

WATTON-AT-STONE NEIGHBOURHOOD PLAN 2017-2033

SUBMISSION VERSION

REPORT OF EXAMINATION

By

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Independent Examiner

July 2023

SUMMARY

I was appointed by East Herts District Council (EHDC) with the support of Watton-at-Stone Parish Council (PC) in May 2023 to undertake the examination of the submission version of the Watton-at-Stone Neighbourhood Plan 2017-2033 (NP).

The neighbourhood area was designated by the local planning authority, EHDC, for the whole of the Parish, on 5 April 2016. The area is shown on Fig. 1 to the NP.

A Consultation Statement sets out the local engagement and consultation which was undertaken. I am satisfied that the level of consultation amply met the relevant statutory requirements. I decided that the statutory conditions for holding a hearing did not exist, and the examination proceeded on the basis of the documents only, together with my visit to the area.

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

The excellent quality of the NP has resulted in the very limited number of instances where I have recommended Modifications.

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

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

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Introduction

1. I was appointed in May 2023 by East Herts District Council (EHDC) with the support of Watton-at-Stone Parish Council (PC), the qualifying body, to undertake the examination of the submission draft (September 2022) of the Watton-at-Stone Neighbourhood Plan 2017-2033 (the NP).
2. I am a King's Counsel with over 40 years' experience of planning law and practice. I am a member of the NPIERS Panel of Independent Examiners. I am independent of any local connections or interests, and have no conflicts of interest.

Watton-at-Stone in Context

3. On 5 April 2016 EHDC designated, at the request of the PC, the qualifying body, a neighbourhood area for the whole of the Parish. The NP area is shown on Fig. 1 (page 7) of the NP.
4. An excellent contextual and historical description of the village is provided under the heading History and Heritage at paragraphs 2.9-2.27 of the NP. This section also summarises some of the main concerns of the authors of the NP, the Watton-at-Stone Neighbourhood Plan Community Steering Group. Chief among these are the need for appropriate village infrastructure to serve the significant developments proposed by draft policies WAS3 and WAS4, and the need for a proposed circular walk to promote walking and cycling from the new developments to the station and the school (paragraphs 2.22-2.26).

The Local Plan

The statutory (adopted) Local Plan for the area is the East Herts District Plan October 2018. The LP period is 2011-2033. Appendix B of the Basic Conditions Statement (BCS) sets out how the NP Policies seek to achieve the strategic objectives of the LP. Appendix C of the BCS sets out how, in the view of the

authors, the NP Policies are in accordance with the strategic policies of the LP. The statutory requirements in this respect are set out below.

Evolution of the NP

5. The Neighbourhood Planning (General) Regulations 2012 set out a legal requirement at regulation 15 that the submission of a neighbourhood plan proposal to the local planning authority must include certain documents, amongst which is a “consultation statement”. The Consultation Statement (CS) – September 2022 – was duly published and submitted.
6. Comprehensive details of the consultation and engagement are set out in the CS. Regulation 14 consultation took place between 17 January and 6 March 2022. Responses were considered and informed the submission version.
7. I am quite satisfied that the level of consultation amply met the relevant statutory requirements.
8. Regulation 16 consultation took place between 8 November and 20 December 2022. Nineteen representations were made (which have been collated as WAS1-WAS19), all of which I have carefully considered.

SEA and HRA

9. Considering firstly SEA, in May 2021 EHDC determined that the NP would be likely to have significant effects on the environment. This screening decision was due to the response of the Environment Agency to the effect that the proposed footpath required as part of Policy WAS3, and its location within Flood Zone 3b, would be likely to have significant effects on the environment. An Environmental Report dated October 2021 was in due course prepared.
10. The Report concluded that significant positive effects were anticipated in relation to population and housing; minor negative effects were anticipated in relation to landscape and the historic environment; uncertain minor negative

effects were forecast in relation to the climate change SEA theme due to the proposed bridge across functional flood plain. I refer to this further below.

11. In relation to HRA, the screening opinion noted that the District Plan would not result in a likely significant effect on internationally designated sites, since Policy NE1 provides for protection of such sites. Given that conclusion, and the fact that the NP does not allocate any additional sites or growth beyond that accounted for in the DP, HRA on the NP was not required.
12. Given the above, I am satisfied that the NP does not breach EU requirements in relation to either SEA or HRA.

The Examination Process

13. I have referred to my appointment above. The examination commenced in June 2023. I received all documents necessary for the examination.
14. On 24 June 2023 I issued my Note 1 dated 23 June to EHDC. This recorded that I had determined that the statutory conditions for holding a hearing were not met, and therefore the examination would proceed on the basis of the documents only, my unaccompanied visit to the area, and any responses to the two questions I raised in the Note.
15. On 6 July I received a joint response to my questions in Note 1. This response was very helpful.
16. I visited the area, unaccompanied, on 15 July. This gave me a very good understanding of the main sites identified in the NP (especially the allocation sites WAS3 and WAS4 and the Local Green Spaces, LGS).

Basic Conditions - General

17. Schedule 4B paragraph 8 to the Town and Country Planning Act 1990 provides that a neighbourhood plan meets the Basic Conditions if it meets those specified

in paragraphs (a), (d), (e), and (f). One further basic condition has been prescribed under paragraph 8(2)(g), as follows:

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

18. As the courts have frequently emphasised, as I do now, the role of a Neighbourhood Plan Examiner is tightly constrained. It is (apart from dealing with other statutory requirements referred to at paragraphs 22-25 below) confined to considering compliance with the basic conditions. The Examiner cannot consider anything else: paragraph 8(6). Therefore the Examiner is not able to consider whether – as would be the case for a local plan – the NP is “sound” (in accordance with paragraph 35 of the NPPF). Accordingly, the Examiner can only consider the content of the NP (the planning judgments made, the choices made, the views regarded as important etc.) insofar as those matters impact on the basic conditions. This inevitably limits, significantly, the extent to which it is proper to respond to what I might call wider “planning merits” points made by representors.
19. I address the criteria in the basic conditions where relevant as I assess, below, the contents of the NP.

Other Statutory Requirements

20. These are set out in the Town and Country Planning Act 1990 (as amended) and sections 38A-38C of the Planning and Compulsory Purchase Act 2004.
21. The NP was prepared and submitted for examination by a qualifying body: section 38A.
22. It has been prepared for an area designated under section 61G of the 1990 Act.
23. The NP meets section 38A(2) in that it sets out policies in relation to the development and use of land in the neighbourhood area.

24. Section 38B requires the NP to specify a period for which it is to have effect. In its submission form, the NP does not do so. I was informed that the plan period is intended to be 2017-2033 (to coincide with the requirements of Policy VILL 1 in the District Plan). I **Recommend** that modifications be made to specify this period on the front cover and on the header to all pages of the NP. I also **Recommend** that an additional paragraph be inserted to this effect after paragraph 1.5 of the text (with consequent renumbering).

Assessment of the NP

25. As indicated in paragraph 18 above, the remit of this examination is significantly more limited than is the case for a local plan examination, but is confined to compliance with the above statutory requirements. Where a particular policy and/or supporting text does not raise any such compliance issues I shall, save exceptionally, make no comment. My comments and consequent recommendations therefore relate to passages where Modifications are required.
26. I would like to pay tribute to two particular aspects of the NP, the first substantive and the second presentational. First, section 3 sets out the Vision and Objectives. These are clearly derived from the responses to consultation, and are clearly expressed. Second, the Figures (including plans and photographs) are all of an unusually high standard, being clear, legible, and immensely helpful guides to the context and Policies of the NP.
27. The Policies Map is at Fig. 6, page 16 with the key at Fig. 7, page 17. The Map is presented in two sections, that to the north and that to the south. I found it somewhat unclear and confusing that the two parts do not “connect”. In the interests of clarity I **Recommend** that a way be found (without losing the required scale) of merging the two parts.
28. The Design Code is set out in paragraphs 5.9-5.30, and is expressly a statutory part of the NP. It is very detailed, and it could be said to be over-prescriptive. However, when considering any planning application, EHDC as local planning

authority will consider all relevant development plan policies and other material considerations, and I would assume that the Design Code will not, of itself prescriptively dictate a particular decision.

29. I have carefully considered the representation (by Sworders) on behalf of Woodhall Estate, in the light of paragraph 28 above. There is one matter that causes me concern. Under the heading of Context (on page 20) the second Design Principle states that: *The adjacent forms and immediate context should be key determinants of the form, massing and layout of the new development.* In agreement with Woodhall Estate (paragraph 4.4 of their representation) I considered that this apparent requirement is too rigid, and contrary to the objectives of national policy and guidance as to encouraging the good design of needed housing development. I therefore **Recommend** its deletion.
30. The Housing Development Strategy introduced on page 30 records that the District Plan requirement for Watton-at-Stone to March 2033 is at least 92 homes (Policy VILL1). Policy VILL1(III) accepts that there may be a need for a change to the Green Belt boundary, to accommodate an extension of the village to achieve the required housing target. The NPPF confirms that where a need for changes to Green Belt boundaries has been established through strategic policies, detailed amendments to those boundaries may be made through neighbourhood plans.
31. Consistent with the District Plan the opportunity was taken during the preparation of the NP to provide for the future growth of the village by exceeding the required 10% growth, in return for significant community benefits for the village.
32. Policy WAS1, Sustainable Housing, proposes housing growth 2017-2033 to be an additional 144 homes. Policy WAS2 proposes amendments to the Green Belt boundary accordingly, as shown on Fig. 9 and the Policies Map.
33. Policy WAS3 provides for the Housing Site Allocation at Walkern Road. It was originally believed that the boundary of WAS3 coincided with the ownership of

Fairview New Homes Ltd, the intended residential developer of the site. In fact, the westernmost portion is in different ownership. Fairview have requested that this portion be deleted from the allocation, a reduction shown on a plan dated 29 June 2023 produced by the PC and titled WAS Reduction and Green Space addition. This would have the advantage of preventing the removal of unnecessary land from the Green Belt, and would also achieve a clearly defined and more enduring physical boundary. To accord with national policy and guidance as to the promotion of effective residential development, and preservation of the Green Belt, I **Recommend**:

- (1) that the Policies Map be amended by the WAS3 reduction shown on the above plan (see www.eastherts.gov.uk/wattonatstonenp);
- (2) that Fig. 9 be amended accordingly; and
- (3) that criterion b) in Policy WAS3 be amended by the deletion of the words “along the boundary with Aston parish”.

34. Representation WAS16 (Fairview) proposes the addition to site allocation WAS3 of a small area of land hatched purple on the plan attached to their representation, for use as greenspace/open space. This seems sensible to me – the proposed greenspace use would not conflict with Green Belt purposes and so the land would not need to be taken out of the Green Belt. It would also ensure that a sustainable density could be achieved within the allocation as a whole. In the interests of national policy and guidance as to the delivery of effective and attractive housing, and hence sustainable development, I make the following **Recommendations**:

- (1) that the Policies Map be amended by the addition of this land to WAS3; and
- (2) that criterion n) of Policy WAS3 be deleted and replaced by:

The provision of public amenity greenspace (which will remain in the Green Belt) will provide a buffer

between the housing development and the River Beane. The green space will include public pedestrian/cycle access over the footbridge that will cross the river and link to the new circular path (see criterion 1)). The space could also be combined with SUDs to make the best use of land.

I have not included the suggested reference to LGS6 for the reasons referred to in paragraph 49 below. The status as LGS is not necessary for delivery of the new pedestrian/cycle bridge.

35. Criterion 1) includes the following: *...this development will provide a new pedestrian/cycle bridge over the River Beane, across the field to the Stevenage Road to connect with the pedestrian access to Moorymead Close and the railway station provided through site WAS4 Stevenage Road (see Policy WAS10).* Self-evidently, these requirements relate to off-site land, and while some or all of the proposed links may be under the ownership/control of the present landowner (Woodhall Estate) that state of affairs may not endure. The provision of the links could doubtless be secured by a Grampian (i.e. negative) condition(s) and/or section 106 obligations.
36. Accordingly, this concern is essentially legal/procedural, and can be dealt with by an amendment to the criterion. I therefore **Recommend** deletion of the words “...will provide...” and replacement with “...will be linked (by way of negative conditions and/or section 106 obligations) to...”. All other wording of criterion 1) can remain. The reason for this **Recommendation** is to ensure the effectiveness of the policy.
37. As the Environment Agency point out, neither of the site allocations in Policy WAS3 nor WAS4 was the subject of an up-to-date flood risk assessment. The East Herts Level 1 and 2 Strategic Flood Risk Assessment (SFRA) was last updated in 2017 and so does not use the most recent climate change allowances. Therefore in accordance with the risk-based approach to flood risk in paragraphs 162-167 of the NPPF, planning applications for each site will need to be supported by a site-specific flood risk assessment. Appropriate text reflecting

this should be added by way of an additional paragraph of text after existing paragraphs 6.21 and 6.26. I so **Recommend**.

38. Similarly, the proposed bridge over the River Beane, the subject of criterion l) sits within flood zone 3b (functional flood plain). Its design has not yet secured the approval of the EA. To ensure that this requirement is satisfied, EHDC and the PC have agreed the following amendments to the criteria in Policy WAS3:

Add at the end of criterion l): *the new pedestrian/cycle bridge must be designed and constructed to the satisfaction of the Environment Agency.*

Re-word criterion m): *The Environment Agency's approval of the bridge design must be secured before any development takes place on this site and a management plan to ensure the upkeep for the bridge and pedestrian/cycle path must be agreed before any part of the development is first occupied.*

I agree that these amendments should be made, and I so **Recommend**. (In the light of these proposed modifications, the EA subsequently withdrew their representation to the NP).

39. Policy WAS4 provides for the Housing Site Allocation at Stevenage Road. I have the following concerns as to certain criteria:

Criterion g)

I agree with the Woodhall Estate representation (paragraphs 3.43-3.45) as to the wording relating to the need for a landscape and visual impact study. As phrased, this could imply that the principle of development on this site could be at risk. However, that principle is now settled through the evidence base and consultation process of the NP. I therefore **Recommend** deletion of criterion g) and its replacement with: *A landscape and visual impact study will be required to inform the design of the development, having regard to the impact of development on the character of the village and the openness of the countryside.*

Criterion m)

I have the same concern here as that over criterion l) of WAS3 (paragraphs 35-36 above). For the same reason, I **Recommend** deletion of “must include” and its replacement with “...*must be linked (by way of negative condition(s) and/or section 106 obligation(s)) to the provision of...*”. All other parts of the text should remain (though in the penultimate line the wording “...*from the to the train station...*” needs correction).

Criterion o)

For the same reason again, I **Recommend** (in relation to the second sentence) deletion of “will provide” and its replacement with “...*will be linked (by way of negative condition(s) and/or section 106 obligation(s)) to the provision of...*”.

40. I should make it clear (in relation to these two policies and elsewhere) that I have considered all the representations on behalf of Woodhall Estate; however, the recommendations I make are (see paragraph 18 above) those I consider necessary to comply with the basic conditions.
41. All other parts of the text should remain, with one exception. Criterion o) raises the possibility that the additional football provision would preferably be at Mill Lane (or on an alternative site). I agree with the representation of Woodhall Estate (paragraphs 3.55-3.58) that the phrase “suitably located” should be inserted before “alternative site”. I so **Recommend**, for reasons of compliance with national policy and contribution to sustainable development.
42. Policy WAS13 is directed to Maintaining and Improving Health Services. It seeks to retain or enhance the provision of the existing health services at Watton Place Clinic, including a pharmacist and private dentist. As Woodhall Estate point out (section 7 of their representation) however, it is not within their gift to control the tenant’s continued occupation beyond the lease term.

43. I therefore agree with the representation that the wording needs to be changed so as to align more closely to District Plan policies CFLR7, CFLR8 and CFLR9.

I therefore **Recommend** deletion of Policy WAS13 and its replacement with:

The existing doctors' surgery currently operating from Watton Place Clinic, 60 High Street, also provides an enhanced offer which includes a pharmacist and a private dentist. Proposals which secure the retention or enhancement of these health services will be supported. Proposals that result in the loss of the existing facility will not be supported unless it has been clearly shown that the facility is no longer needed in its current form, the loss would be replaced by new provision in a suitable location or the proposal is for an alternative community facility, the need for which outweighs the loss.

44. Policy WAS16 addresses Protected Recreational Open Space. Six sites would be protected under the policy. PRO6 relates to land at Mill Lane. The Policies Map shows the designation applying to land north and south of Mill Lane. This land is not in recreational/open space use, but is grassland. Policy WAS15 proposes that provision of new football facilities on the land south of Mill Lane be made. This is linked to Policy WAS4 criterion o), which seeks additional football provision on this land “or on an alternative site” (proposed in paragraph 41 above to be changed to “...a suitably located alternative site”). As Woodhall Estate point out (section 10 of their representation) they not only would not make the land north of Mill Lane available for sport/recreational use, but draw attention to the fact that – consistent with related policies – neither part of the Mill Lane land might come into sport/recreational use.

45. In agreement with this representation, I therefore **Recommend**:

- (1) that PROS6 be deleted from Policy WAS16;
- (2) that the Policies Map be amended accordingly (i.e. by deletion of all the land at Mill Lane from the PROS designation);

- (3) that the last sentence of Policy WAS15 – referring to PROS6 – be deleted, and a final sentence should be added: *Suitably located alternative sites will also be considered* ; and
 - (4) that in Policy WAS4 criterion o) the reference to Policy WAS16 be deleted.
46. Policy WAS17 designates seven sites as Local Green Space (LGS). The proposed areas are shown on the Policies Map. The assessment of land for LGS designation is shown on the LGS Spreadsheet at Appendix D of the NP, and further details of the designated sites are provided in Appendix E. The criteria for LGS designation are set out in paragraph 102 of the NPPF. The designation should only be used where the green space is:
- a) in reasonably close proximity to the community it serves;
 - b) demonstrably special to the local community and holds a particular local significance, for example because of its beauty, historic significance, recreational value (including as a playing field), tranquillity or richness of its wildlife; and
 - c) local in character and not an extensive tract of land.
47. I note the points made in the Woodhall Estate representation, paragraphs 11.4-11.6. In summary, it is contended that Appendix E does not explain how LGS4, LGS5 and LGS7 are demonstrably special to the community or have a particular significance. Nor does it explain the benefit afforded by the designation over existing policy designations and constraints, such as Green Belt, flood plains, public rights of way, and the like. Reference is made to advice in the NPPG that if land is already protected by Green Belt policy, consideration should be given to whether any additional local benefit would be gained by designation as LGS.
48. The conclusions and recommendations I make below are very closely informed by my visit to each of the proposed LGS. I regard LGS1, LGS2, and LGS3 as meeting the national criteria for designation. I do not regard any of the remaining proposed LGS as meeting all those criteria. I have concerns about

criteria a) and c) but am in particular not satisfied about their compliance with criterion b). Accordingly, I **Recommend** the deletion of the four sites LGS4, LGS5, LGS6 and LGS7.

49. Policy WAS18 addresses protected views. Section 12 of the Woodhall Estate representation raises an apparent discrepancy in relation to View 7. This does not, in my view, engage a basic condition issue, but I trust that any discrepancy can be resolved.

50. Policy WAS23 addresses Archaeology. In their regulation 16 representation, Hertfordshire County Council suggest a revision (which in my view is consistent with national policy and guidance) to better reflect the variety of options in the archaeology planning process. I agree, and **Recommend** that the following text be inserted into the text of the Policy between “whether” and “site surveys”: *conservation is required (for example preservation in situ or redesign) and if further...*

Basic Conditions

51. In my above review of the NP and its Policies, I have naturally had close regard to compliance with the basic conditions. I have **Recommended** a limited number of modifications, for the reasons I have specified.

52. I endorse the accuracy of the Basic Conditions Statement.

Conclusion

53. I conclude that the NP is well-researched, well-evidenced, and clearly laid out and written. It is of very high quality. If made, the NP will become a key part of the statutory development plan. The very high quality of the NP has led to the need for a very limited number of necessary recommendations or modifications. I **Recommend** that, subject to those modifications being made, the NP should proceed to referendum.
54. I see no reason to recommend that the area covered by the referendum should differ from the neighbourhood area.
55. I regard it as within the implied powers of EHDC to make minor or consequential changes to the text, which do not affect the substance of either the NP or this Report (such as re-numbering or minor factual updates).

Christopher Lockhart-Mummery KC

Examiner

July 2023