neighbourhoods should now be amended to ensure this further assessment is carried out in all instances.

In summary, the reasons for proposing that a smaller area of North Weald Bassett parish is designated as a neighbourhood area are that given the location of the parish on the district boundary with Harlow, there are a number of strategic and cross boundary issues that must rightfully be considered under the Council's Duty to Cooperate. It is not within the remit of the neighbourhood planning function to address and deliver matters including, but not limited to, Green Belt review, cross boundary agreement of housing and job growth figures, and planning and delivery of key strategic infrastructure.

Other Options for Action:

- (i) To not establish clear criteria on the designation of neighbourhood plan areas.
- (ii) To designate the whole of North Weald Bassett parish area as a neighbourhood area.
- (iii) To designate the whole of North Weald Bassett parish area as a neighbourhood area, alongside a memorandum of understanding (or similar) setting out the matters which can be addressed and desired sequencing of plan preparation.
- (iv) To designate alternative areas of the parish, as per part g. of Appendix 2.

Counsel's advice has been sought on the desirability and legality of the alternatives that were identified. As a result of that advice, Officers do not consider that option (iii) above would be

lawfully available to the Council.

Report:

1. Neighbourhood Planning was introduced as part of the Localism Act 2011. It enables town/parish councils and Neighbourhood Forums to actively participate in plan making by creating Neighbourhood Development Plans (NDP). A NDP, once it has been approved in the community via referendum and subsequently 'made' by the Local Planning Authority (LPA), forms part of the statutory development plan and is therefore used in the determination of planning applications. NDPs can include housing and employment land allocations, policies and design statements; they can be as simple or as complicated as the town/parish council choose. Crucially, the NDP must be in general conformity with national planning policy as well as the strategic policies of the District Council's Local Plan.

2. To date seven applications for the designation of neighbourhood areas have been received from parish councils, and five of these have been approved. All five have included the whole parish. The application recently received from Loughton is currently out for consultation and the final application is the subject of this report. Each of the areas that have been designated to date are for complete parish areas. In these areas, no matters of a strategic nature have been identified and, in accordance with the regulations, it was considered desirable and appropriate for the whole of the parish areas to be designated for the purposes of preparing a neighbourhood plan.

3. In a parished area a LPA is required to have regard to the desirability of designating the whole of the area of a parish or town council as a neighbourhood area (s61G(4) of TCPA 1990 refers). The LPA should take into account the parish or town council's statement explaining why the area applied for is considered appropriate to be designated as such. Whilst the LPA should aim to designate the area applied for, it can refuse to do so if it considers the area is not appropriate. Where it does so, the LPA must give reasons. Therefore, Local Authorities have some flexibility in determining whether it is desirable to designate the whole parish and subsequent case law supports this approach. The Court of Appeal determined that in the case of *Daws Hill (R (Daws Hill Neighbourhood Forum) v Wycombe District Council, (2013))* that the Council has not acted unlawfully in designating a smaller area than that which had been applied for. The key matter in that case was that the area contained two strategic development sites, (as allocated in the Core Strategy), and the District Council did not consider it was desirable for these areas to be included as part of the Neighbourhood Plan area.

4. The Government's Planning Practice Guidance states that a neighbourhood area can include land allocated in a Local Plan as a strategic site. The guidance advises that "where a proposed neighbourhood area includes such a site, those wishing to produce a neighbourhood plan or Order should discuss with the local planning authority the particular planning context and circumstances that may inform the local planning authority's decision on the area it will designate." However, Local Plan preparation for Epping Forest District is at a stage where it is not yet known to what extent there will be any strategic land allocations, and in what location if there are any. For the Harlow area, it is more likely (although not certain) that some strategic allocations will be made.

5. An application for designation of a Neighbourhood Area was made by North Weald Bassett Parish Council on 8 September 2014. It was recognised that this application, and any such subsequent application which includes land immediately adjacent to the administrative boundary of Harlow, is likely to raise issues of cross boundary/strategic concern. Therefore, Counsel's advice has been sought on the desirability and legality of a range of alternatives regarding the designation of an area for the purposes of preparing a Neighbourhood Plan. These are:

- (i) to designate the area as applied for (i.e. the whole parish);
- (ii) to designate the area as applied for, and draft a Memorandum of Understanding (or similar) between the Parish Council and District Council, setting out the strategic matters and areas that would be without the remit of the Neighbourhood Plan, and suggested sequencing to take forward the NDP; or
- (iii) to designate a smaller area of the parish.

6. It is clear that the 1990 Act (s61G(5)) confers on the Council a broad discretion as to whether it is appropriate to designate the entire parish, or any part thereof, as a neighbourhood area. In respect of the first and third alternatives, it is for the Council to determine whether it is desirable to take such action, and that a clear process would likely make such decisions lawful. Officers considered in detail the second option as a potential solution to consideration of complex and strategic issues in the broader Harlow area, and were particularly keen to pursue this alternative should it be confirmed as a lawful option. However, following advice received, it was determined this action would not be lawful as the Regulations make no allowance for conditional designation of neighbourhood plan areas.

7. In now considering the application for designation before the District Council by North Weald Bassett Parish Council, and any others that may be made by parishes that include cross boundary or strategic matters, it is important to set out a clear structure for how such applications will be considered. Further, as the Local Plan process evolves and strategic site allocations are identified throughout the district, it will be necessary to consider all subsequent applications for neighbourhood areas against the same criteria.

Criteria

8. National Planning Practice Guidance (NPPG) identifies the types of considerations that should be taken into account in determining whether a proposed neighbourhood area is desirable.

The following could be considerations when deciding the boundaries of a neighbourhood area:

- *village or settlement boundaries, which could reflect areas of planned expansion*
- *the catchment area for walking to local services such as shops, primary schools, doctors' surgery, parks or other facilities*
- *the area where formal or informal networks of community based groups operate*
- *the physical appearance or characteristics of the neighbourhood, for example buildings may be of a consistent scale or style*
- *whether the area forms all or part of a coherent estate either for businesses or residents*
- *whether the area is wholly or predominantly a business area*
- *whether infrastructure or physical features define a natural boundary, for example a major road or railway line or waterway*
- *the natural setting or features in an area*
- *size of the population (living and working) in the area*

Electoral ward boundaries can be a useful starting point for discussions on the appropriate size of a neighbourhood area; these have an average population of about 5,500 residents.

(NPPG ID 41-033-20140306)

9. The above guidance provides a framework for decision making and local criteria are presented at Appendix 1 for agreement by Cabinet.

Application by North Weald Bassett Parish Council

10. An application was received by Epping Forest District Council (EFDC) on 8 September 2014, and subsequently advertised with the period afforded for inviting representations on the application between 22 September and 31 October 2014. A single representation was received from Boyer Planning, on behalf of the promoters of land at Latton Priory, to the north west of North Weald Bassett parish and on the boundary with Harlow District Council. This representation did not raise an objection per se, but set out that there may be some logic to using the M11 as a dividing line in the parish, and only designating the eastern portion of the parish. In the event that the District Council were inclined to designate the whole of the parish, Boyer Planning have established that they would be willing to contribute information as it relates to Latton Priory to aid the preparation of a NDP.

11. Further to the period for representations ending, and as a result of the representation received from Boyer Planning, a view was sought from officers of Harlow District Council. That view stated *"In order to secure the proper strategic planning of the area I consider that it would be premature to include sites on the edge of Harlow, but in Epping, within the area of the NWB Neighbourhood Plan. This should only be considered once agreement has been reached between the respective LPA's on the housing numbers across the area. Even then growth around Harlow should be considered in the context of perhaps a joint Area Action Plan."*

12. The criteria established above and at Appendix 1, sets out the way in which the District Council will consider any applications for neighbourhood area designation. This identifies a clear framework against which the District Council will consider whether strategic/cross boundary matters that should rightfully be considered by the district Local Plan are, or are likely to be, present, and whether these should lead the Council to exclude part of a parish from a designation.

13. In this case it is clear there are a number strategic and cross boundary issues that must be analysed, discussed and agreed at a district level. It is not within the remit of the neighbourhood planning process to deal with matters including the overall establishment of housing and job growth figures, strategic transport matters and green belt boundary review. Further, the Duty to Cooperate requires that EFDC continues to work closely with neighbouring authorities and other key regulatory and infrastructure provision organisations, and at this level such matters are beyond the remit of the neighbourhood planning function. It is considered the possible presence of additional strategic allocations in North Weald Bassett village itself would be guided by the existing Masterplan, which provides substantial information upon which the parish council can prepare their NDP. This is a different policy position from that which exists in the area immediately adjoining Harlow.

14. As such, and in accordance with the 1990 Act (s61G(4)) it is not considered desirable to designate the whole of North Weald Bassett parish area as a neighbourhood area.

15. In considering the most appropriate area to be designated, regard has been had to National Planning Policy Guidance and legal advice. There are no clear parameters for how an amended designation should be formulated, but it would appear reasonable to ensure that any such revised designation is created on the basis of known factors. To this end, and for reasons set out in detail in Appendix 2, it is suggested that the area at the north western

extent of North Weald Bassett parish, bounded by the M11 motorway in the east, the district administrative boundary in the north, the parish boundary in the west and London Road (B1393) and Rye Hill Road to the south, is excluded from the neighbourhood area.

16. Should the District Council as part of its Local Plan make any allocations in the area excluded from the neighbourhood plan area, the Council would involve the Parish in the process and any subsequent masterplanning or Action Area Plan.

Resource Implications:

Neighbourhood Planning is supported by the Planning Policy team from within existing resources. Government funding is available at particular stages, and this is sought at the appropriate times.

Legal and Governance Implications:

The Localism Act 2011 introduced neighbourhood planning and brought about changes to the Town and Country Planning Act 1990 (as amended). Detailed guidance is provided by Neighbourhood Planning (General) Regulations 2012, the National Planning Policy Framework (NPPF) and the Planning Practice Guidance (PPG).

Safer, Cleaner and Greener Implications:

The SCG Scrutiny Panel is required to keep under review the application of Strategic Environmental Assessment (SEA) as it applies to the preparation of the new Local Plan. The SEA is one of the key mechanisms by which alternative sites and policy options will be tested to determine which is the most appropriate to deliver the vision and objectives of the Local Plan.

Consultation Undertaken:

Representations were invited on the application for designation between 22 September and 31 October 2014. One representation was received, as set out in the body of this Report.

Background Papers:

North Weald Bassett Parish Council application for designation of Neighbourhood Area – 08/09/2014

Representation received from Boyer Planning – 31/10/2014

Further letter received from North Weald Bassett Parish Council – 07/01/2015

Risk Management:

There are a number of potential risks associated with this decision, which could include the Council's decision on the designation of the neighbourhood area being challenged. Accordingly, Counsel's advice has been sought to ensure that a lawful approach is being taken.

CABINET REPORT: APPENDIX 1
DESIGNATION OF NEIGHBOURHOOD AREAS

Area application received:

Assessment date:

Criterion	Response (Yes / No / N/A)	Justification
a. Does the application include the whole of a Parish area?		(Summarise case presented by Town / Parish Council)
b. If only part of the Parish has been applied for, have appropriate reasons been supplied to justify this approach?		
c. If more than one Parish area is seeking designation as a neighbourhood area, have appropriate reasons been supplied to justify this approach?		
d. Does the Parish immediately adjoin the district boundary?		(Provide description of relationship to adjoining authorities)
i. If yes, are there any known or potential cross boundary/strategic matters covered by the Duty to Cooperate that cannot reasonably be addressed via the Neighbourhood Plan process?		
e. Where the parish does not immediately adjoin the district boundary, are there any identified strategic matters for consideration by the Local Plan process, including those that may be covered by the Duty to Cooperate?		
i. If yes, does the presence of any of these issues suggest an amended area would be desirable?		
ii. If it is desirable to		

designate an alternative area, what is the new area that is proposed? (Reflecting guidance provided by NPPG section 41-033-20140306)		
<u>CONCLUSION/REASONS FOR DECISION</u>		

CABINET REPORT: APPENDIX 2
DESIGNATION OF NEIGHBOURHOOD AREAS

Area application received: **NORTH WEALD BASSETT PARISH COUNCIL**
Assessment date: **10 FEBRUARY 2015**

Criterion	Response (Yes / No / N/A)	Justification
a. Does the application include the whole of a Parish area?	Yes	Application letter dated 8 September 2014 identifies the Parish Council consider the area is appropriate for the following reasons: <ol style="list-style-type: none"> 1. The area defined is covered by North Weald Bassett Parish Council in it entirety. 2. The area is recognised by the local community, EFDC and ECC as being the Parish of North Weald Bassett. <p>The letter gives no explanation in planning terms as to why the area is considered appropriate.</p>
b. If only part of the Parish has been applied for, have appropriate reasons been supplied to justify this approach?	N/A	
c. If more than one Parish area is seeking designation as a neighbourhood area, have appropriate reasons been supplied to justify this approach?	N/A	
d. Does the Parish immediately adjoin the district boundary?	Yes	North Weald Bassett Parish immediately adjoins Harlow District Council area on its northern boundary.
i. If yes, are there any known or potential matters covered by the Duty to Cooperate that cannot lawfully or reasonably be addressed via the Neighbourhood Plan process?	Yes	The potential growth of Harlow, into land within Epping Forest District, has been mooted for more than decade. As a result of continuing changes to the national planning system, progress in terms of land allocations via Local Plans and an agreed method of delivery, have been delayed. The Duty to Cooperate requires Local Planning Authorities to establish matters of cross boundary significance, and to reach consensus on how these matters should be addressed. A number of such matters have been identified between Harlow and Epping Forest District Councils. These include, but are not limited to, establishment of housing and employment need figures, apportionment of growth needs across the SHMA/Functional Economic

		<p>Area, and identification and delivery of key strategic infrastructure. It is clear there are a number of key strategic matters that need to be addressed in taking forward the possible growth of Harlow, notwithstanding that at this stage, Epping Forest District Council has not yet determined whether such growth is the most appropriate to meet the needs of the district as a whole.</p> <p>Further, there are a number of known development interests on the borders of Harlow, all of which are being actively promoted for inclusion in the Local Plan. As above, Epping Forest District Council has not yet determined which, if any, of these sites may be appropriate for allocation in the Local Plan. However, the matters which must be addressed in order to reach reasonable conclusions are complex and wide ranging. It is not considered it would be reasonable for the Parish Council to undertake this function. The consideration of such matters also includes areas that are not part of the remit of a neighbourhood development plan, for example a Green Belt Review.</p> <p>The potential allocation at Latton Priory is an area where the issues of Green Belt Review, landscape sensitivity, transport infrastructure and links to Harlow are of particular concern. A cross boundary approach, including (at least) Epping Forest, Harlow and East Hertfordshire District Councils, is required to ensure a comprehensive assessment of all the possible sites around Harlow is carried out.</p> <p>If a stage is reached in which the area at Latton Priory is allocated for development purposes, there may then be an opportunity for the neighbourhood area to be altered. In the meantime, the District Council must continue to work closely with neighbouring district authorities under the Duty to Cooperate, and in due course will seek to actively engage with the parish council on any emerging proposals.</p>
<p>e. Where the parish does not immediately adjoin the district boundary, are there any identified strategic matters for consideration by the Local Plan process, including those that may be covered by the Duty to Cooperate?</p>	<p>N/A</p>	<p>North Weald Bassett parish immediately adjoins the district boundary, question d. above refers.</p>
<p>f. Considering d. and e. above, does the presence of any</p>	<p>Yes</p>	<p>It is not considered desirable to designate the whole of North Weald Bassett Parish as a neighbourhood area for reasons set out in d.</p>

<p>identified issues indicate an amended area would be desirable?</p>		<p>above.</p> <p>It would be more appropriate if the area immediately adjoining the district boundary, encompassing potential development sites bordering Harlow were not subject to a neighbourhood area designation.</p>
<p>g. If it is desirable to designate an alternative area, what is the new area that is proposed? (Reflecting guidance provided by NPPG section 41-033-20140306)</p>	<p>Yes</p>	<p>There are several alternatives available in considering the most appropriate and desirable area to be designated as a neighbourhood area. The law is clear that it is for the District Council to make such a determination, but that this must be fully justified. Planning Practice Guidance identifies that ward boundaries may provide an appropriate starting point. North Weald Bassett parish comprises three wards – Hastingwood, North Weald Village, and Thornwood.</p> <p>Exclusion of Hastingwood ward would enable comprehensive consideration of all of the area that immediately borders Harlow. However, a long held principle in considering possible development in this area is that the M11 provides a strong and defensible boundary, beyond which the growth of Harlow should not encroach. Further, Hastingwood and Foster Street would be excluded from any neighbourhood plan, and it is in these areas that the majority of the resident population and built development is found across Hastingwood ward. There are few residential properties in the area to the west of the M11 motorway. Given the absence of possible strategic development in the area to the east of the motorway, it would not seem appropriate to exclude the entirety of the area.</p> <p>A further submission from North Weald Bassett Parish Council, whilst making no mention of the aspirations for any potential neighbourhood plan, nor providing any justification in planning terms, does set out that the Parish Council does not consider it is logical to use the M11 solely as a boundary for any neighbourhood area. This is considered illogical by the Parish Council, because using the M11 as a boundary line would separate parts of wards. It would therefore appear that a compromise between the two positions would be reasonable, with the area in the north western corner of the parish (bounded by the M11 to the east, the district boundary to the north, the parish boundary to the west, and London Road (B1393) and Rye Hill Road to the south – plan attached) being excluded from the neighbourhood area.</p>
<p><u>CONCLUSION</u> In accordance with s. 61(G) of the Town and Country Planning Act 1990 (as amended) it is not</p>		

considered desirable to designate the whole of North Weald Bassett Parish Council as a neighbourhood area.

REASONS FOR DECISION

1. A number of strategic cross boundary matters have been identified which include, but are not limited to, Green Belt review, cross District boundary agreement of housing and job growth figures, and planning and delivery of key strategic infrastructure;
2. The matters identified in 1. (above) are not within the remit of a Neighbourhood Development Plan to address;
3. A comprehensive assessment of all of the possible sites around Harlow (in Epping Forest, Harlow and East Hertfordshire District Council areas) must be carried out to ensure that the most suitable site(s) (if any at all) are allocated for development.
4. The area proposed for exclusion is defined by existing physical and administrative boundaries, and does not cover an area of high existing population.

A revised area is proposed as per the attached plan.

Due Regard Record

Name of policy or activity:

Determination of Neighbourhood Area designation for North Weald Bassett

What this record is for: By law the Council must, in the course of its service delivery and decision making, think about and see if it can eliminate unlawful discrimination, advance equality of opportunity, and foster good relations. This active consideration is known as, 'paying due regard', and it must be recorded as evidence. We pay due regard by undertaking equality analysis and using what we learn through this analysis in our service delivery and decision making. The purpose of this form is as a log of evidence of due regard.

When do I use this record? Every time you complete equality analysis on a policy or activity this record must be updated. Due regard must be paid, and therefore equality analysis undertaken, at 'formative stages' of policies and activities including proposed changes to or withdrawal of services. This record must be included as an appendix to any report to decision making bodies. Agenda Planning Groups will not accept any report which does not include evidence of due regard being paid via completion of an Equality Analysis Report.

How do I use this record: When you next undertake equality analysis open a Due Regard Record. Use it to record a summary of your analysis, including the reason for the analysis, the evidence considered, what the evidence told you about the protected groups, and the key findings from the analysis. This will be key information from Steps 1-7 of the Equality Analysis process set out in the Toolkit, and your Equality Analysis Report. This Due Regard Record is Step 8 of that process.

Date / Name	Summary of equality analysis
Ken Bean / Amanda Thorn 18/02/2015	<ul style="list-style-type: none"> • The Cabinet report is seeking the designation of a neighbourhood area covering part of the Parish of North Weald Bassett • Once commenced, the Neighbourhood Plan may have various equality implications for a number of different groups, both in terms of the level of engagement that is undertaken during its preparation and the impact that any policies may have on different sections of the local community. However it is the duty of the Parish Council to consider such issues during the preparation of the neighbourhood plan, and as such, the neighbourhood plan should be subject to equality analysis separately. • For reasons set out in the Cabinet Report, it is not considered

	<p>desirable to designate the whole of the Parish for Neighbourhood Plan purposes. In summary these reasons relate the District Council's proper assessment of matters to be addressed under the Duty to Cooperation in respect of the preparation of the Council's District Local Plan.</p> <ul style="list-style-type: none">• The area proposed to be excluded from the Neighbourhood Area is defined on the basis of administrative boundaries and existing physical features, and is done so to deliver effective and appropriate spatial planning for the area. No equality issues are identified.
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EPPING FOREST DISTRICT COUNCIL CABINET MINUTES

Committee: Cabinet **Date:** 11 June 2015

Place: Council Chamber, Civic Offices, High Street, Epping **Time:** 7.00 - 9.55 pm

Members Present: C Whitbread (Chairman), S Stavrou (Vice-Chairman), R Bassett, W Breare-Hall, A Grigg, D Stallan, G Waller, H Kane and A Lion

Other

Councillors: K Angold-Stephens, N Bedford, S Kane, H Kauffman, A Mitchell MBE, R Morgan, A Patel, C C Pond, C P Pond, B Surtees, L Wagland and J M Whitehouse

Apologies: J Philip

Officers Present: G Chipp (Chief Executive), C O'Boyle (Director of Governance), R Palmer (Director of Resources), A Hall (Director of Communities), K Durrani (Assistant Director (Technical Services)), P Pledger (Assistant Director (Housing Property)), K Polyzoides (Assistant Director (Policy & Conservation)), K Bean (Planning Policy Manager), T Carne (Public Relations and Marketing Officer), S Devine (Private Sector Housing Manager), E Higgins (Insurance & Risk Officer), S Tautz (Democratic Services Manager), G J Woodhall (Democratic Services Officer) and J Leither (Webcasting Officer)

Also in attendance; C Pasterfield and L Edwards (Consultants)

1. WEBCASTING INTRODUCTION

The Leader of the Council made a short address to remind all present that the meeting would be broadcast on the Internet, and that the Council had adopted a protocol for the webcasting of its meetings.

2. DECLARATIONS OF INTEREST

There were no declarations of interest pursuant to the Council's Code of Member Conduct.

3. MINUTES

(1) That the minutes of the meeting held on 13 April 2015 be taken as read and signed by the Leader of the Council as a correct record.

4. REPORTS OF PORTFOLIO HOLDERS

Environment

The Environment Portfolio Holder made the following statement concerning the waste collection service operated in the District by Biffa Municipal Limited:

"I'm grateful for this opportunity to update the Cabinet, Members and residents on the latest situation with the waste, recycling and street cleansing services, delivered by our contractor, Biffa.

I'd like to begin by making it clear that I consider Biffa's failure to deliver a universally acceptable service, of the standard we require and our residents expect, to be extremely serious. I share the very real anger and frustration of all those who Biffa have let down, and especially those who have suffered repeated missed collections. I want to reiterate my sincere apologies to all those affected, and assure them that I and the Council's Officers are doing all in our power to compel Biffa to urgently resolve these problems. My statement this evening is not, therefore, a defence of this situation. Rather, it is an account of what has happened and what is being done to correct it.

I'd like to briefly remind the Cabinet of the procurement exercise that led to the appointment of Biffa.

The previous waste management contract expired in November last year. In March 2013 we began the procurement process by means of Competitive Dialogue, with initially eight bidders, which was reduced to 4 by the time we reached the final stage. In the early stages of the exercise the tender assessment criteria was based 60% on price and 40% on quality, but at the final stage this was changed to 50% for both price and quality, to reflect and emphasise this Council's focus on quality. The 50% awarded for quality was subdivided into 40% for a technical assessment by Officers and 10% for a Member interview panel.

The procurement process was led by a project team that consisted of Officers from this Council and representatives from Essex County Council and the Council's specialist consultants, WYG Environmental Limited. Key elements of the assessment process included considering company structure; company finances and insurances; the ability to deliver the services being tendered; health and safety; equalities, and business continuity.

At the Final Tender stage the Council asked the 4 remaining contractors to bid on 2 service levels – a Monday to Friday service and a Tuesday to Friday service – and agreed that the lowest priced submission for each of these would be considered for assessment. The highest scoring tender bid was from Biffa and that was based on a 4 day collection service – something they deliver in authorities elsewhere in the country. Biffa's bid was assessed by Technical Officers and the Council's expert consultants, WYG, who confirmed that the level of resources Biffa had allocated for the new service were sufficient and that there was no operational reason why a 4 day service would not be feasible.

The decision to award the 10 year contract to Biffa was made by Cabinet on 19 May 2014. There followed a mobilisation period to ensure a smooth transition from the previous contractor and this was completed on 4 November last year, when Biffa assumed responsibility for the service.

In their tender bid, Biffa proposed that the 4 day service commence in March of this year but, mindful that such a major service change would require considerable preparation, I instructed that this be put back to at least May. Accordingly, the new service commenced on 12 May. Biffa had, therefore, operated the service successfully for 6 months prior to the introduction of their new fleet, new technology, and the 4 day collection schedule.

Unfortunately, as is now widely recognised, a number of problems have beset the service from 12 May, not all of which are directly linked to the introduction of the 4 day service.

These include:

- IT failures affecting the in-cab technology that contains the new collection rounds and the supply of live information back to Biffa management and the Council;*
- issues with the compactors on some of the new freighters not operating whilst the vehicles were in motion;*
- problems with safety sensors on the bin lifts;*
- faults with the on-board weighing equipment, that prevented the freighters from accepting the full pay load; and*
- the need for the work force to familiarise themselves with new rounds and adapt to longer working days.*

For many residents, the switch to a 4 day service also necessitated a change in the day, and time of day, of their collection. For some, notably those in Chigwell, Debden and Waltham Abbey, it also resulted in a change in the collection week of their recycling and black bin. A letter was sent to every household in the District detailing these changes, but a number of residents remained unclear as to the new arrangements and I accept that this communication could have, and should have, been clearer and measures put in place to mitigate the impact of the week change. I have instructed Officers to issue a reminder to residents of their collection day, mindful that the numerous catch-up collections Biffa have had to undertake has caused many people additional confusion. Further publicity will be distributed once the collection service is stabilised.

Of course, not all the services that Biffa provides have been affected. The vast majority of collections are completed successfully, and street cleansing services have continued with little or no disruption, but a significant number of residents, located across the District, have endured some, sometimes severe, disruption and inconvenience. It is estimated that the number of missed collections over the initial 4 week period was around 15,000, out of a total of 432,000. To date, this has generated around 9,000 phone calls and 3,000 emails to the Council's Customer Contact Centre.

As an outsourced service the ability of the Council to directly influence its delivery is inevitably limited but, from the moment these problems were identified, the Council's Officers and Staff have been working tirelessly to help Biffa address them, and to minimise the impact on residents. They have worked long hours, and in many cases over weekends, in often difficult circumstances. I would like to thank each of them for all they continue to do on behalf of our residents. If effort alone were sufficient to solve the problems Biffa have encountered, they would have been resolved a long time ago.

Biffa themselves have committed significant additional resources to dealing with the problems they have encountered, bringing in extra staff and vehicles and undertaking catch-up collections on Saturdays, Sundays and Mondays. However, the problems are not yet resolved, and collections are still being missed, so, together with the Leader, Chief Executive and the Director of Neighbourhoods, I continue to put pressure on Biffa at all levels of the company. Meetings are taking place with the Managing Director of Biffa Municipal, the Director Commercial, the Director Operations, the Regional Manager, the Business Manager, the Project Mobilisation Manager, the Process, Quality and Information Manager, and the Senior Business

Manager, amongst others. The next of these is tomorrow morning, after which I will be able to update Members again.

At the Overview and Scrutiny Committee meeting held on Tuesday of this week I asked that they undertake a thorough review of the implementation of the 4 day collection service, which I'm grateful to them for agreeing to do. It's very important that the causes of the problems we've faced are both identified and understood, and that lessons are learnt for the future. In the meantime, I can assure the Cabinet that my priority, and that of all those involved, is to bring a swift resolution to this situation."

A local Member for Chigwell Village reminded the Cabinet of the approach taken by a previous Portfolio Holder for Environment, who used a dedicated mobile phone to take calls from the public concerning refuse collections. There had been problems over the communication with residents; the letter that was sent out was confusing. The Member had particular concerns with the four-day collection service, especially that crews were now expected to collect 25% more refuse per day in the new service, and therefore needed an extra two hours per day to cope with the workload. A longer working day for the crews would also lead to more delays through getting held up in the afternoon school runs around the District. The Member had discussed the matter with a crew member in her street, who had stated that there was not enough time allocated to finish the new round, the workload for the crews had tripled under the new system, and that it was his opinion that the new service would never be stabilised. The Member had considerable concern about the effect of the missed collections on residents, and had been inundated with emails about the service from disgruntled residents. It was also highlighted that one of the drivers for the new service had been the desire to avoid catch-up services after a bank holiday, but only four of the eight annual bank holidays fell on a Monday each year. The Member opined that the new service would not work and that the number of missed collections endured by residents was not acceptable.

The Environment Portfolio Holder agreed that there were lessons to be learnt from the way that the Council had communicated with residents, although the Council had used a number of different channels to advertise the new service. Biffa had modelled the new 4-day collection service and the Council's consultants, WYG Environmental Limited, had agreed that the new service was deliverable. The routes would remain under review to deal with issues as they arose, and a 4-day collection service did work in other parts of the country. It was emphasised that there had been other drivers for the new service, and not just the need to avoid bank holiday catch-up services.

The Assistant Director of Neighbourhoods (Technical Services) added that Colchester Borough Council operated a four-day collection service, and a further three Essex District Councils were also considering it. The problems with the new fleet of freighters had not helped the situation, and had led to a snowballing effect of the problems being experienced. However, the modelling performed during the competitive dialogue process had indicated that a four-day collection service was achievable and this had been borne out by the analysis performed by the Council's consultants.

The local Member for Chigwell Village countered that the current routes were clearly not working, and that Chigwell was a particularly difficult area to collect from. The Member wanted to know if Biffa Municipal had surveyed the Epping Forest District properly before offering their four-day collection service as an option to the Council. The Member also noted that the parent company, Biffa Limited, was beginning

preparations to obtain a listing for a public stock flotation in 2016 and wondered whether this had had any effect upon their bid to win the contract for Epping Forest.

The Portfolio Holder stated that it would be sensible to review the current routes and improve them if necessary. It was acknowledged that residents would see freighters moving throughout the District without stopping to make collections, however it could simply be that the freighter was full and needed to travel to the Waste Transfer Station in Harlow to empty its contents. The Council did provide all the bidders for the new contract with evidence of the uniqueness of the District during the competitive dialogue process.

Another local Member for Loughton Broadway added that the inclusion of the green/garden waste collections in the four-day service was an extra burden upon the crews. The Member also expressed his gratitude to the staff for their efforts during this difficult time. The Assistant Director responded that the refuse staff were contracted to work from 7.00am to 4.00pm; the Harlow Waste Transfer Station closed at 4.30pm each evening. Staff welfare and morale was important to the Council, as some of the refuse collectors had been in situ for 25 years. Biffa would make additional resources available for green/garden waste collections during the growing season.

The local Member for Chigwell Village asserted that the evidence indicated a four-day collection service would not work in Epping Forest, and enquired what the cut-off point was for the current schedule, and whether there was a contingency plan. The Portfolio Holder assured Members that Biffa was being questioned as to the viability of the four-day collection service, but there was no cut-off point for the current collection service.

The Leader of the Council apologised to residents affected by problems with the move to a four-day collection service, and assured residents that the Council was working tirelessly to resolve the problems with the new collection schedule. The points raised by the local Member for Chigwell Village would be discussed with Biffa at the next meeting with the Council scheduled for tomorrow morning. It was reiterated that the Council's first duty was to restore the collections service for all residents across the District.

5. PUBLIC QUESTIONS

The Cabinet noted that there had been no public questions submitted for consideration.

6. OVERVIEW AND SCRUTINY

The Chairman of the Overview & Scrutiny Committee reported that the following items of business had been considered at its meeting held on 9 June 2015:

(a) A presentation from the Barts Health Trust which provided an update on the problems faced by the Trust, and particularly Whipps Cross Hospital. It was noted that the Trust was now in special measures and implementing an improvement programme.

(b) Reviewed the Key Decision List and the outturn of the Corporate Plan Key Objectives for 2014/15.

(c) Appointed the Members, Chairmen and Vice-Chairmen to the Select Committees and Task & Finish Panels for the municipal year.

(d) Agreed the Overview & Scrutiny Annual Report 2014/15 for consideration by the Council on 28 July 2015,

(e) Agreed to receive a presentation for Essex County Fire & Rescue Service in January 2016, and to investigate the recent problems experienced by Biffa with waste collections throughout the District.

The Cabinet's agenda was reviewed but there were no specific issues identified on any of the items being considered.

A local Member for Chigwell expressed concern that the report on Whipps Cross Hospital was the worst report seen at an Overview & Scrutiny meeting. Whipps Cross Hospital had a very bad reputation within medical circles, and there had been very few references to patients within the actual presentation itself. The Member requested a further presentation from the Health Trust in the near future.

The Leader of the Council agreed that Barts Health Trust should be requested to make an early return to the Council, and the Chairman of the Overview & Scrutiny Committee confirmed that this request had already been made.

7. NORTH WEALD BASSETT NEIGHBOURHOOD AREA DESIGNATION

The Portfolio Holder for Planning Policy presented a report regarding the designation of a Neighbourhood Area for the parish of North Weald Bassett.

The Portfolio Holder stated that an application for the designation of a Neighbourhood Area for the purposes of the preparation of a Neighbourhood Plan had been received from North Weald Bassett Parish Council on 8 September 2014. At the Parish Council's request, to allow additional time to consider the recommendation of the Council, the consideration and determination of the Parish Council's application was deferred at the Cabinet meeting held on 9 March 2015.

The Portfolio Holder informed the Cabinet that the location of North Weald Bassett Parish, immediately adjacent to Harlow's administrative boundary, and the possibility of strategic cross-boundary growth via the Local Plans of Epping Forest, Harlow and East Hertfordshire District Councils, had caused the Council to question the desirability of designating the whole of the Parish as a Neighbourhood Area for neighbourhood planning purposes. In considering the alternatives available, the Council had sought legal advice from Counsel specialising in planning law. Having considered that legal advice, it was thought that the District Council had a broad discretion in determining whether, in the particular circumstances relevant to this application, it was desirable to designate the entire area identified in the application. As a result, it had been proposed that the north western part of the Parish, bounded by the M11 motorway to the east, the administrative boundary with Harlow to the north, the Parish boundary to the west and the London Road (B1393) and Rye Hill Road to the south, should be excluded from the Neighbourhood Area designation (the attached map at appendix 2 of the report refers).

The Housing Portfolio Holder, who was a local Member for North Weald Bassett, commented that the District and Parish Councils had a good record of working together. The five Neighbourhood Plans within the District previously agreed had covered the whole area of a particular Parish or Town Council, but North Weald Bassett was seemingly being treated differently. Residents had legitimate concerns about further land being granted to Harlow District Council, as had happened for the development of the Church Langley estate nearly 25 years ago. It was also

highlighted that a public consultation had been commenced by the County Council over the possible siting of a Construction & Demolition Waste facility at Hastingwood on a site adjacent to both Junction 7 of the M11 motorway and the area to be omitted from the Neighbourhood Area. The Parish Council wished to work with the District Council over the future of the Parish, and the current approach contravened the aims and aspirations of the Localism Act 2011.

The Portfolio Holder acknowledged that the County Council's proposed siting of a Construction and Demolition Waste facility had been unexpected, and details of the consultation were only sent to County Council Members last week. The Portfolio Holder had already discussed the matter with the relevant County Council Portfolio Holder and made his objections to the plans known. He also stated that the District Council would still consult with the Parish Council over plans for the area of the Parish to be omitted, even if parts of it was subsequently designated as a Strategic Site. The recommendations before the Cabinet concurred with the legal advice received by the Council, and there had been no plans put forward for possible boundary changes to this District and Harlow.

Both the local Members for North Weald Bassett felt that there was the potential for Harlow District Council to gain land that was currently in the Epping Forest District. There could be a request for the M11 motorway to form a new boundary for Harlow District Council, with the potential for further development in that area. The Portfolio Holder reassured the Cabinet that Harlow District Council had been informed that the area to be omitted from the Neighbourhood Area designation would, irrespective of any future strategic site designation, remain as Epping Forest District Council land, and that any houses built in this area would therefore be Epping Forest District houses.

The Assistant Director of Neighbourhoods (Forward Planning & Economic Development) acknowledged the concerns of the Parish Council, and Officers would continue to work closely with the Parish Council, but Neighbourhood Plans could not deal with the cross-boundary strategic issues that were being raised in this particular area bordering Harlow. The Portfolio Holder confirmed that the Parish Council would be included in any consultations concerning the area in question.

Other members of the Cabinet pointed out that a Neighbourhood Plan would not prevent any development in a particular area; however, the Council could then use the planning process to argue against development when plans were submitted. A local Member for Chipping Ongar, Greensted and Marden Ash noted that there could be a two-tier approach to Neighbourhood Plans, with those Parishes on the Epping Forest boundary being treated differently. The need to include Local Councils in local planning issues was re-iterated.

The Portfolio Holder advised the Cabinet that Local Councils had been fully included in the Local Plan process to date, and that the District Council was always willing to listen to the views of the Town and Parish Councils.

Decision:

(1) That the exclusion of an area to the west of the M11 motorway from the application by North Weald Bassett Parish Council for the designation of the whole Parish for the purposes of preparing a Neighbourhood Plan be agreed for the following reasons:

- (a) a number of strategic cross boundary matters had been identified which included, but were not limited to, Green Belt review, cross district

boundary agreement of housing and job growth figures, and planning and delivery of key strategic infrastructure;

(b) the matters identified in (a) above were not within the remit of a Neighbourhood Plan to address;

(c) a comprehensive assessment of all of the possible sites around Harlow (in Epping Forest, Harlow and East Hertfordshire District Council areas) must be carried out to ensure that the most suitable site(s) (if any at all) were allocated for development in the Local Plans for these three Districts; and

(d) the proposed area to be excluded from the Neighbourhood Area designation was defined by existing physical and administrative boundaries, and did not cover an area of high existing population.

Reasons for Decision:

With regard to the location of the Parish on the District boundary with Harlow, there were a number of strategic and cross-boundary issues that had to be properly considered under the Council's Duty to Co-Operate. It was not within the remit of the neighbourhood planning process to address and deliver matters including, but not limited to, Green Belt review, cross-boundary agreement of housing and job growth figures, and the planning and delivery of key strategic infrastructure.

Other Options Considered and Rejected:

To designate the whole of North Weald Bassett Parish area as a Neighbourhood Area. However, this had been discounted due to the strategic and cross-boundary issues that had to be properly considered under the Council's Duty to Co-Operate.

To designate the whole of North Weald Bassett Parish area as a Neighbourhood Area, alongside a memorandum of understanding (or similar) setting out the matters which could be addressed and desired sequencing of plan preparation. However, as a result of the legal advice received from Counsel, this option was not considered to be lawfully available to the Council.

To designate alternative areas of the Parish. However, the law was clear that any such designation had to be fully justifiable.

8. HOUSING RELATED SUPPORT CHARGES

The Housing Portfolio Holder presented a report concerning Housing Related Support Charges and properties designated as being suitable for older people.

The Portfolio Holder reported that the Council had increased its Housing Related Support (HRS) charges to private Careline users and Council tenants living in sheltered and other housing designated for older people by amounts higher than inflation for 2015/16. This was mainly to cover an expected significant reduction in support funding to the Council from Essex County Council (ECC) of at least £133,000 (42%), which Officers from the County Council had advised would be made from April 2016, although it was also to achieve a position whereby the Council's Careline Service was fully self-funded.

The Portfolio Holder informed the Cabinet that, at a very late stage, the County Council decided not to proceed with the planned Housing Related Support funding

reduction for 2015/16. However, since the Council had already implemented the increased charges and advised all affected tenants, the Housing Portfolio Holder had decided to provide the Cabinet with a report on the main options available to respond to the associated implications of this late decision by the County Council.

The Portfolio Holder outlined the five options available to the Council, with an assessment of the advantages and disadvantages of each one. This exercise had also highlighted the fact that, due to annual reductions in Support funding from the County Council since 2003, the combined income from Housing Related Support charges and the County Council's funding no longer bore any resemblance to the cost of the providing the service. Consequently, all other Council tenants, who did not receive the service, now subsidised the cost by around £10 per property per annum. Therefore, the preferred option was to continue the previously agreed Housing Related Support Charges for the remainder of 2015/16 to Council tenants and private Careline users, and for the Portfolio Holder to present a plan to a future meeting of the Cabinet for how much the charges should be increased each year from April 2016 until the Scheme became self-funded, with regard to any further annual reductions from the County Council.

The Portfolio Holder apologised for the tabling of an addendum report, but it indicated the Tenant & Leaseholder Federation's reluctant support for the preferred option, along with a request that future Housing Related Support Charges be increased over as long a period as possible.

The Portfolio Holder added that the number of properties on housing estates previously designated as being suitable for older people had been reducing, to meet the demand for general needs housing. It was proposed to request the Housing Select Committee to consider whether more properties should be de-designated and to review the staffing levels for the Scheme Management Service to determine if the costs of the Scheme could be reduced further. The Select Committee would be requested to make recommendations to the Portfolio Holder accordingly.

The Cabinet noted the rationale behind the recommendation of the Portfolio Holder and was reassured by the fact that the Tenants & Leaseholders Federation understood the situation that the County Council had placed the District Council in. In response to questions from the Members present, the Portfolio Holder added that it was not known at the current time how long it would take to make the Scheme Management Service self-funded, as this would depend on future budget decisions made by the County Council, and that support for people in need had been provided with a subsidy from the Housing Revenue Account in the sum of £58,000 for 2015/16.

Decision:

(1) That, having regard to the comments of the Epping Forest Tenants & Leaseholders Federation tabled at the meeting, the approach to Housing Related Support (HRS) charges set out in Option 5 within the report be taken, namely to continue with the agreed 2015/16 charges and increase charges further from April 2016 over a period of time until the cost of the Scheme Management Service was self funded, and that:

(a) the HRS charges made to Council tenants and private Careline users for 2015/16 be continued for the remainder of the current year; and

(b) in advance of the budget cycle for 2016/17, a plan on how much HRS charges should be increased each year from April 2016 until the cost of the

Scheme Management Service became self-funded, with regard to any annual reductions in HRS funding from Essex County Council, be recommended by the Housing Portfolio Holder to the Cabinet;

- (2) That the Housing Select Committee be requested to:
 - (a) consider whether more properties specially designated for older people on housing estates should be de-designated, with future vacancies used to meet the increasing demand for younger housing applicants;
 - (b) review the associated level of staffing required to provide the Scheme Management Service to determine if staffing costs (and therefore HRS charges) could be reduced as a result; and
 - (c) make recommendations to the Housing Portfolio Holder accordingly; and
- (3) That letters be sent to all service users in February 2016, once the Cabinet had determined the HRS charges for 2016/17 and the amount of HRS funding to be received from Essex County Council for 2016/17 was known, explaining the proposed approach and the reasons.

Reasons for Decision:

It was felt that the under-recovery of costs for the Scheme Management Service was unfair on other Council tenants who did not receive the service, and was untenable in the longer term.

Other Options Considered and Rejected:

To rescind the 2015/16 increase in HRS charges and, where considered appropriate, refund payments made by tenants back to April 2015.

To rescind the 2015/16 increase by reducing the 2015/16 HRS charges mid-year to an amount below the 2014/15 HRS charge, in order to off-set the increased charges made from April 2015, and refund where appropriate.

To continue with the 2015/16 charges and take into account any increase above that required as a result of the expected ECC funding cut when setting charges for 2016/17.

Implement variations to the options above for different categories of service user.

9. REVISED PROGRAMME OF WORKS FOR OFF-STREET PARKING AT TORRINGTON DRIVE, LOUGHTON

The Housing Portfolio Holder introduced a report concerning the timing of the off-street parking scheme at Torrington Drive in Loughton.

The Portfolio Holder reminded the Cabinet that, at its meeting in February 2015, it had delegated authority to the Council Housebuilding Cabinet Committee to consider the benefits of providing off-street parking spaces in areas in close proximity to housebuilding sites at the same time as when the associated housebuilding feasibility study was considered and recommend to the Cabinet if and when any off-street parking sites were to be included in future years' programmes. When the Cabinet Committee on 5 March 2015 considered the housebuilding development site at

Burton Road in Loughton, consideration was also given to the provision of an off-street parking scheme in Torrington Drive in Loughton. The Cabinet Committee recommended that the scheme be progressed, subject to a public consultation with residents, and that the Director of Neighbourhoods be requested to include the new off-street parking spaces in a Residents Parking Scheme.

The Portfolio Holder stated that an evaluation of the Scheme had concluded it was possible to provide 64 parking spaces, which would enable one space to be allocated to each of the 64 west facing flats that overlooked the Central Line. Permits would be offered for these spaces at a cost of £43 per year and it was suggested that such permits should initially be limited to one per household. The total cost of the Scheme was estimated at £215,000, and the budget for off-street parking schemes currently stood at £1.9million. The proposed Scheme at Torrington Drive was already top of the ranking list for 2016/17, so the construction of the Scheme now would bring it forward by approximately nine months.

The Cabinet heard from a public speaker on this item who stated that residents had been requesting a solution for the parking issues in this area for some time now. The member of the public also requested that the new parking spaces be reserved for the residents of the west facing flats only; that none of the spaces should be made available to other residents in the area, such as Burton Road; and that the surrounding green areas be landscaped as part of the construction of the Scheme. Finally, the resident enquired as to why residents were being asked to pay for parking permits?

The Portfolio Holder responded that the Council would initially offer one space per household to cover all 64 of the west facing flats in Torrington Drive. The fee would enable the parking bays to be managed and enforced and, although the bays would not be numbered, only 64 permits would be issued for the 64 spaces. The local ward Councillors had been consulted upon each of the proposed off-street parking schemes and further public consultation would be undertaken as part of the process to determine the necessary application for planning consent. The Cabinet was reminded that a majority of the residents in the flats had to be in favour of the scheme for it to proceed.

The Assistant Director of Housing (Housing Property and Development) confirmed that the area around the west facing flats was heavily congested, and hence the proposed scheme before the Cabinet. If the remaining parts of Torrington Drive become equally congested then this would be examined at a later date. The Assistant Director confirmed that a Road Traffic Order would be required for the proposed scheme.

A local Member for Loughton Broadway welcomed the scheme, but was concerned about a possible lack of parking available for the proposed development in Burton Road, and highlighted a more general problem concerning parking in the area.

The Portfolio Holder reassured the Cabinet that the issue of parking in the Burton Road area would be considered when the planning application was determined by the District Development Management Committee. Visitor permits would be available for the proposed bays, and the Council would liaise with the North Essex Parking Partnership over enforcement issues in the area.

Decision:

(1) That the off-street parking scheme at Torrington Drive, Loughton be brought forward for inclusion in the 2015/16 off-street parking programme to coincide with the

Council Housebuilding development, subject to resident consultation and planning approval; and

(2) That any new off-street parking spaces be provided as a Residents Parking Scheme, consistent with other schemes across the District with permits limited to one per household.

Reasons for Decision:

The Cabinet Committee had agreed that a report be submitted to the Cabinet recommending that priority be given to the provision of an off-street parking scheme in Torrington Drive, Loughton being undertaken, subject to a resident consultation; and that the Director of Neighbourhoods be asked to give consideration to including any new off-street parking spaces being provided as a Residents Parking Scheme.

Other Options Considered and Rejected:

To not bring forward the off-street parking scheme at Torrington Drive. However, this would not offset the fears of local residents that any new housing development would create a parking problem in the future.

To not provide the parking spaces as a Residents Parking Scheme. However, this would create free parking for commuters and would not benefit the local residents.

To allow residents to apply for more than one parking permit on a first-come-first-served basis. However, this would mean some residents would not be able to park their car and the offer of a permit should be made accessible to all residents.

10. LOCAL DEVELOPMENT SCHEME AND LOCAL PLAN RESOURCING

The Portfolio Holder for Planning Policy presented a report regarding the agreement of the Local Development Scheme for 2015/16, and an update on the Local Plan budget.

The Portfolio Holder stated that the Council had a statutory obligation under the Localism Act 2011 to prepare a Local Development Scheme, which was the high level project plan for the preparation of the Epping Forest District Local Plan. The current Scheme had been approved in July 2014, and now required updating. The main factors that had affected the timetable for the production of the Local Plan since last year were:

- (i) the requirement for a comprehensive review of the Green Belt;
- (ii) the work required under the duty to co-operate and to update the Strategic Housing Market Assessment;
- (iii) the publication of the latest household projections for the period 2012-37 which had been published in February 2015;
- (iv) the additional work required to complete the Strategic Flood Risk Assessment; and
- (v) the advice and assistance provided for the development of Neighbourhood Plans.

The Portfolio Holder reported that the revised timetable for the preparation of the Local Plan indicated that the draft Local Plan public consultation would start in July 2016 and run until September 2016 to allow for the summer holiday period, it would then be published for representations in April 2017, submitted to the Planning Inspectorate in October 2017, the Examination in Public occurring in early 2018, and the final Plan adopted in September 2018.

The Portfolio Holder informed the Cabinet that expenditure on the Local Plan had been approximately £1.2million since 2004/05, and that estimated additional funds in the sum of £537,673 would be required up to 2018/19. This additional expenditure would be provided by the District Development Fund. The Council had experienced difficulties in recruiting experienced staff, despite the budgetary resources being made available, due to the limited number of suitably qualified applicants being available and competition from neighbouring authorities for such staff. Thus, it had been agreed to use the budget from the vacant Planning Officer and Technical Support posts to recruit a Senior Planner on a fixed term contract for 18 months.

The Portfolio Holder added that the Council continually needed to take account of more information made available once the Planning Inspector reports of recent Examinations in Public were published. Further items for the Evidence Base would be coming forward for decision later in the year. The Leader of the Council acknowledged that it was frustrating when the timetable was changed and the publication of the Local Plan was further delayed, but this was predominantly as a result of changes to the process by the Government. It was accepted that this was a long process. The legal advice received was that the Council's approach was right, and the mantra from the Queens Counsel engaged by the Council was "Do it once, do it well, do it right!".

Decision:

- (1) That the updated Local Development Scheme for 2015/16, attached at Appendix 1 of the report, be adopted and published on the Council's website; and
- (2) That expenditure against the Local Plan budget in 2014/15, the projected expenditure for 2015/16, and the estimated expenditure for 2015/16 and future years, including a need to reconsider the project fund as a whole in the next available budget cycle, be noted.

Reason for Decision:

The Council was obliged under the Localism Act 2011 to prepare and publish a Local Development Scheme so that the public and stakeholders were aware of the likely timing of key stages of the plan making process. The current Scheme, approved a year ago, was due for renewal.

To keep the Cabinet apprised of the current and likely future expenditure in respect of the Local Plan preparation process.

Other Options Considered and Rejected:

To not agree or vary the Local Development Scheme.

11. PROVISION OF NEW DEPOT AT OAKWOOD HILL

The Portfolio Holder for Asset Management & Economic Development presented a report concerning the provision of a new Depot at Oakwood Hill in Loughton.

The Portfolio Holder reported that, in order for the development of the Epping Forest Shopping Park at Langston Road to take place, the existing services at that Depot needed to be relocated. Therefore, it was proposed to relocate the Grounds Maintenance Service and Fleet Operations garage to a new depot at Oakwood Hill, also in Loughton. The design layout of the new buildings had been undertaken in consultation with the two services involved to ensure that the proposed accommodation and facilities would need their meets adequately. The project to construct the new depot was offered to five companies, of which three had submitted bids. The lowest bid received was from T. J. Evers Limited in the sum of £2,385,176 although this bid had only accounted for statutory signage and not signage specific to the depot services; this would be covered under the contingency allowance. In addition, statutory diversions had not been included in the tender price, which were the highways works necessary to construct the depot entrance and relocate the bus stop. It was estimated that £50,000 would cover these works.

A local Member for Loughton Broadway noted that the construction cost of the new Depot had not been included in the Development Appraisal for the construction of the Epping Forest Shopping Park. The Council's Development Consultant for the Shopping Park project confirmed that the cost for the new depot at Oakwood Hill had not been included, as it was being treated as a separate issue.

Decision:

(1) That the tender bid of £2,385,176 from T. J. Evers Ltd to undertake the design, build and construction of the new depot at Oakwood Hill for Grounds Maintenance and Fleet Operations be accepted; and

(2) That, pursuant to Overview and Scrutiny Rule 21 (Special Urgency), the Chairman of the Council be requested to waive the call-in arrangements for this decision due to its urgency as any delay in relocating services from Langston Road Depot may impact on the programme for delivering the new Epping Forest Shopping Park.

Reasons for Decision:

To provide new accommodation for relocated staff and to vacate the Langston Road Depot in order to facilitate the development of the Epping Forest Shopping Park.

Other Options Considered and Rejected:

To not relocate staff to this location and delay the construction of the Epping Forest Shopping Park.

12. SITE LICENCE CONDITIONS ON HOLIDAY CARAVAN AND CAMPING SITES

The Housing Portfolio Holder presented a report on the proposed Site Licence Conditions for Holiday Caravan and Camping sites.

The Portfolio Holder reminded the Cabinet that the Council was responsible, through its site licensing regime, for ensuring health, safety and fire safety provisions were satisfactory on the holiday caravan and camping sites within the District. The existing site licence conditions for holiday sites had not been reviewed for many years and were outdated. Following consultation with site operators, statutory consultees and other interested parties, new conditions had been produced which the Cabinet was

now being requested to adopt as the Epping Forest District Council Standard Site Licence Conditions for Holiday Camping and Caravan Sites.

The Portfolio Holder added that site licence conditions had been agreed for permanent residential sites in 2013, and for Gypsy, Roma and Traveller sites in 2014. This was the last set of site licence conditions that the Council had to review and implement, and the Portfolio Holder added his thanks to the Officers for their efforts over the past few years.

The Cabinet noted that the Council was now consulted upon by other authorities when they were undertaking similar exercises.

Resolved:

(1) That, following consultation with site operators, statutory consultees and other interested parties, the Standard Licence Conditions for Holiday Caravan and Camping Sites in Epping Forest District, as attached at Appendix 1 of the report, be adopted.

Reasons for Decision:

The Council was required to issue licences on all park homes sites in the District with conditions that were relevant, consistent and would adequately protect the health and safety of people residing at, or visiting the sites. The existing site licence conditions for Holiday Sites in the District had not been reviewed for many years.

Other Options Considered and Rejected:

To not produce new licence conditions. However, the existing conditions were outdated and could compromise the health and safety of those visiting the sites.

To not consult with site owners, statutory consultees and other interested parties. However, the relevant legislation required the licence holder to be given an opportunity to make representation before any changes were imposed, and that the Fire Service was consulted before any changes were made.

13. CORPORATE PLAN KEY OBJECTIVES - 2014-15 OUTTURN

The Leader of the Council presented a progress report on the achievement of the Council's Key Objectives for 2014/15.

The Leader stated that the Corporate Plan was the Council's key strategic planning document, setting out its priorities over the four-year period from 2011/12 to 2014/15, with strategic themes reflecting those of the Community Strategy for the District. Updates to the Corporate Plan were published annually, to reflect the Key Objectives for each year of the plan period and progress against the achievement of Key Objectives for previous years.

The Leader added that the annual identification of Key Objectives provided an opportunity for the Council to focus attention on how areas for improvement would be addressed, opportunities exploited and better outcomes delivered during the year. The Key Objectives were intended to provide a clear statement of the Council's overall intentions for each year, and were supported by a range of actions and deliverables designed to achieve specific outcomes. A range of Key Objectives for 2014/15 had been adopted by the Cabinet in April 2014, and progress in relation to

individual actions and deliverables was reviewed by the Cabinet and the Overview and Scrutiny Committee on a quarterly and outturn basis.

The Leader reported that, at the end of the year, 35 (65%) of the individual deliverables or actions supporting the Key Objectives had been achieved; and that 19 (35%) of the deliverables or actions had not been completed by year-end although significant progress had been made.

Decision:

(1) That the review of the end of year position in relation to the achievement of the Council's Key Objectives for 2014/15 be noted.

Reasons for Decision:

It was important that relevant performance management processes were in place to review progress against the Key Objectives, to ensure their continued achievability and relevance, and to identify proposals for appropriate corrective action in areas of under-performance.

Other Options Considered and Rejected:

No other options were appropriate in this respect. Failure to monitor and review performance against the Key Objectives and to consider corrective action where necessary, could have negative implications for the Council's reputation and judgements made about its progress, and might mean that opportunities for improvement were lost.

14. TENDER FOR INSURANCE POLICIES

The Finance Portfolio Holder presented a report on the outcome of the tender for the Council's insurance policies.

The Portfolio Holder reminded the Cabinet that the Council was currently insured almost exclusively through Zurich Municipal (ZM), an arrangement that had been in place for many years. When the last long term agreement was tendered in 2010 it was through a collaborative procurement exercise, sponsored by the Regional Improvement and Efficiency Partnership (RIEP), with eleven other authorities. The outcome of this process was disappointing as the only insurer to quote for the whole portfolio was Zurich Municipal, and Zurich Municipal were only prepared to enter into contracts for the whole portfolio of covers. Therefore, the Council had no option other than to enter into a new agreement with Zurich Municipal.

The Portfolio Holder reported that, for this renewal, the Council had conducted its own exercise, although given the specialised nature of insurance procurement it was necessary to first appoint a broker to assist with the process and to ensure the best possible response from the market. The Council obtained quotes from three brokers and selected Marsh Limited to assist with the procurement. Tenders were returned on 26 May 2015 by four different insurance companies. Having evaluated the tenders the most economically advantageous tender had been submitted by Zurich Municipal, which provided the Council with a significant saving. Therefore, it was recommended to enter into a further agreement with Zurich Municipal to provide the Council's insurance policies for five years, with an option to extend the cover for a further two years.

The Cabinet noted the projected saving of £125,000 for the Council's insurance premiums in 2015/16 from accepting the bid from Zurich Municipal.

Decision:

- (1) That the outcome of the tender exercise for the Council's insurance policies be noted;
- (2) That an agreement with Zurich Municipal be entered into for five years with an option to extend for a further two years; and
- (3) That, pursuant to Overview and Scrutiny Rule 21 (Special Urgency), the Chairman of Council be requested to waive the call-in arrangements for this decision due to its urgency as any delay would prejudice the Council's interests because there would be a gap between the expiry of the old policies and the commencement of the new policies leaving the Council uninsured for a short period.

Reason for Decision:

To provide the Council with comprehensive and cost effective insurance cover for the next five years, and Contract Standing Order C22 required approval from either the Council or the Cabinet before any tender valued in excess of £1 million could be accepted.

Other Options Considered and Rejected:

The Council could let a number of individual contracts for different parts of the policy portfolio to different insurance companies. However, this had not been recommended as it would be more costly and less efficient.

15. ANY OTHER BUSINESS

The Cabinet noted that there was no other urgent business for consideration at the meeting.

16. EXCLUSION OF PUBLIC AND PRESS

Decision:

- (1) That, in accordance with Section 100(A)(4) of the Local Government Act 1972, the public and press be excluded from the meeting for the items of business set out below as it would involve the likely disclosure of exempt information as defined in the paragraph of Part 1 of Schedule 12(A) of the Act indicated and the exemption was considered to outweigh the potential public interest in disclosing the information:

<u>Agenda Item</u>	<u>Subject</u>	<u>Paragraph Number</u>
18	Licence for North Weald Market	3
19	Epping Forest Shopping Park	3

17. LICENCE FOR NORTH WEALD MARKET

The Portfolio Holder for Asset Management & Economic Development presented a report regarding the licence for the North Weald Market.

The Portfolio Holder reported that, at the meeting of the Asset Management and Economic Development Cabinet Committee on 21 October 2014, it was recommended and subsequently agreed by the Cabinet that the Council would vary the current licence to Hughmark International, the operator of the North Weald Market. This variation eliminated a fixed fee; instead the Council would receive 75% of any profit, after Hughmark's operational costs were met. This decision was taken to reflect the trend of declining trade and income generated by the market. In reaching this decision, the Cabinet sought a formal review of the variation to the licence after six months of further trading.

The Portfolio Holder stated that this review was undertaken at the Asset Management and Economic Development Cabinet Committee meeting on 23 April 2015. In reviewing the performance of the market over the last six months, the previous trend of declining trade and income had continued, and the Cabinet Committee felt that the overall position could not be improved. Therefore, it had been recommended that the Council should exercise its right to terminate the Licence, and re-tender the opportunity to hold regular outdoor events on the current market area at North Weald Airfield. Under the terms of the current Licence, the Council had to give notice by 30 June 2015 for the Licence to expire on 31 December 2015. Consequently, it had also been recommended that the call-in period for this decision should be waived under the Special Urgency rules in the Constitution.

The Cabinet acknowledged that the Market had provided a significant income to the Council in the past, but that the current trading conditions had worsened. It was also noted that the Council had provided every possible support to the Market in the previous two years but that it had become no longer sustainable.

Decision:

- (1) That, as recommended by the Asset Management & Economic Development Cabinet Committee, the Council's right to determine the Licence for North Weald Market be exercised, giving six months notice by 30 June 2015, due to the unlikely prospect of an improved trading position by the current market operator Hughmark International;
- (2) That the opportunity to hold regular outdoor events on the current market area at North Weald Airfield be re-tendered by the Council, and to include but not restricted to outdoor markets;
- (3) That the results of the procurement exercise in (2) above be reported to a future meeting of the Cabinet; and
- (4) That, pursuant to Overview & Scrutiny Rule 21 (Special Urgency), the Chairman of the Council be requested to waive the call-in arrangements for this decision due to the urgency arising from the contractual obligation to give notice of determining the licence by 30 June 2015.

Reasons for Decision:

To reduce the financial risk to the Council from the continued under-performance of the Market at North Weald Airfield.

To maximise the potential future return to the Council through the re-tendering of the opportunity to hold other outdoor events, including Markets, on the current market area at North Weald Airfield.

Other Options Considered and Rejected:

To allow the Market to operate under the current terms of the revised Licence. However, this would risk the Council being exposed to further reductions in income.

To seek further alterations to the current Licence. However, it was not thought likely that the Operator would make further concessions to the Council to improve its financial position.

18. EPPING FOREST SHOPPING PARK

The Portfolio Holder for Asset Management & Economic Development introduced a report concerning the Epping Forest Shopping Park.

The Portfolio Holder reminded the Cabinet that, in accordance with previous policy decisions to derive best value from the Council's assets and to generate revenue from the investment of capital resources, a number of development projects on Council owned land were currently being progressed. The most significant of these was the Epping Forest Shopping Park in Langston Road, Loughton, which had the capacity to generate employment for local people, provide a significant boost to the local economy, and ensure that retail spend was retained within the District.

The Portfolio Holder reported that, having obtained the necessary planning consent, and appointed a project team, who had undertaken the necessary development appraisal and cost estimate work, the Cabinet was being requested to agree a number of important considerations in progressing the project. The first of these was the buying out of the interest of the current joint venture partner, Polofind Limited, for a negotiated sum of £10.25million plus £410,000 for stamp duty and £153,750 for agents fees. The purchase price would include no further liability by Polofind Limited for the clawback provision of £2.25million. The second of these was obtaining the capital provision required to construct and let the shopping park, which it was estimated would cost a further £19.181million. The third consideration was the retention of the existing project team, who would be engaged directly by the Council once the purchase was complete, through the waiver of Contract Standing Orders C5 and C6, and the confirmation of the appointment of DAC Beachcroft as specialist construction lawyers.

The Portfolio Holder highlighted that the European Union procurement requirements (OJEU) would apply to the main building contract, but not to the Section 278 Highways Works Contract, and the Cabinet was requested to authorise the tendering of the Highways works as detailed in the Section 278 agreement to include any advance utilities costs to be met within existing resources allocated to the project to date. It was stressed that the additional procedures to comply with OJEU would make completing the project in time for a Christmas 2016 opening more challenging.

The Cabinet noted the current position on the marketing of the retail park and the potential anchor tenants, as well as the latest Development Appraisal for the project as provided by the Council's consultants. Whilst it was acknowledged that there was an element of risk if the Council became the sole owner operator, this would enable the Council to have full control of the tenant mix and retain all future income generated by the Shopping Park. It was also emphasised that the Cabinet would continue to receive regular monitoring reports at future meetings.

Local Members from Loughton asked a number of detailed questions concerning the development of the Shopping Park and its potential effects on nearby town centres. The Cabinet noted that there was a lack of such smaller centres inside the area

bounded by the M25 motorway, and that the potential anchor tenants all had stores at nearby locations which indicated their belief that a presence at the Shopping Park would be profitable. It was highlighted that the move of the Museum store from the depot at Langston Road was being funded by the National Lottery, and that the Council's refuse contractor no longer required space at the depot. Although enabling costs had not been included in the Development Appraisal, the savings for the Council from the Clawback provision almost offset the cost of building the new depot at Oakwood Hill, considered earlier in the meeting. The Portfolio Holder agreed to provide additional information on the project to Members at the special Council meeting scheduled for 23 June 2015, which had been arranged to consider the request for the necessary supplementary finance to progress the project.

Decision:

- (1) That the buy out of the interest of Polofind Limited in the Epping Forest Shopping Park development by the Council be agreed and in particular, the site known as T11 for the sum of £10,250,000 plus £410,000 for stamp duty and £153,750 for agents fees in accordance with the Heads of Terms attached as an Appendix to the report, which included no further liability by Polofind Limited for the clawback provision of £2,250,000 plus reimbursement of Professional Fees incurred in bringing the site forward;
- (2) That a Capital Supplementary Estimate be recommended to the Council for approval at the Extraordinary Meeting on 23 June 2015 in the sum of the £10,250,000, plus £410,000 for stamp duty and £153,750 for agents fees for the purchase and an estimated £642,000 for professional fees, plus a sum of £19,180,530 making a total of £30,636,280 based on the latest Development Appraisal to enable the Council to construct and let the Epping Forest Shopping Park;
- (3) That Contract Standing Orders C5 and C6 be waived to enable the Council to retain the existing project team, who would be engaged directly by the Council under new contracts developed by DAC Beachcroft, whose provisional appointment as specialist construction lawyers would be confirmed; and
- (4) That a temporary licence of 12 months for two units at Oakwood Hill Industrial Estate be entered into by the Council, to facilitate the vacating of the depot pending the completion of the Council's new depot facilities at Oakwood Hill, at a cost of £69,000 including internet, utilities and building insurance but not business rates, to be contained within existing provision.

Reasons for Decision:

A considerable amount of urgent work was necessary to bring forward the development of the Epping Forest Shopping Park, in order to achieve an opening for the Christmas period in 2016.

In addition, the Council's joint venture partner, Polofind Ltd, had conditioned their agreement to sell their interest at the proposed price, on the basis of a final decision being taken by the end of June 2015.

Other Options Considered and Rejected:

To not proceed with the purchase of Polofind's interest at this time; however, this could delay the project and the opening of the Shopping Park.

To enter into the formal Joint Venture Agreement with Polofind Limited and continue the development in partnership. However, the Council would not then have sole control over the project or the expected financial return.

To dispose of the Council's interest in the depot site to Polofind Limited, or to market the depot site with the benefit of the retail planning permission on the open market. However, this option had been previously rejected by the Council and although it would provide a capital receipt, it would not provide a revenue stream to support the provision of future Council services.

CHAIRMAN



Neutral Citation Number: [2014] EWCA Civ 228

Case No: C1/2013/0861

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION,
ADMINISTRATIVE COURT
MR JUSTICE SUPPERSTONE
CO/12288/2012

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Thursday 6th March 2014

Before:

THE MASTER OF THE ROLLS
LORD JUSTICE SULLIVAN

and

LORD JUSTICE BRIGGS

Between:

(1) **DAWS HILL NEIGHBOURHOOD FORUM**
(2) **STEWART ARMSTRONG**
(3) **ANGUS LAIDLAW**

Appellants

- and -

(1) **WYCOMBE DISTRICT COUNCIL**
-and-
(2) **THE SECRETARY OF STATE FOR COMMUNITIES
AND LOCAL GOVERNMENT**
-and-
(3) **TAYLOR WIMPEY UK LIMITED**

Respondent

**First Interested
Party**

**Second
Interested Party**

(Transcript of the Handed Down Judgment of
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A Merrill Communications Company
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Official Shorthand Writers to the Court)

Paul Stinchcombe QC and Lisa Busch (instructed by **Leigh Day**) for the **Appellants**
Suzanne Ornsby QC and Isabella Tafur (instructed by **Wycombe District Council**) for the
Respondent
Morag Ellis QC and Stephanie Knowles (instructed by **Berwin Leighton Paisner LLP**) for
the **Second Interested Party**

The First Interested Party did not appear and was not represented

Hearing dates: 10th & 11th February 2014

Judgment
As Approved by the Court

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Lord Justice Sullivan:

Introduction

1. This is an appeal against the Order dated 13th March 2013 of Supperstone J dismissing the Appellants claim for judicial review of the Respondent's decision made on the 25th September 2012 to refuse the application made by the Daws Hill Residents' Association ("DHRA") for the designation of a neighbourhood area. The Respondent designated a smaller neighbourhood area excluding two strategic sites which had been included in the area specified in the application: the former RAF Daws Hill site, and the Handy Cross Sports Centre site.
2. Supperstone J set out the legislative framework, the factual background, and the reasons given by the Respondent for its decision, in paragraphs 3-14, 17-26 and 27-28 respectively, of his judgment: [2013] EWHC 513 (Admin). There was no challenge to those parts of the judgment. I gratefully adopt, and will not repeat them. For convenience, I have reproduced in an Annex to this judgment sections 61F and 61G which were inserted into the Town and Country Planning Act 1990 ("the 1990 Act") by the Localism Act 2011 ("the 2011 Act").

Section 61G

3. The proper interpretation of subsection 61G(5) of the 1990 Act is of central importance in this appeal. That subsection provides:

"If –

 - (a) a valid application is made to the authority,
 - (b) some or all of the specified area has not been designated as a neighbourhood area, and
 - (c) the authority refuse the application because they consider that the specified area is not an appropriate area to be designated as a neighbourhood area,

the authority must exercise their power of designation so as to secure that some or all of the specified area forms part of one or more areas designated (or to be designated) as neighbourhood areas."
4. At first sight, the Respondent's decision falls squarely within the terms of the subsection. The Respondent refused the DHRA's application because it considered that the area specified in that application (including the Daws Hill and Sports Centre sites) was not an appropriate area to be designated as a neighbourhood area, but it exercised its power of designation so as to secure that some of the specified area (excluding the Daws Hill and Sports Centre sites) became a neighbourhood area. The Appellants did not contend that the Respondent exercised its power of designation unlawfully because the reduced area comprised the whole, and not merely part, of a designated neighbourhood area.
5. Before Supperstone J the Appellants' primary submission was that the Respondent had acted unlawfully because in exercising its power of designation so as to exclude the two strategic sites from the designated neighbourhood area the Respondent had acted in such a manner as to frustrate the purposes of the 2011 Act: see paragraph 29 of the judgment. The Respondent contended that subsection 61G(5) conferred a wide discretion to be exercised having regard

to the factual and policy matrix that existed at the time the decision was taken (see paragraphs 40-41 of the judgment); and that the factors taken into account by the Respondent fell within the ambit of that broad discretion: see paragraphs 51-56 of the judgment. Supperstone J accepted the Respondent's submission. He concluded that the discretion conferred by section 61G(5) was a broad one, to be exercised having regard to the "specific factual and policy matrix that exists in the individual case at the time the determination is made", and that the Respondent had properly had regard to that matrix: see paragraph 57 of the judgment.

6. At the heart of Mr. Stinchcombe QC's submissions before this Court on behalf of the Appellants was a submission which was not made to Supperstone J, and which did not feature in the Appellants' original Grounds of Appeal. The new submission, incorporated into the Appellants' Amended Grounds of Appeal on the second day of the hearing, was that the discretion conferred by subsection 61G(5) - to decide what is an appropriate area to be designated as a neighbourhood area - is not a discretion to decide whether a given area should or should not be designated as a neighbourhood area, but is confined to a discretion to decide within which neighbourhood area any given site is to be included.
7. What was Parliament's intention in enacting the subsection? The starting point must be the language used in section 61G. In my judgment, that language does not support the existence of such a limitation. Both subsections (1) and (5) describe the designation function as a power, not a duty. On the face of it, a power given to a local planning authority to decide whether a specified area is "an appropriate area" to be designated as a neighbourhood area necessarily confers a broad discretion. The designation of an area as a neighbourhood area is not an end in itself. The purpose of designating an area as a neighbourhood area is to define the area within which a neighbourhood forum (outside the area of a Parish Council) is authorised to exercise certain planning powers: the making of a neighbourhood plan and/or a neighbourhood development order. When determining the issue of appropriateness it may, therefore, be necessary to have regard to a wide range of planning considerations.
8. It is true that if the authority refuses the application because it considers that the specified area is not an appropriate area to be designated as a neighbourhood area, subsection (5) then requires that the power of designation is to be exercised in a particular way, but the subsection does not require the power to be exercised so as to secure that all of the specified area forms part of an area that is, or is to be designated as a neighbourhood area. If Parliament had intended that the local planning authority should simply decide within which designated neighbourhood area any specified area should be included it would have required the power of designation to be exercised so as to secure that all, and not some or all, of the specified area forms part of a neighbourhood area. When imposing the duty on the manner in which the designation power must be exercised under subsection 61G(5) Parliament clearly envisaged that a local planning authority might exercise the power so as to designate a smaller area as a neighbourhood area leaving part or parts of the specified area outwith any neighbourhood area. In this appeal we are not concerned with the role of Parish Councils in the neighbourhood planning process, but it will be noted that even in a case where the "relevant body" making the application for designation of the area is a Parish Council, and the local planning authority must have regard to the desirability of designating the whole of the Parish Council's area as a neighbourhood area (see subsection 61G(4)(a)), it is not required to designate the whole, and may exclude part, of the Parish Council's area, thus ensuring that it will not be included in any neighbourhood area: see subsection 61G(3)(b).

9. Mr. Stinchcombe sought to overcome this difficulty, and to convert “some or all” in subsection 61G(5) into “all”, by advancing two propositions:-
- (1) That the power to designate a neighbourhood area is exercisable when an application is made by a “relevant body”, and the definition of “relevant body” in subsection 61G(2) includes in paragraph (b) “an organisation or body” which is, or is capable of being, designated as a neighbourhood forum (on the assumption that, for this purpose, the specified area is designated as a neighbourhood area). The capability threshold in paragraph 61G(2)(b) is a relatively low one. Any organisation or body that meets the relatively basic conditions set out in section 61F(5) is capable of being designated as a neighbourhood forum.
 - (2) While a local planning authority can lawfully decline to consider certain types of repeat proposals for designation of a neighbourhood area (see paragraph 5 of Schedule 4B to the 1990 Act), it may not lawfully refuse to consider a repeat application or applications made in respect of the excluded part or parts of a specified area in an earlier application.
10. Mr. Stinchcombe submitted that the combined effect of these two propositions was that any local planning authority considering whether a specified area is an appropriate area to be designated as a neighbourhood area must appreciate that if it designates only some, but not all of the specified area as a neighbourhood area, then a further application specifying that excluded area as an area to be designated as a neighbourhood area can promptly be made by an organisation or body which meets the low capability threshold for designation as a neighbourhood forum for that area; and if that is done subsection 61G(5) will require the local planning authority to use its power of designation so as to secure that some or all of that excluded area is included in a neighbourhood area; and if the local planning authority decides that only some, but not all, of the excluded area should be included in a neighbourhood area, the same application process can be repeated in respect of the remaining part or parts of the excluded area, until, by a process of salami slicing (my words), the local planning authority is eventually constrained to designate the whole of the excluded area as a neighbourhood area.
11. Mr. Stinchcombe submitted that this analysis of the legislative provisions led to the conclusion that Parliament intended, not that local planning authorities should decide whether a specified area is an appropriate area to be designated as a neighbourhood area, but within which designated (or to be designated) neighbourhood area it should be included. Parliament’s intention in enacting these provisions of the 2011 Act was, he submitted, that the whole of England should, wherever it is the wish of the local community, be covered by a patchwork of neighbourhood areas, within which neighbourhood forums will prepare neighbourhood development orders and neighbourhood development plans.
12. While the first of Mr. Stinchcombe’s propositions is correct, as far as it goes, it fails to recognise the discretion conferred upon the local planning authority by subsection 61F(5): the authority may, not must, designate an organisation or body meeting the conditions set out in that subsection as a neighbourhood area. Once again, the manner in which this subsection (5) discretion may be exercised is subject to a duty: to have regard to the desirability of designating a body that meets the criteria in subsection (7). Provided the local planning authority does have regard to the desirability of designation in such a case, it may still refuse an application for designation as a neighbourhood forum.
13. Mr. Stinchcombe submitted that even if the local planning authority refused an application for designation as a neighbourhood forum by a body meeting the capability threshold in section 61G(2)(b), it would still be obliged to determine the application for the specified area

to be designated as a neighbourhood area. In order to refuse that application the local planning authority would have to exercise its power under subsection 61G(5), thus bringing into effect the obligation to exercise the power so as to secure that some or all of the specified area was included in an area designated (or to be designated) as a neighbourhood area.

14. In my judgment, this submission takes insufficient account of the need to read sections 61F and 61G together. I accept the submission of Miss Ornsby QC on behalf of the Respondent that the two sections are inextricably interlinked. A neighbourhood forum is an organisation or body that is authorised to act in relation to a neighbourhood area if it is designated by a local planning authority as a neighbourhood forum for that area: see section 61F(3) of the 1990 Act, as applied to neighbourhood development plans by section 38C (1) and (2)(a) of the Planning and Compulsory Purchase Act 2004. Putting the matter at its simplest: one cannot have a neighbourhood forum without its neighbourhood area (see the conditions in subsection 61F(5)); and outside the area of a Parish council one cannot have a neighbourhood area without its neighbourhood forum (see subsection 61G(1)).
15. The inclusion of an organisation or body which is capable of being designated as a neighbourhood forum as a “relevant body” in subsection 61G(2) is readily understandable. When section 61G came into force on 15th November 2011 there were no designated neighbourhood areas or neighbourhood forums. In order to meet what would otherwise have been a “Catch 22” impasse – with no neighbourhood forum there could have been no application for designation of a neighbourhood area, and with no designated neighbourhood area there could have been no application for designation as a neighbourhood forum – it was necessary to enable the making of combined applications by organisations or bodies capable of becoming neighbourhood forums, both for designation as an neighbourhood forum and for designation of the neighbourhood area in relation to which the neighbourhood forum would be authorised to act: see regulations 5 and 8 of The Neighbourhood Planning (General) Regulations 2012.
16. Against this statutory background, where the only purpose of a designated neighbourhood area is to define the area within which a designated neighbourhood forum is authorised to act, the Appellants’ submission that provided an organisation or body which meets the capability threshold has made an application for designation of a specified area as a neighbourhood area, that application has a continuing life of its own, and must be determined under subsection 61G(5) even if the local planning authority has refused the applicant organisation or body’s application for designation as a neighbourhood forum, makes no sense. If the unsuccessful applicant for designation as a neighbourhood forum was the first applicant under the 2011 Act, the local planning authority would be unable to comply with that part of subsection 61G(6) which requires it to exercise its designating power so as to secure that some or all of the specified area forms part of one or more areas designated, or to be designated, as neighbourhood areas, because there would be no such areas.
17. For these reasons, I consider that sections 61F and 61G enable a local planning authority when considering a combined application by an organisation or body which is capable of being designated as a neighbourhood forum both for designation as a neighbourhood forum and for designation of the neighbourhood area for that neighbourhood forum, to exercise its power under section 61F(5) to refuse the application for designation as a neighbourhood forum. If it does so it may decline to determine the application for designation of the specified area as a neighbourhood area on the basis that an organisation or body whose application for neighbourhood forum designation has been refused is not a “relevant body”

because it is no longer “capable of being designated as a neighbourhood forum”. This would confine the need to exercise the section 61G(5) power of designation to those cases where the local planning authority did consider it appropriate to designate a neighbourhood forum, but did not think that the specified area was appropriate for designation as the neighbourhood area. In such a case, as in the present case, the local planning authority would be able (even if the applicant was the first successful applicant for neighbourhood forum status) to exercise its power of designation so as to ensure that some of the specified area was designated as a neighbourhood area.

18. While Parliament clearly envisaged that there might be repeat applications for designation, it would, to put it at its lowest, be surprising if, in enacting subsection 61G(5), Parliament had intended that a lawful decision by a local planning authority that the whole of a specified area was not an appropriate area to be designated as a neighbourhood area and that only some of the area was an appropriate area to be so designated, could be circumvented by the simple expedient of another body capable of being designated as a neighbourhood forum making a further application in respect of the excluded area, and then the repetition of that process as often as necessary in order to eventually secure the designation of the whole of the originally specified area. For the reasons set out above, I do not accept Mr. Stinchcombe’s submission that we are driven to reach such an improbable conclusion. If such a repeat application was made by an organisation or body which passed the capability threshold in section 61G(2)(a) in respect of an area which the local planning authority had previously considered was not an appropriate area to be designated as a neighbourhood area, the local planning authority would be entitled to refuse the application for neighbourhood forum designation under section 61F(5), and that would dispose of the repeat application. It does not follow that the local planning authority would necessarily refuse a repeat application for designation. Circumstances might have changed so as to justify a fresh application in respect of the excluded area. Whatever the precise extent of the power conferred by section 61F(5), it is sufficiently broad to enable local planning authorities to refuse repeat applications of the kind envisaged by Mr. Stinchcombe, which would in other contexts be described as an abuse of process. The submission that it was Parliament’s intention that the whole of England and Wales should, wherever it is the wish of the local community, be covered by a patchwork of neighbourhood areas, conflicts with the express terms of section 61G whether one is considering an application by a neighbourhood forum or a Parish Council: see paragraph 8 (above).

The remaining Grounds of Appeal

19. In his other Grounds of Appeal Mr. Stinchcombe submitted that Supperstone J had erred in concluding that, when exercising the discretion conferred by subsection 61G(5), the Respondent was entitled to have regard to the “policy and factual matrix” that existed at the time of its decision, so as to exclude the two strategic sites from the designated neighbourhood area for reasons which all related to their strategic nature. He submitted that the matters relied upon by the Respondent were irrelevant considerations, and/or that the Respondent’s decision frustrated the purpose of the 2011 Act. Although he did not concede that these other grounds of appeal were dependent upon the Court accepting his approach to the interpretation of subsection 61G(5), it is difficult to see why the factors considered by the Respondent when deciding to exclude the two strategic sites from the designated neighbourhood area (see paragraph 28 of the judgment) were irrelevant considerations or why the Respondent’s decision frustrated the purpose of the 2011 Act, if the discretion conferred by the subsection is a discretion to decide whether a given area should or should

not be designated as a neighbourhood area, and is not confined to a discretion to decide within which neighbourhood area that area should be included.

20. If the discretion is not so confined, any decision by the local planning authority as to appropriateness must take into account the factual and policy matrix that exists in each individual case at the time that the decision is made. As I have mentioned, the Appellants do not challenge the Judge's account of the factual and policy matrix. It is unnecessary to repeat the detail. The first four reasons given by the Respondent for excluding the two strategic sites from the specified area (it was common ground that the fifth reason did not take the matter any further) are all interlinked. In summary, it was not simply that RAF Daws Hill and the Sports Centre sites were strategic sites that would have larger than local impacts upon larger "communities of interest" requiring any referendum to take place over a much wider area than the specified area, possibly extending to the whole of the District Council's area; it was that the planning process in respect of these two strategic sites was already well advanced by September 2012. Outline planning permission had been granted for the Sports Centre site and a revised outline application for that site was under consideration, and a planning application pursuant to a highly prescriptive Development Brief for the Daws Hill site, which had been approved in draft for consultation in June 2012, was anticipated that Autumn.
21. The DHRA's application for designation of a neighbourhood area had explained why it sought the inclusion of the two strategic sites within the designated specified area. That explanation included the following paragraphs:

"The suggested high-density residential development of RAF Daws Hill and the proposed inclusion of 36,000 sqm of employment generating floorspace other supporting development and a hotel in the Sports Centre redevelopment we believe will adversely affect the quality of life for existing residents. The Daws Hill Neighbourhood Plan (NP) is being developed to help deliver the local community's ambitions and needs for the plan period 2012-2026 in accordance with the Localism Act 2011 and 2012 to allow them to exercise influence over decision that will 'make a big difference' to their lives within the neighbourhood area.

The existing residential area is boxed-in by the M40, Handy Cross Sports Centre, Marlow Hill, Wycombe Abbey School grounds and RAF Daws Hill, and is therefore directly affected by the two development sites at Handy Cross and RAF Daws Hill. Any large-scale development within the neighbourhood area will have a profound impact on the existing residents due to increased traffic within the area, increased traffic flow through the area and the consequent increase in noise pollution, air pollution and disruption; environmental issues; the impact of increased commercial and retail facilities in a predominantly residential area; the changed character of the dramatically increased residential area and home numbers in a designated Area of Outstanding Natural Beauty (AONB) because of the suggested higher density developments; the impact on local schools, health and welfare resources; the impact of the

delivery of services: water, telephone/broadband, electricity and gas supplies; and the impact of the developments on security of the schools, and the character of the gateway to High Wycombe (Handy Cross onto Marlow Hill).”

22. Given that the primary purpose of the DHRA was to influence the scale of development on the two strategic sites through the neighbourhood development plan process, the Respondent was entitled to conclude that any neighbourhood development plan would be overtaken by events. Depending on the complexity of the issues to be resolved in the neighbourhood development plan (and there is no dispute that the two strategic sites raised very complex issues), and assuming a positive outcome at both the independent examination and the referendum stages, it would take between 12 and 21 months before a neighbourhood development plan could be approved. In these circumstances the Respondent was entitled to conclude that in this particular case false expectations would be raised and time and resources would be wasted. In my judgment, this particular combination of factors could not sensibly be described as an irrelevant consideration for the purpose of the exercise of the designation power in section 61G(5).

Character of the area

23. Before the judge, Mr. Stinchcombe submitted that the Respondent had failed to take into account the character of the area by excluding the two strategic sites which were part of a single area (paragraph 35 judgment). His submission that the concept of the character of a neighbourhood area which is to be found in sub-paragraph (a)(iii) of subsection 61F(7) must “translate through to section 61G from section 61F” (ibid) was not accepted by the judge (see paragraph 36 of the judgment). While I would accept that the reference to the “character of [the] area” in subsection 61F(7)(a)(iii) does not “transfer” or “translate through” to subsection 61G(5), I do not accept that this leads to the conclusion that the character of the area is an irrelevant consideration for the purpose of the designation power in the latter subsection. The character of an area proposed for designation as a neighbourhood area is bound to be a relevant consideration when the local planning authority is deciding whether its designation as a neighbourhood area is appropriate. If, which is by no means clear, the judge reached a contrary conclusion on this issue, I would respectfully disagree with him on that point.
24. However, the point is of no assistance to the Appellants. Their submission that the Council failed to have regard to the character of the area when deciding to exclude the two strategic areas from the designated neighbourhood area is wholly unrealistic. It is true that the words “character of the area” do not appear in either the officers’ report or the formal reasons given for the Council’s decision, but on a fair reading of both of those documents it is clear that, unsurprisingly, both officers and members were very well aware of the character of the various parts of the specified area proposed by the DHRA, and in particular they were familiar with the character of the two strategic sites. A revised planning application for the Sports Centre site had been received, and the meeting of the Council’s Cabinet on 10th September 2012 which considered the DHRA’s application for designation was also considering changes to the Daws Hill Development Brief following public consultation. The fact that the two sites were strategic sites was a reflection of their location and size and their “brownfield” character, but they were excluded from the designated neighbourhood area because they were two strategic sites where the planning process was very well advanced, and not because they were, in some way unrelated to their strategic characteristics, “out of character” with the remainder of the neighbourhood area.

Conclusion

25. I would dismiss this appeal.

Lord Justice Briggs:

26. I agree.

The Master of the Rolls:

27. I also agree.

Annex

61F Authorisation to act in relation to neighbourhood areas

(1) For the purposes of a neighbourhood development order, a parish council are authorised to act in relation to a neighbourhood area if that area consists of or includes the whole or any part of the area of the council.

(2) If that neighbourhood area also includes the whole or any part of the area of another parish council, the parish council is authorised for those purposes to act in relation to that neighbourhood area only if the other parish council have given their consent.

(3) For the purposes of a neighbourhood development order, an organisation or body is authorised to act in relation to a neighbourhood area if it is designated by a local planning authority as a neighbourhood forum for that area.

(4) An organisation or body may be designated for a neighbourhood area only if that area does not consist of or include the whole or any part of the area of a parish council.

(5) A local planning authority may designate an organisation or body as a neighbourhood forum if the authority are satisfied that it meets the following conditions—

(a) it is established for the express purpose of promoting or improving the social, economic and environmental well-being of an area that consists of or includes the neighbourhood area concerned (whether or not it is also established for the express purpose of promoting the carrying on of trades, professions or other businesses in such an area),

(b) its membership is open to—

(i) individuals who live in the neighbourhood area concerned,

(ii) individuals who work there (whether for businesses carried on there or otherwise), and

(iii) individuals who are elected members of a county council, district council or London borough council any of whose area falls within the neighbourhood area concerned,

(c) its membership includes a minimum of 21 individuals each of whom—

(i) lives in the neighbourhood area concerned,

(ii) works there (whether for a business carried on there or otherwise), or

(iii) is an elected member of a county council, district council or London borough council any of whose area falls within the neighbourhood area concerned,

(d) it has a written constitution, and

(e) such other conditions as may be prescribed.

(6) A local planning authority may also designate an organisation or body as a neighbourhood forum if they are satisfied that the organisation or body meets prescribed conditions.

(7) A local planning authority—

(a) must, in determining under subsection (5) whether to designate an organisation or body as a neighbourhood forum for a neighbourhood area, have regard to the desirability of designating an organisation or body—

(i) which has secured (or taken reasonable steps to attempt to secure) that its membership includes at least one individual falling within each of sub-paragraphs (i) to (iii) of subsection (5)(b),

(ii) whose membership is drawn from different places in the neighbourhood area concerned and from different sections of the community in that area, and

(iii) whose purpose reflects (in general terms) the character of that area,

(b) may designate only one organisation or body as a neighbourhood forum for each neighbourhood area,

(c) may designate an organisation or body as a neighbourhood forum only if the organisation or body has made an application to be designated, and

(d) must give reasons to an organisation or body applying to be designated as a neighbourhood forum where the authority refuse the application.

(8) A designation—

(a) ceases to have effect at the end of the period of 5 years beginning with the day on which it is made but without affecting the validity of any proposal for a neighbourhood development order made before the end of that period, and

(b) in the case of the designation of an unincorporated association, is not to be affected merely because of a change in the membership of the association.

(9) A local planning authority may withdraw an organisation or body's designation as a neighbourhood forum if they consider that the organisation or body is no longer meeting—

(a) the conditions by reference to which it was designated, or

(b) any other criteria to which the authority were required to have regard in making the designation;

and, where an organisation or body's designation is withdrawn, the authority must give reasons to the organisation or body.

(10) A proposal for a neighbourhood development order by a parish council or neighbourhood forum may not be made at any time in relation to a neighbourhood area if there is at that time another proposal by the council or forum in relation to that area that is outstanding.

(11) Each local planning authority must make such arrangements as they consider appropriate for making people aware as to the times when organisations or bodies could make applications to be designated as neighbourhood forums for neighbourhood areas.

(12) Regulations—

(a) may make provision in connection with proposals made by qualifying bodies for neighbourhood development orders, and

(b) may make provision in connection with designations (or withdrawals of designations) of organisations or bodies as neighbourhood forums (including provision of a kind mentioned in section 61G(11)(a) to (g)).

(13) The regulations may in particular make provision—

(a) as to the consequences of the creation of a new parish council, or a change in the area of a parish council, on any proposal made for a neighbourhood development order,

(b) as to the consequences of the dissolution of a neighbourhood forum on any proposal for a neighbourhood development order made by it,

(c) suspending the operation of any duty of a local planning authority under paragraph 6 or 7 of Schedule 4B in cases where they are considering the withdrawal of the designation of an organisation or body as a neighbourhood forum,

(d) for determining when a proposal for a neighbourhood development order is to be regarded as outstanding, and

(e)requiring a local planning authority to have regard (in addition, where relevant, to the matters set out in subsection (7)(a)) to prescribed matters in determining whether to designate an organisation or body as a neighbourhood forum.

61G Meaning of “neighbourhood area”

(1)A “neighbourhood area” means an area within the area of a local planning authority in England which has been designated by the authority as a neighbourhood area; but that power to designate is exercisable only where—

(a)a relevant body has applied to the authority for an area specified in the application to be designated by the authority as a neighbourhood area, and

(b)the authority are determining the application (but see subsection (5)).

(2)A “relevant body” means—

(a)a parish council, or

(b)an organisation or body which is, or is capable of being, designated as a neighbourhood forum (on the assumption that, for this purpose, the specified area is designated as a neighbourhood area).

(3)The specified area—

(a)in the case of an application by a parish council, must be one that consists of or includes the whole or any part of the area of the council, and

(b)in the case of an application by an organisation or body, must not be one that consists of or includes the whole or any part of the area of a parish council.

(4)In determining an application the authority must have regard to—

(a)the desirability of designating the whole of the area of a parish council as a neighbourhood area, and

(b)the desirability of maintaining the existing boundaries of areas already designated as neighbourhood areas.

(5)If—

(a)a valid application is made to the authority,

(b)some or all of the specified area has not been designated as a neighbourhood area, and

(c)the authority refuse the application because they consider that the specified area is not an appropriate area to be designated as a neighbourhood area,

the authority must exercise their power of designation so as to secure that some or all of the specified area forms part of one or more areas designated (or to be designated) as neighbourhood areas.

(6)The authority may, in determining any application, modify designations already made; but if a modification relates to any extent to the area of a parish council, the modification may be made only with the council’s consent.

(7)The areas designated as neighbourhood areas must not overlap with each other.

(8)A local planning authority must publish a map setting out the areas that are for the time being designated as neighbourhood areas.

(9)If the authority refuse an application, they must give reasons to the applicant for refusing the application.

(10)In this section “specified”, in relation to an application, means specified in the application.

(11) Regulations may make provision in connection with the designation of areas as neighbourhood areas; and the regulations may in particular make provision—

(a) as to the procedure to be followed in relation to designations,

(b) as to the giving of notice and publicity in connection with designations,

(c) as to consultation with and participation by the public in relation to designations,

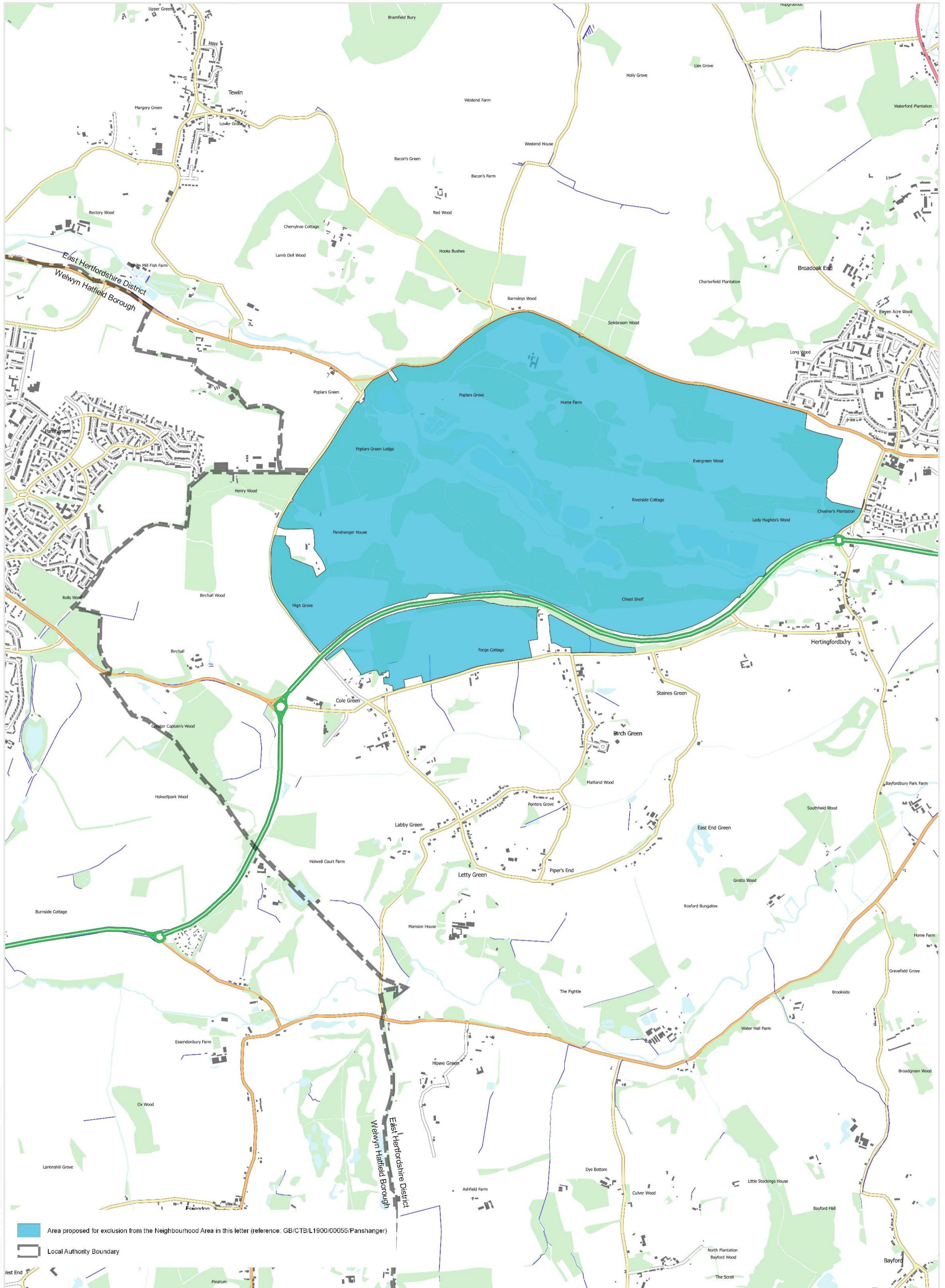
(d) as to the making and consideration of representations about designations (including the time by which representations must be made),

(e) as to the form and content of applications for designations,

(f) requiring an application for a designation to be determined by a prescribed date,

(g) entitling or requiring a local planning authority in prescribed circumstances to decline to consider an application for a designation, and

(h) about the modification of designations (including provision about the consequences of modification on proposals for neighbourhood development orders, or on neighbourhood development orders, that have already been made).



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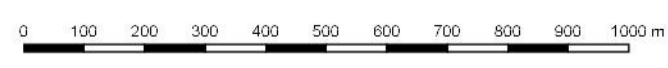


Hertingfordbury Neighbourhood Area:
Area Proposed for Exclusion

Drawn: MRP
Designed: JWT
Approved: JWT

Date: 16/12/2015
Scale: 1:12,500 @ A2

Draw: LARKIN 12/1
Rev: 1
Do not scale from this drawing



1:12,500 @ A2
 16/12/2015
 MRP, JWT, JWT
 LARKIN 12/1, Rev: 1
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N A B A R R O

East Hertfordshire District Council

Council Offices
Wallfields
Pegs Lane
Hertford
SG13 8EQ

17 December 2015

Our ref: GB/CTB/L1990/00055/Panshanger
Your ref:

Dear Sirs

OBJECTION by Tarmac to application by Hertingfordbury Parish Council to designate a Neighbourhood Area on grounds of conflict with the emerging Local Plans and with Tarmac's interests at Panshanger Park

We represent Tarmac whose land interests are included in the proposed Neighbourhood Area, and as such is an interested person for the purposes of the relevant legislation.

As a preliminary issue, we note that the Hertingfordbury Parish Council is the applicant for the area designation. In the absence of any information as to the basis for the identification of the Neighbourhood Area or the principles upon which a Neighbourhood Plan is being promoted, Tarmac reserves the right to make further representations as to the vires of the Parish Council's application.

We would also note that Panshanger Park and Birchall relate to an area that is much greater than the Parish of Hertingfordbury – we would suggest that the majority of the community that uses Panshanger Park lives outside the Parish of Hertingfordbury for example in Hertford and Welwyn Garden City. These communities would have no influence in helping to frame the Hertingfordbury Neighbourhood Plan and just as importantly (and undemocratically) would have no vote in respect of any future neighbourhood plan referendum.

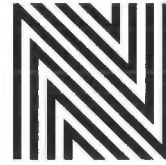
In addition, notwithstanding the large extent of Tarmac's interests in the proposed Neighbourhood Area, Hertingfordbury Parish Council has made no attempt to discuss the proposed Neighbourhood Area with Tarmac. The proposed Neighbourhood Area as currently put forward is likely to impinge on Tarmac's existing operations and restoration proposals at Panshanger Park and frustrate and undermine the proper forward planning processes of East Hertfordshire District Council.

In common with other recent proposals for Neighbourhood Area designation elsewhere, we consider that the proposed boundaries of this particular Neighbourhood Area are misconceived, and in conflict with strategic cross boundary planning priorities.

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L1990/00055/83151208 v.3



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To: East Herts Council
Date: 17 December 2015
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We would note, in particular, the decision in the High Court in *R. (on the application of Daws Hill Neighbourhood Forum) v Wycombe DC* [2014] EWCA Civ 228 (copy attached) when it was established that where a Parish Council is the relevant body making the application for designation of the area, the local planning authority must have regard to the desirability of designating the whole of the Parish Council's area as a Neighbourhood Area and made clear that:

"it is not required to designate the whole, and may exclude part, of the Parish Council's area, thus ensuring that it will not be included in any neighbourhood area".

In the same case, Lord Justice Sullivan said that in addressing the question of appropriateness of the inclusion of land in a Neighbourhood Area in accordance with the requirements of Section 61G of the Town and Country Planning Act 1990:

"any decision by the local planning authority as to appropriateness must take into account the factual and policy matrix that exists in each individual case at the time that the decision is made".

In this case the proposed Neighbourhood Area encompasses the whole of the administrative area of Hertingfordbury Parish Council (except apparently the village of Hertingfordbury itself) including that part of Panshanger Park as is in East Hertfordshire District.

We would note in particular that:

- No justification has been given, other than the administrative parish boundary, as to why the proposed area is considered to be appropriate as an area for the Neighbourhood Plan. The composition and morphology of the 'de facto' land area with its built forms, land uses, connectivity and character within the Parish Boundary is clearly different and actually segmented / divided by the A414. For example:
 - Land to the south comprises small fragmented settlements with a rural agricultural character and with land and land uses connected by a small scale community road network and potentially comprising many landowners.
 - In contrast, land to the north comprising predominantly of two main land blocks ie Panshanger Park and Birchall, with a limited number of land uses and landowners. Both land blocks being previously, currently or potentially subject to land uses related to minerals development and / or landfilling. The land blocks to the north have also been, and will be covered in the future, by specific planning and legal applications and obligations. The NP should address only land to the south of the A414 (which is still a large geographical area).
- Panshanger Park is already the subject of a detailed planning permission and s.52 agreement that governs the development and future restoration of this area.
- Panshanger Park has also been the subject of Vision discussions that have been in train for over 2 years now in terms of expanding the scope of the Park over and above the basic requirements of the original S.52 Agreement.
- The Vision discussions have involved a process of bringing the various stakeholders (EHDC, HCC, HMWT and others) on board with the concept of enabling works on site to fund



N A B A R R O

To: East Herts Council
Date: 17 December 2015
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enhanced infrastructure and a full restoration of the Orangery formal gardens etc. This process is now well advanced and an application could be made within the next 18 months.

- Given that the process for adopting a neighbourhood development plan could take as long as 21 months, it is likely that detailed planning proposals for Panshanger Park will have been submitted and, potentially determined, within that timescale.
- In the event of conflict between the proposed neighbourhood plan and the local plans, which we strongly suspect would arise, this would lead to considerable time and resources being wasted by all parties.

These are all material considerations which the local authority should take into account when considering whether Panshanger Park should be included in the Neighbourhood Area to be designated.

In our submission, insofar as a Neighbourhood Area is designated at all, that part of the proposed Neighbourhood Area encompassed by Panshanger Park should be excluded from it – as shown shaded blue on the attached plan.

Separate representations are being made in connection with Tarmac's interest in the Birchall Garden Suburb proposals.

Please acknowledge safe receipt of this letter.

Yours faithfully



NABARRO LLP

PA/1285/sf

14 January 2016

Ms Isabelle Haddow
East Herts District Council
Wallfields
Pegs Lane
Hertford
SG13 8EQ

Dear Ms Haddow

Hertingfordbury Neighbourhood Plan

I am instructed by Mr Anthony Downs of Gascoyne Cecil Estates who are major landowners within the proposed Hertingfordbury Neighbourhood Plan Area.

I confirm that the Estate are supportive of the principle of a Neighbourhood Plan for Hertingfordbury Parish and which includes the villages of Cole Green and Birch Green. In particular, the Estate are in general terms supportive of 'bottom-up' planning with emphasis on consultation, dialogue and discussion with local people in the planning of their areas.

You may be aware that the Estate have held a number of local Charrette's within Welwyn Hatfield in recent years with full involvement and engagement with the local communities. The Charette's which are open consultation and discussion events have been held in respect of Hertfordshire, Old Hatfield (redevelopment of Salisbury Square) and Mill Green (between Welwyn Garden City and Hatfield).

You may be aware from discussion with your Policy Team colleagues (Claire Sime/Jenny Pierce) that in May 2014, we produced a promotional brochure, entitled The Greens, Hertford as part of your emerging East Herts Local Plan. I am enclosing a copy of this brochure (if you have not already seen it), and which you will see that we put forward and proposed a limited degree of residential infill development within the settlements of Birch Green and Cole Green within Hertingfordbury Parish.

We will welcome further discussion with officers on these proposals in consultation with Hertingfordbury Parish, as both the East Herts Local Plan and Hertingfordbury Neighbourhood Plan come to fruition.

I refer to representations you have already received from Nabarro LLP Solicitors on behalf of Lafarge Tarmac who have raised an objection to the proposed Hertingfordbury Neighbourhood Plan area. (Nabarro LLP letter to you of 16 December 2015). The Estate wish to point out that land proposed by Nabarro on behalf of Tarmac to be removed from the Neighbourhood Plan area includes land within the ownership of Gascoyne Cecil Estates. In this regard, the Estate are happy for their land to be included within the Neighbourhood Plan area and would not wish for it to be excluded. I am enclosing a plan showing the Estate's ownership in Cole Green/Birch Green within Hertingfordbury Parish for your reference.



You will be aware from previous discussions with Jenny Pierce and Claire Sime from your Policy Team that the Estate have withdrawn their land from your draft Strategic Broad Location for Growth East of Welwyn Garden City (EWEL1) (in June 2015).

Gascoyne Cecil Estates have confirmed categorically that there is no Memorandum of Agreement between the Estate and Lafarge Tarmac (nor has there ever been such a document) and the Estate continue to hold serious reservations about the present Lafarge Tarmac proposals. These concerns stem firstly from the impact of the development upon the setting of heritage assets (both Hatfield and Panshanger Park), adverse landscape impact, Lafarge's failure to address concerns raised in respect of the proposed strategic green corridor as well as wider issues including wildlife/ecology and capacity of the A414 to take additional traffic from this development.

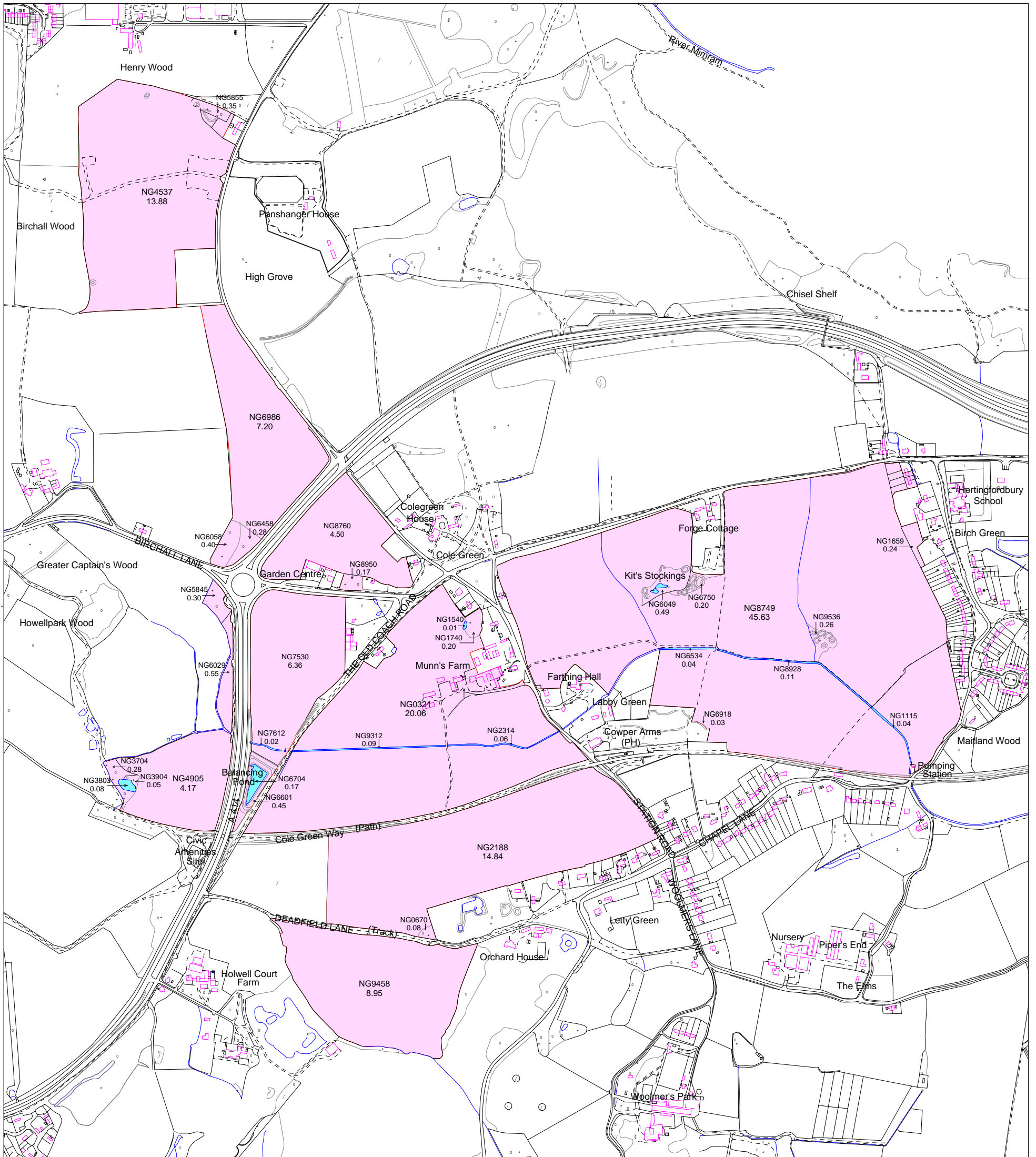
I confirm that the Estate and its advisers will be keen to further discuss the draft Hertingfordbury Neighbourhood Plan as it progresses through the plan-making process and in this regard, support the Parish in their efforts.


No doubt you will take these matters fully into consideration on the proposals for the Parish to be designated as a Neighbourhood Area.

Please contact me if there are any immediate points arising from this letter.

Yours sincerely

Encs: The Greens Promotional Brochure
Gascoyne Cecil Estates Land Ownership Map





GASCOYNE CECIL
 ESTATES

Hatfield Park Estate Office, Hatfield House,
 Hatfield, Hertfordshire, AL9 5NF
 Tel: 01707 287000 Fax: 01707 275719

Hatfield Estate: Munns Farm

SCALE: 1:9000	DATE: 28/06/2007
MAP FILE REFERENCE: Munns Farm pink.mpd	



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The Greens, Hertford

Birch Green, Cole Green & Letty Green

Draft East Hertfordshire
District Plan Preferred
Options Consultation
Representations on
behalf of the Gascoyne
Cecil Estates

These representations have been prepared by JB Planning Associates (JBPA) on behalf of the Gascoyne Cecil Estates (the Estate) in relation to the Preferred Options Consultation on the emerging East Hertfordshire District Plan (the draft District Plan).

The representations support the identification of Birch Green, Cole Green and Letty Green as Group 2 Villages but recommend some amendments to the draft Plan to ensure that sufficient scope is retained to allow the villages to remain sustainable and vibrant communities.

Historical Context

The Gascoyne Cecil Estates

The Estate has been at the heart of local communities for more than four hundred years, and continues to flourish in spite of the challenges that the passage of time has brought. To quote from the Gascoyne Cecil Estates prospectus:

“Estates cannot stand still; nothing is more certain than terminal decline if preservation of the past outweighs the needs of the present and future. The Estates are managed on behalf of the Marquess of Salisbury by Gascoyne Cecil Estates.

While the challenges evolve, the ethos behind the Estates’ approach to management remains constant:

- To enhance our environment and secure the long-term prosperity both of the Estates and their extended communities.
- To preserve the best of what we already hold, improving this with new homes, high-quality public spaces and thriving businesses – all of which will provide employment and support to local communities for years to come.

Development will always be a contentious matter – change will always give rise to fears for what the future might hold. The Estates believe that change is not only inevitable but in many cases is desirable. However it must take place in partnership with local communities and the Estates have worked hard in recent years to engage with communities and key stakeholder partners. We strongly believe that local communities should have their say in how towns and villages might evolve.

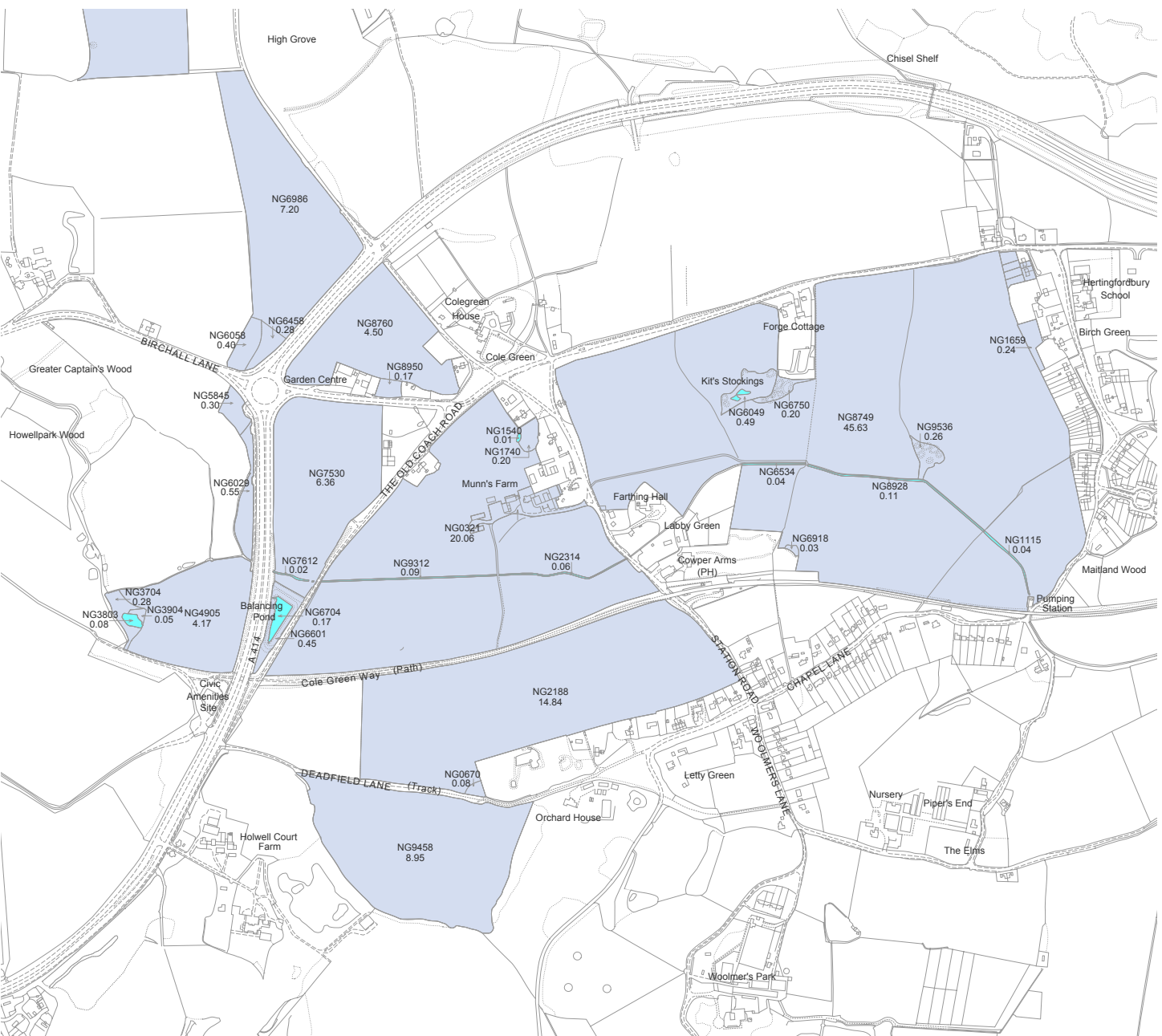
Release of farm land for development will always be a difficult decision. We believe, however, that where such development is necessary it is important to engage and lobby for the best possible standard of development. Thus, we will ensure that the Estates remain at the heart of any debate on future expansion of towns and villages and that development built on Estates land creates places of which people can be proud and which provide sustainable communities for many generations to come.

New development does not have to be bad. Careful planning and design can overcome many of the shortcomings of more typical housing developments. We believe that well-designed urban extensions can be a vital driver of prosperity and in turn assist in the regeneration of other parts of our existing towns and villages.

Adopting a longer term vision and having a desire to remain at the heart of our communities means we will listen to people’s aspirations and concerns and strive to achieve the best possible results that build upon our own history.”



Gascoyne Cecil Estates land ownership surrounding the Three Villages



Strategic Context

East Hertfordshire District Plan

Housing Need

The draft District Plan states that the “evidence indicates” a need for 15,000 new homes between 2011 and 2031 – an average of 750 new homes a year (draft Policy DPS1). We understand that this figure is a rounding of the Government’s 2011 (as published in April 2013) population projection for the District of 14,716 new households (an increase from the 2008 population projection of 13,224 new households).

However, the housing requirement projections¹ set out in the Council’s latest Strategic Housing Market Assessment (SHMA) of March 2013 suggest a need for between 16,900 and 18,600 new homes; notably these figures are based on the lower 2008 population projections as opposed to the higher 2011 projections.



In justifying the proposed use of the 15,000 new homes figure, the Council has stated² that there is “no justifiable reason for not relying on such official projections as a basis for informing planning for housing and related policy work”; however to do so would be contrary to the NPPF (para. 159), which requires that the need and demand for housing is also taken into account.

Thus the true need for housing within the District could be up to 3,600 new homes higher than is being planned for by the Council.

New Homes	
SHMA	16,800–18,600
Draft Plan	15,000

1. Excluding the Net Nil-Migration household projection figure (xref NPPG).

2. East Herts Council District Planning Executive Panel 25 July 2013 Report by Executive Member for Strategic Planning and Transport, Population and Household Projections: Update Report, Paragraph 2.20.

Housing Land Supply

The Council estimates that during the first 5 years of the plan period (2011–2016), only 2,654 new homes will have been built instead of the 3,750 required (5×750) – a shortfall of 1,096 homes; the Council has not provided any calculation to support the 2,654 figure. Indeed, the Council's latest (February 2014) Annual Monitoring Report (AMR) predicts that only 2,341 homes will be delivered between 2011 and 2016; if so, then the shortfall will be 1,409 rather than 1,096 as stated in the draft Plan.

The National Planning Policy Framework (NPPF) requires (para. 47) that local planning authorities should “identify and update annually a supply of specific deliverable sites sufficient to provide 5 years’ worth of housing” – in this case sufficient land for 3,750 homes.

The National Planning Policy Guidance (NPPG) supports (para. 35) the approach whereby a shortfall in housing supply is made up in the short-term, usually over the course of the next 5 years. Despite this, the Council is proposing that the shortfall be made up over the course of the remaining 15 years of the plan period (i.e. 2016–2031), the only apparent justification being that “it is not realistic” to expect the proposed sites to contribute to reducing the shortfall in the first 5 years (in fact the Council is referring to the second 5 years of the plan period (2016–2021), or effectively the first half of the plan period (2011–2021)). The Council therefore proposes that the shortfall of 1,096 homes (assuming that this is the shortfall rather than 1,409 homes mentioned above) be made up at a rate of 73.1 homes ($1,096 / 15$) per year over the remaining 15 years of the plan period rather than an average of 219.2 homes ($1,096 / 5$) per year if this same shortfall is to be made up within the first 5 years. If this approach were to be confirmed, then assuming that 823 homes ($750 + 73$) per year are delivered between 2016 and 2021, the mid-point of the

plan period would be reached with almost a whole years’ worth of housing (731 homes) having not been delivered.

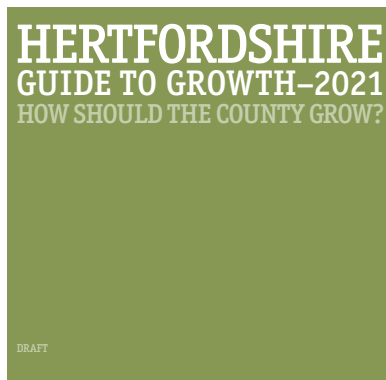
The NPPF also requires an “additional buffer of 5% (moved forward from later in the plan period) to ensure choice and competition in the market for land” – in this case an additional 188 homes ($3,750 \times 5\%$). (The Council erroneously (para. 3.3.6) applies this 5% buffer to the 5 year requirement **plus** the shortfall suggested by it rather than just to the 5 year requirement.)

The Council thus proposes that the District Plan provide for a total of 4,321 homes during the period 2016–2021, whereas the figure should be 5,034 homes ($3,750 + 188 + 1,096$) or 5,347 ($3,750 + 188 + 1,409$). Indeed, if the overall need for housing is as suggested by the Council's SHMA, then assuming the additional requirement is distributed over the remainder of the plan period (2016–2031), the requirement for the period 2016–2021 could be as high as 6,547. The draft District Plan proposes delivery of just 4,423 new homes.

In short, the draft District Plan does not appear to provide for sufficient housing to be delivered either during the remainder of the plan period, or during the next 5 years.

Village Housing

Notably, the District Plan Development Strategy (draft Policy DPS2) references (at part VII) development coming forward from within Group 1 villages (draft Policy VILL1) but fails to reference any development coming forward within Group 2 villages as provided for within the draft Plan (draft Policy VILL2) despite the Plan making clear (para. 3.3.10) that the windfall allowance (of which development within Group 2 villages would form part) is one of the ways in which the Council proposes that its' 15,000 home target (part 1 of Policy DPS2) will be met.



Policy Context

East Hertfordshire District Plan

General Principles

The inclusion of the three villages as within Group 2 is welcomed – previously all three villages were categorised as Group 3, which prevented any new housing (except rural exception site affordable housing) or employment or social / community facilities from being developed and thereby threatened to undermine the villages’ sustainability and vitality.

Group 2 villages are described in Section 6 of the Strategy Supporting Document as being “generally smaller villages with some services and facilities but often without a primary school [where] infill development may be appropriate ... to support existing facilities and services”. In this context, in relation to the three villages, the Council concluded that “some limited infill development ... would not be inappropriate and could assist with meeting local needs”.

We generally concur with the assessment of the three villages as contained within the Council’s ‘Strategy Supporting Document’ (insert ref) (Sieve 1: Areas 26, 30 and 43 – sections 4.9.5, 4.5.9 and 4.5.22) but would highlight a few points on which we differ:

- Whilst the Council states that Birch Green and Cole Green do not have good access to bus or rail services, both are served by bus route 388 between Hertford and Welwyn Garden City, which provides a connection to railway and bus stations within both towns; Letty Green is served on a less frequent basis by bus route 380 (as is Birch Green).
- Whilst the Council states that Birch Green suffers from limited employment opportunities due to the lack of access to the main road (taken as being the A414), there are a number of existing employers operating within the village (refer to page 14 of these representations) providing a range of existing employment opportunities, this despite a constraint over the previous decade on new employment development.





- Whilst the Council states that apart from the Cowper Arms Public House “there are no community facilities within Cole Green, nor the cluster of villages of which it is a part”, and makes a similar statement in relation to Letty Green without referencing the pub, across the three villages there are in fact 5 of the 11 types of facility identified by the Council as being ‘community facilities’ (Strategy Supporting Document para 3.18.4) – in addition to the pub there is a children’s playground, a nursery / pre-school, playing field (and accessible woodland) and the primary school, plus both Birch Green and Letty Green are served by the mobile library (libraries are not listed by the Council as a ‘community facility’).

We support the Council’s reasonable conclusion (Strategy Supporting Document para 4.9.39.5) that, despite a shortage of services and facilities within villages across the District, which might by some measures of sustainability lead one to conclude that that the villages are unsustainable locations for development, many villages are vibrant communities with a full and active social calendar supporting vital local and rural enterprises, the proximity of Cole Green Way and access to primary education and public transport leading to a conclusion that the Three Villages are more sustainable than they might at first appear to be.

We concur that the introduction of new development into can contribute to this by bringing new life to these established societies helping to sustain existing services and potentially generating custom for new facilities. Arguably, opportunities exist whereby one can strengthen provision of community facilities, employment or housing provision in a sympathetic and complimentary manner. It is recognised that sympathetic development requires a detailed approach to design and construction, and close cooperation with existing communities, points which are already advocated through Gascoyne Cecil Estates Design Codes (submitted alongside these representations).

We also support the Council’s recognition (Strategy Supporting Document para 4.9.39.8) that there are “instances where settlements have strong inter-relationships because of their close proximity, despite not being immediately adjacent to each other” and that the concept of clusters of villages that share services and/or facilities needs to be recognised.

Policy Context

East Hertfordshire District Plan

Infill Development

We support the principle, as set out within draft Policy VILL2, of allowing limited infill development, limited affordable housing for local community identified needs, and the provision of small-scale employment, leisure, recreation and community facilities within Group 2 villages where supported by the local community. Such an approach will ensure that the overall sustainability of these settlements can be improved and should also assist in meeting local needs for both market and affordable housing.



However, we object to the narrow definition of limited infill development (part II of draft Policy VILL2, and para. 10.2.5) that limits new housing development to five homes on any particular site. No specific justification has been provided as to why the Council considers that a development of more than five dwellings could not be considered as appropriate limited infilling. The NPPF does not define or provide guidance on what limited infilling in villages should be regarded as constituting, and thus national policy is deliberately vague, allowing interpretation by decision makers taking account of specific local circumstances.

On a recent planning appeal (APP/J1915/A/13/2205070) concerning a site within the District at Brickendon Green, an Inspector concluded that the question of what “limited infilling in villages” should mean “is a matter of planning judgement for the decision maker”. The Inspector in that case took a broad view of what limited infilling could constitute, and concluded that the underlying intention of restricting development in villages to limited infilling was to avoid harm to the character and appearance of the village.

We note that guidance within the 2007 Local Plan defines infill development as “the erection of up to five small dwellings”. However, it is important to recognise that the 2007 Local Plan Inspector noted in his assessment of the 2007 Local Plan that the definition was “for guidance only and therefore provides for flexibility”. Furthermore, the 2007 Local Plan Inspector found that the definition was necessary in order to provide more flexibility for infill development than a narrower definition which would construe infill development as relating solely to a small gap in an otherwise built frontage.

The definition within the 2007 Local Plan thus permitted larger development within Category 1 and 2 villages than would have been permitted by a narrower interpretation of infill development. Importantly, the 2007 Local Plan Inspector did not comment on the “up to five small dwellings” wording, or in any way suggest that a development of more than five dwellings could not be regarded as appropriate infill development.



In light of the comments of the 2007 Local Plan Inspector and the recent appeal decision at Brickendon Green, we consider it reasonable to conclude that infill development in excess of five dwellings could be considered as both limited and appropriate in certain contexts where it would not have an unduly harmful impact on the character and appearance of the village. For example, a particularly large or well enclosed site may conceivably be developed for more than five dwellings whilst not having a harmful impact on the character and appearance of the village.

Notably, given the need to boost significantly the supply of housing and meet housing needs, as required by the NPPF (para. 47), and the requirement to “optimise the potential of the site to accommodate development” (para. 58), it would appear illogical and contrary to national policy to limit infill development to five dwellings if a site was capable of accommodating six or more dwellings in an acceptable manner; such a limitation would also be contrary to draft District Plan Policy HOU2, which requires development to make efficient use of land. In short, we consider that it is unreasonable to restrict infill development to a maximum of five dwellings on any individual site, particularly given the shortfall in housing delivery to date and the lack of sufficient provision for housing in the draft District Plan in general.

Aside from the fact that a limit on the number of dwellings allowed on any particular site as limited infill development is both inappropriate and unjustified, it is also unnecessary. Collectively, the criteria in part III of draft Policy VILL2 requires development to be of a scale appropriate to the size of the village, relate well to the village in terms of location, layout and connectivity, and so on. Such requirements on their own should effectively ensure that any proposals for infill development will be of a limited scale and thus we consider it unnecessary to impose a maximum number of dwellings across the board, regardless of local circumstances.

Given the above, we consider that the limitation of infill development to no more than 5 new homes on any particular site within Group 2 villages is unjustified, inconsistent with the NPPF and thus unsound (NPPF para. 182).

Policy Context

East Hertfordshire District Plan

Village Boundaries

The draft District Plan proposes, for the first time (as compared to the 2007 Local Plan), that Group 2 villages be encompassed within a village boundary described in the Plan as the “built-up area” of the village. The draft Plan clarifies that the village boundaries have “generally been defined by the current outer extent of the built-up area of villages”. However, in most cases, these boundaries have been prepared with no apparent consistency and limited regard to the true extent of the village as detailed later in these representations.

In preparing the draft Plan the Council assessed various ‘areas of search’ and in doing so considered whether these areas had a ‘clear boundary’ (insert ref); however the areas of search were materially larger than the actual extent of the existing village and thus cannot be used as village boundaries.

In undertaking this assessment the Council considered the potential for each village to grow by up to 10% (at 30 dph) – in relation to the three villages the Council has thus considered the scope for an additional 9 new homes at Birch Green, 2 new homes at Cole Green and 8 new homes at Letty Green. However, the Council has not published any information on which potential sites it considered in this regard, or whether these were located within the village boundary as now proposed, or elsewhere.

As with the proposed definition of ‘limited infill development’, we consider that the proposed definition of village boundaries is inappropriate, unjustified and unnecessary. Collectively, the criteria in part III of Policy VILL2 requires development to be of a scale appropriate to the size of the village, relate well to the village in terms of location, layout and connectivity, and so on. Such requirements on their own should effectively ensure that any proposals for infill development will be on an appropriate site and thus we consider it unnecessary to seek to artificially define a village boundary, regardless of contextual circumstance.

On this basis, we have to question why the Council considers itself able to propose definitive village boundaries, when there is a distinct possibility (as yet unbeknownst to the Council due to its SLAA not yet having assessed sites around Group 2 villages) that the only sites that might come forward for development at villages might be, even only slightly, outside the boundaries and thus for this reason alone, would then have to be considered unacceptable even were they to otherwise satisfy the criteria of part III of draft Policy VILL2.

In short, there is currently a complete lack of justification for the village boundaries, not to mention a complete lack of evidence to support the proposed boundaries as defined.



Site Identification

In 2009 the Council undertook a ‘call-for-sites’ as part of preparing its’ Strategic Land Availability Assessment (SLAA).

At the time, the Council described the purpose of the SLAA (SLAA FAQ) as being to identify the development potential of sites across the District – in other words, how many houses could be built on a site – and to provide an assessment of when, if and how the site could be developed. The Council stated the SLAA would help it take policy decisions on how to best meet its housing requirement and how much development should go where.

In explaining the next steps, the Council stated that a technical assessment would be undertaken by the SLAA Partnership during summer/autumn 2011, which would set out when, if and how a site could be developed, with the SLAA then informing the District Plan. The Council explained that the SLAA would show that the option(s) chosen by the Council are feasible, that there is sufficient deliverable land in different areas, and would provide a list of sites from which the Council can select the most sustainable. The shortfall in housing delivery to date and the lack of sufficient provision for housing in the draft District Plan in general emphasises the need for a robust SLAA.

Despite this, and the October 2012 SLAA Technical Study (para. 2.5) noting that the SHLAA Practice Guidance (insert ref) is clear that “sites should not be excluded from the assessment because of existing planning policy designations”, the Council then comment that “approximately one third of the District is Metropolitan Green Belt and the remainder is designated as the Rural Area beyond the Green Belt” and that “as such, outside of the identified settlements, development is considered inappropriate in principle” (also para. 2.5). We consider that such a statement clearly demonstrates that the Council has predicated its SLAA by taking into account the existing planning policy designations that the same paragraph categorically states should not be taken into account.



In relation to ‘Stage 4: Determining which sites and areas will be surveyed’, the Council explains (para. 3.20) that the SLAA is being undertaken in rounds reflecting its approach whereby different parts of the District are assessed in different manners at different times, with the six main settlements and Group 1 villages (notably as defined in the 2007 Local Plan as opposed to as proposed in the draft District Plan) being assessed prior to the publication of the draft District Plan, with Group 2 and 3 villages and the remainder of the rural area then being assessed in Round 3 post the publication of the draft District Plan. The Council justifies this approach by explaining (‘importantly’) that in the main settlements and Group 1 villages, “the principle of development is established through the Local Plan Second Review 2007” and that “it is for this reason” that sites elsewhere including in Group 2 villages will be considered in Round 3.

In other words, these statements further confirm that the Council has predicated its SLAA by taking into account existing planning policy designations, even to the extent of assuming the categorisation of villages in the 2007 Local Plan rather than as proposed in the draft District Plan.

In short, the Council has not systematically reviewed any potential development sites outside the main settlements and Group 1 villages (as defined in the 2007 Local Plan), yet it appears to consider itself able to propose definitive boundaries around Group 2 villages within which all new homes should be delivered – this approach is clearly unjustified, inconsistent with the NPPF and thus unsound (NPPF para. 182).

Local Context

The Three Villages

Sustainable Communities

As noted by the Council, many villages are vibrant communities with a full and active social calendar supporting vital local and rural enterprises – the Three Villages of Birch Green, Cole Green and Letty Green are no exception.

The introduction of new development into villages brings new life to these established communities helping to sustain existing services and generating custom for new or enhanced facilities such as the existing bus service (388) between Hatfield and Welwyn Garden City.

Also as noted by the Council, there are instances where settlements – such as the Three Villages – have strong inter-relationships because of their close proximity, such ‘clusters’ of villages sharing services and/or facilities.

Services and Facilities

Existing services, facilities, employment opportunities, and so on within the Three Villages include:

Birch Green

- Served by bus routes 380 and 388 (with bus shelters)
- Immediate access to an extensive network of public rights of way including the Cole Green Way footpath and Sustrans route, via which access will be available to the proposed Panshanger Country Park
- Hertingfordbury Cowper C of E Primary School
- Served by mobile library
- Children’s playground (equipped)
- Playing field (football) (informal)
- Maitland wood (public access)
- Rochfords wholesale plant nursery
- New England plant nursery
- Antiques shop
- Bed & breakfast
- Post box
- Phone box
- Parish Council notice board.












Cole Green

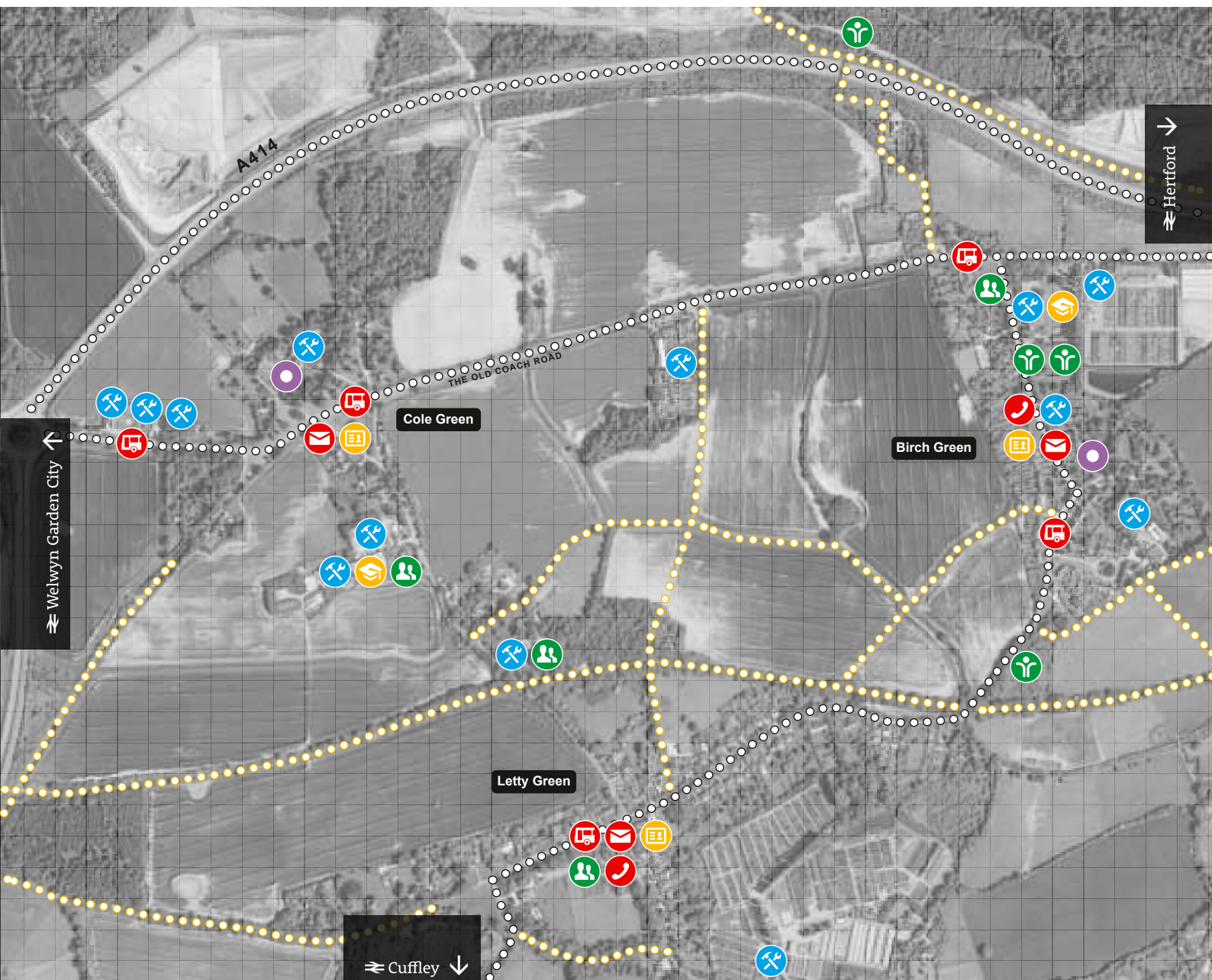
- Served by bus route 388
- Immediate access to an extensive network of public rights of way including the Cole Green Way footpath and Sustrans route
- Munns Farm children’s day nursery
- Cowper Arms public house and restaurant
- Various industrial and related companies at Cole Green Works
- Motor salvage works
- Stables
- Cattery
- Garden and pet centre
- Aquatic shop
- Post box
- Parish Council notice board.

Letty Green

- Served by bus route 380
- Immediate access to an extensive network of public rights of way including the Cole Green Way footpath and Sustrans route
- Served by mobile library
- Rochfords wholesale plant nursery
- Post box
- Phone box
- Parish Council notice board.

Services and Facilities in the Three Villages

-  Employment premises
-  Education premises
-  Community facility
-  Recreation facility
-  Post Box
-  Phone Box
-  Notice Board
-  Bus stop
-  Other
-  Public Right of Way
-  Public transport route



Local Context

Birch Green

Village Boundary

The draft District Plan explains that the proposed village boundaries have “generally been defined by the current outer extent of the built-up area of villages”.

Notwithstanding our view that there is a complete lack of justification for the village boundaries, not to mention a complete lack of evidence to support the proposed boundaries as defined, we have considered where the boundary should be drawn if the Council, and ultimately an Inspector, conclude that boundaries are necessary / appropriate.

Boundary Issues

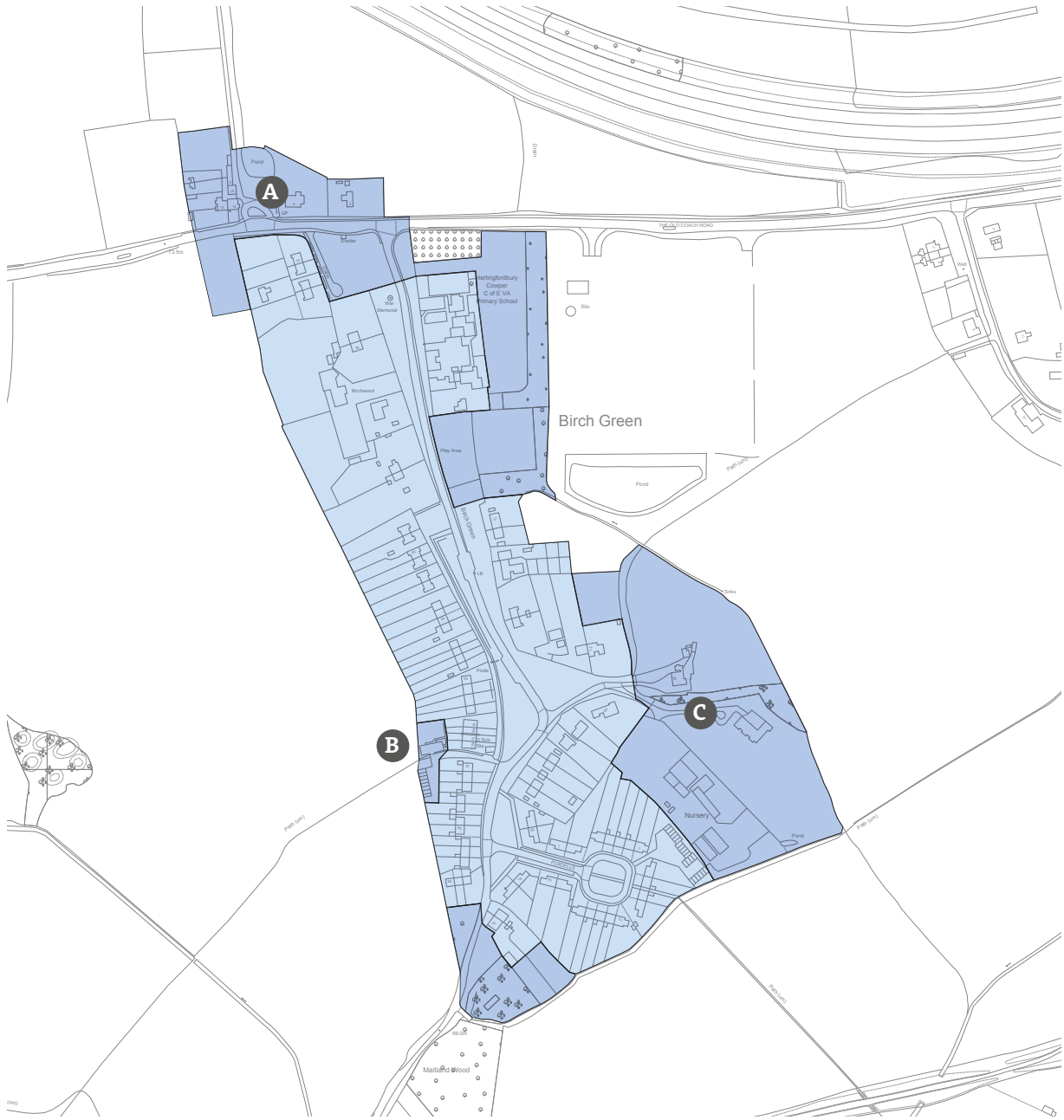
- A** The proposed village boundary around Birch Green includes the majority of the core of the village but inexplicably excludes the pocket of housing on the northern side of the The Old Coach Road.
- B** It also excludes from the village boundary, for no apparent reason, a small area of car parking on the western boundary that is associated with adjacent housing.

- C** The two largest homes on the eastern edge of the village are excluded from the village boundary in their entirety, as are the lower halves of four residential gardens, this suggesting that there are some thresholds relating to residential plot size that have been applied in the drawing of the proposed boundary although other, larger plots are included in their entirety (no such thresholds / criteria have been explained within the draft District Plan or any of the supporting / technical studies).

The Council is proposing that limited infill / windfall development can come forward within the village in order to ensure that the housing target requirement is met, yet the Council has no evidence as to whether this is possible within the village boundary as proposed thus we suggest that some clearly deliverable sites are considered to assist with the current shortfall in housing land supply.



Village boundary as proposed in the draft District Plan and recommended amendments (shown in the darker blue)



Local Context

Cole Green

Village Boundary

Again, notwithstanding our view that there is a complete lack of justification for the village boundaries, not to mention a complete lack of evidence to support the proposed boundaries as defined, we have considered where the boundary should be drawn if the Council, and ultimately an Inspector, conclude that boundaries are necessary / appropriate.

Boundary Issues

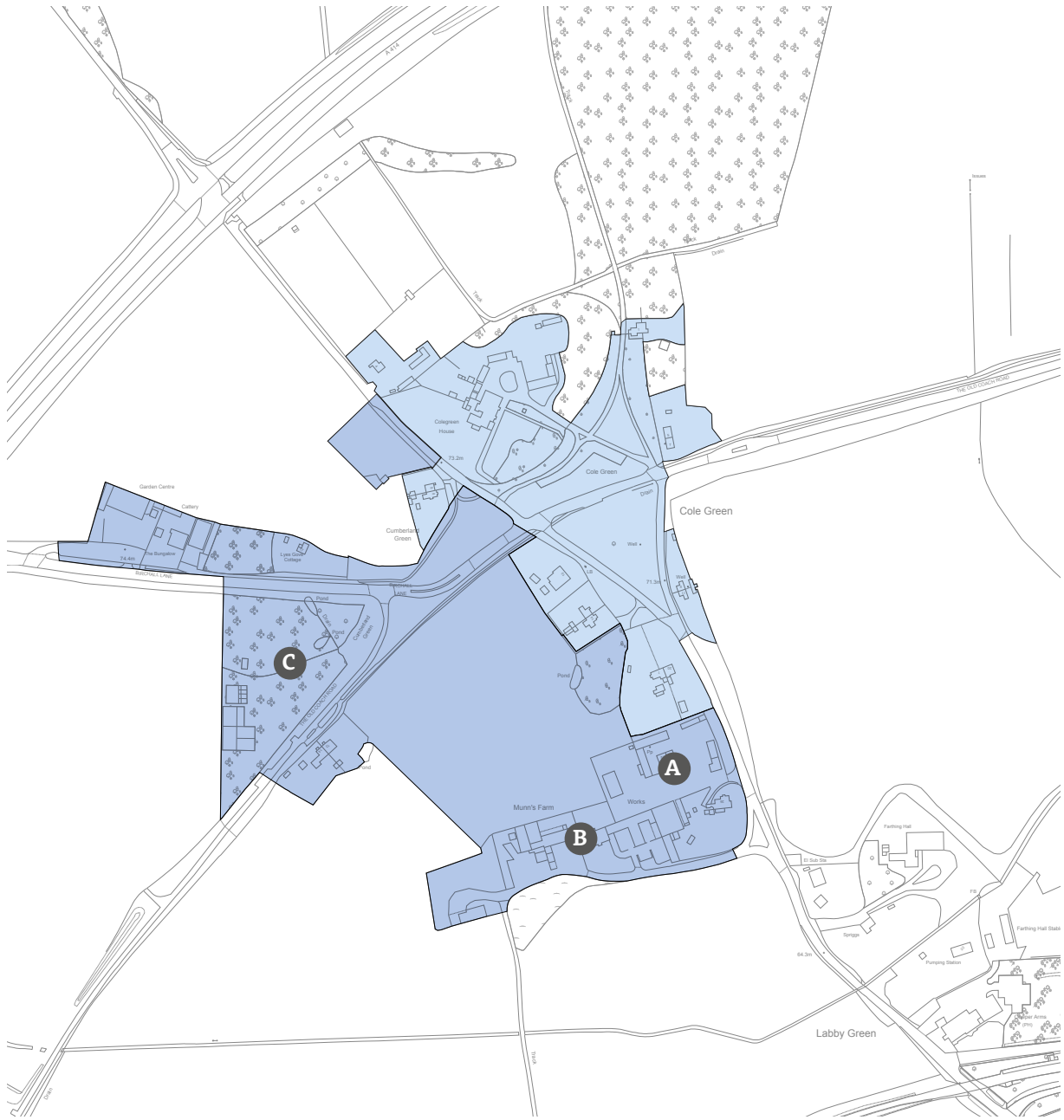
- A** Inexplicably, the proposed village boundary excludes the most built-up part of the village – the Cole Green Works.
- B** The proposed boundary also, again inexplicably, excludes all of Munns Farm – currently in use as a children’s day nursery.
- C** The boundary as proposed fails to include a number of dwellings and employment premises on the western side of the village.



The Council is proposing that limited infill / windfall development can come forward within the village in order to ensure that the housing target requirement is met, yet the Council has no evidence as to whether this is possible within the village boundary as proposed thus we suggest that some clearly deliverable sites are considered to assist with the current shortfall in housing land supply.



Village boundary as proposed in the draft District Plan and recommended amendments (shown in the darker blue)



Local Context

Letty Green

Village Boundary

As above, notwithstanding our view that there is a complete lack of justification for the village boundaries, not to mention a complete lack of evidence to support the proposed boundaries as defined, we have considered where the boundary should be drawn if the Council, and ultimately an Inspector, conclude that boundaries are necessary / appropriate.

The Council is proposing that limited infill / windfall development can come forward within the village in order to ensure that the housing target requirement is met, yet the Council has no evidence as to whether this is possible within the village boundary as proposed thus we suggest that some clearly deliverable sites are considered to assist with the current shortfall in housing land supply.

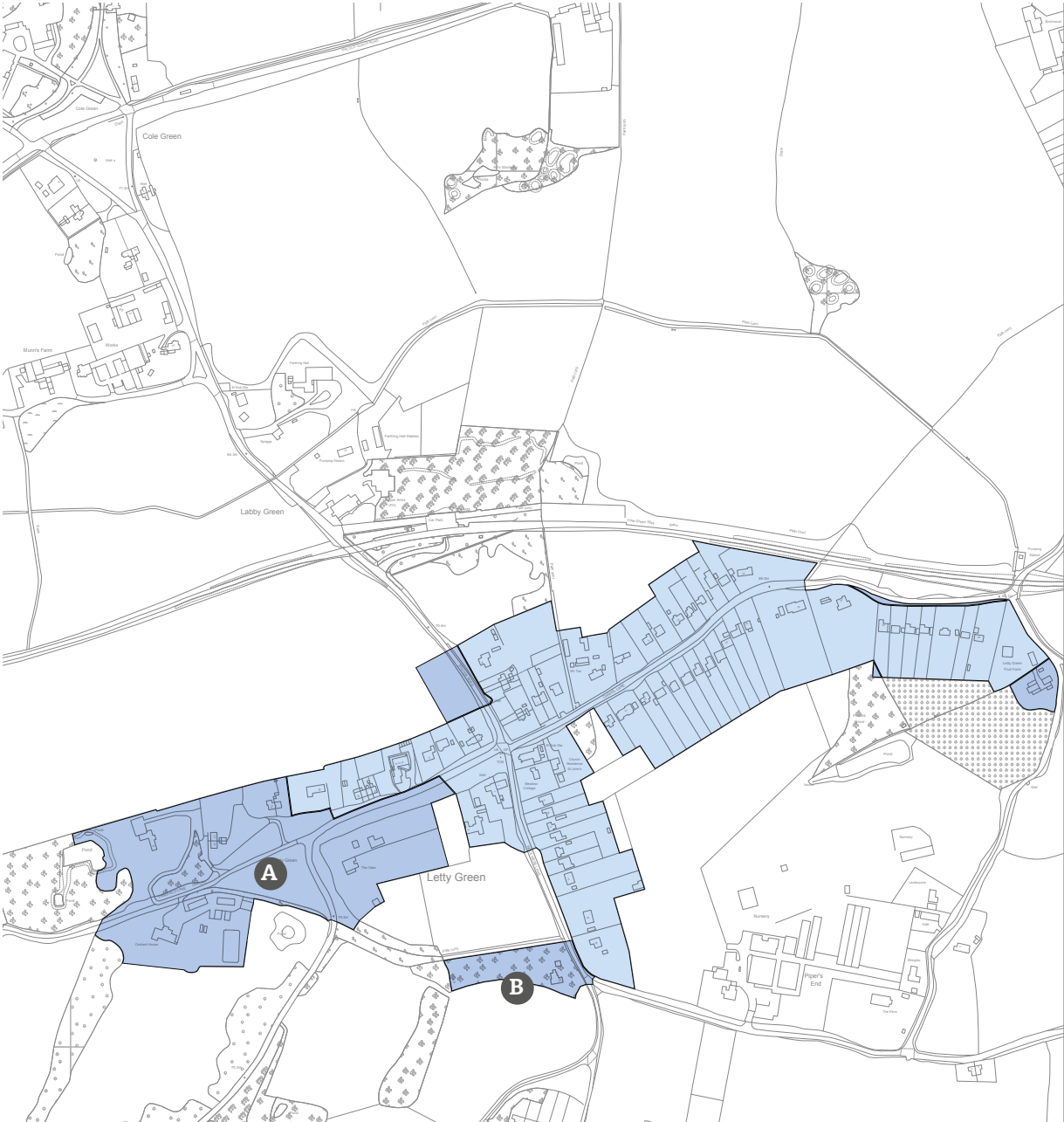


Boundary Issues

- A** The proposed village boundary stops short of the western end of the existing village.
- B** The proposed boundary includes existing homes along the eastern side of Woolmers Lane but excludes, for no apparent reason, one home on the western side of the Lane.



Village boundary as proposed in the draft District Plan and recommended amendments (shown in the darker blue)



Summary & Conclusion

Summary

- The true need for housing within the District could be up to 3,600 new homes higher than is being planned for by the Council.
- The draft District Plan does not provide for sufficient housing to be delivered either during the remainder of the plan period, or during the next 5 years.
- The inclusion of Birch Green, Cole Green and Letty Green as Group 2 villages is welcomed – previously all three villages were categorised as Group 3, which prevented any new housing (except rural exception site affordable housing) or employment or social / community facilities from being developed and thereby threatened to undermine the villages’ sustainability and vitality.
- We support the Council’s reasonable conclusion that, despite a shortage of services and facilities within villages across the District, which might by some measures of sustainability lead one to conclude that that the villages are unsustainable locations for development, many villages are vibrant communities with a full and active social calendar supporting vital local and rural enterprises, the proximity of Cole Green Way and access to primary education and public transport leading to a conclusion that the Three Villages are more sustainable than they might at first appear to be.
- We also support the Council’s recognition that there are instances where settlements have strong inter-relationships because of their close proximity, despite not being immediately adjacent to each other and that the concept of clusters of villages that share services and/or facilities needs to be recognised.
- We support the principle, as set out within draft Policy VILL2, of allowing limited infill housing development, limited affordable housing for local community identified needs, and the provision of small-scale employment, leisure, recreation and community facilities within Group 2 villages where supported by the local community.
- The limitation of infill development to no more than 5 new homes on any particular site within Group 2 villages is unjustified, inconsistent with the NPPF and thus unsound.
- There is currently a complete lack of justification for the village boundaries, not to mention a complete lack of evidence to support the proposed boundaries as defined.
- The Council has not systematically reviewed any potential development sites outside the main settlements and Group 1 villages (as defined in the 2007 Local Plan), yet it appears to consider itself able to propose definitive boundaries around Group 2 villages within which all new homes should be delivered – this approach is clearly unjustified, inconsistent with the NPPF and thus unsound.



Conclusion

- In conclusion, we support the identification of Birch Green, Cole Green and Letty Green as Group 2 villages.
- However we consider it unnecessary to limit infill development to no more than 5 new homes on any site and thus object to this part of draft Policy VILL2.
- We also consider that it would be regrettable if unnecessary boundaries drawn around these villages with the intention of protecting them and their communities from unwelcome development, ultimately stifled them. For this reason, we also object to the proposed definition of boundaries around Group 2 villages

