

## Welwyn Hatfield Local Plan (2013-2031) Public Examination

### October 2019 consultation on new examination documents – Green Gap Assessment

**On behalf of:** Aurora Properties (UK) Limited

**Date:** 4 November 2019

1. On behalf of Aurora Properties (UK) Ltd (Aurora), we write in response to the Welwyn Hatfield Local Plan consultation published by the Inspector on the 6 October 2019 in relation to further new examination documents.
2. The examination documents subject of this consultation cover a wide range of matters. For the purposes of this response, we focus the Land Use Consultants (LUC) Green Gap Assessment, including Appendices 1 and 2 [EX160A-B].
3. This submission sets out the reasons for which we conclude that the LUC Green Gap assessment would create a policy that is unnecessary and inappropriate for an authority within the Green Belt. It reaches the following overarching conclusion:
  - The proposed Green Gap policy would be superfluous to the current Green Belt designation. The use of both designations would be unprecedented and create inconsistency. It would create a further negative policy to constrain housing supply; it has not been adequately justified; it could potentially be consistent with national policy; and it introduces concerns regarding a lack of cooperation with adjoining local authorities.
  - The NPPF makes clear that Green Belt boundaries can only be altered through the preparation or review of a plan. Therefore, any planning application in a "Green Gap" on land which has not been released from the Green Belt in the plan making process would face the test of "Very Special Circumstances". A Green Gap policy would add nothing to the national Green Belt purposes and the protection stated clearly in the NPPF, which makes clear that Very Special Circumstances will not exist unless potential harm is clearly outweighed by other considerations. It would be illogical for (1) a site to be released from the Green Belt for housing development to be subsequently refused planning permission because of a local Green Gap policy or (2) for a planning application to satisfy the test of Very Special Circumstances, to then be refused planning permission because of a local Green Gap policy.
  - WHBC is seeking to introduce a new Green Gap policy that would undermine national policy. The proposed Green Gap policy is negative and ill-conceived. It would make the Plan unsound.

#### Background

4. The WHBC draft Local Plan was submitted in May 2017 without a Green Gap policy. The concept of green gaps were first mentioned by the Inspector [EX91b] as a potential mechanism to achieve the Council's aspiration to protect the existing settlement pattern. The Inspector recognised that there was a basis for debate as to how these would be defined, but he did not set the Council the task of implementing such a policy:

Deloitte LLP is a limited liability partnership registered in England and Wales with registered number OC303675 and its registered office at 1 New Street Square, London, EC4A 3HQ, United Kingdom.

Deloitte LLP is the United Kingdom affiliate of Deloitte NWE LLP, a member firm of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee ("DTTL"). DTTL and each of its member firms are legally separate and independent entities. DTTL and Deloitte NWE LLP do not provide services to clients. Please see [www.deloitte.com/about](http://www.deloitte.com/about) to learn more about our global network of member firms. Real Estate Services regulated by RICS.

*"There appears to be a desire on the part of your Council to protect the existing settlement pattern. I take this to mean that it wishes to protect some or all of the open breaks between settlements in the Green Belt. Again these ought to be defined independently of any consideration of development sites adjacent to these villages. **How they are defined, i.e. as Green Belt or as Green Breaks/Wedges (as in much of the country), is a basis for debate in itself.** However, the protection of the settlement pattern is not a statutory purpose of the Green Belt and this analysis should be kept totally separate from any findings about the future of the Green Belt, even if for convenience you decide to retain Green Belt designation, for all such land, regardless of its actual contribution to the Green Belt itself." [Emphasis added]*

5. In his note of December 2017 [EX39] the Inspector set out the considerations for the gaps between settlements. That note concluded that the perception of the gap, having regard to topography and physical features was more important than the simple distance measurement of the gap. It was not therefore necessary for the Council to submit Green Gap evidence on the basis of a new Plan policy.
6. The submitted Local Plan does not contain any explanation or policy for the purpose or role of the "Settlement Pattern". Therefore, the purpose of the Green Gap policy is without substance.

### **Policy context**

7. The submitted Plan relies, correctly, on national Green Belt policy (NPPF 2019 - paragraphs 143 to 147) to protect Green Belt land from harmful development, which strictly requires that any non-exception development in the Green Belt (NPPF 2019 - paragraphs 145 and 146) should identify and demonstrate "very special circumstances". The threshold for that test is extremely high.
8. Where land is allocated for housing, it will be released from the Green Belt, where it is not allocated, it will be protected by national Green Belt policy. The NPPF makes no mention of "Green Gaps" or "Green Wedges".
9. In any event, the weight to be given to any "Green Gap" would have to be consistent with NPPF (2012), in particular paragraphs 14, 17 and 47.
10. A core planning principle (NPPF, paragraph 17, 2012) states that planning should "*proactively drive and support sustainable economic development to deliver homes, business and industrial units, infrastructure and thriving local places that the country needs. Every effort should be made objectively to identify and meet the housing, business and other development needs of an area.*"
11. Moreover, paragraph 47 of the NPPF (2012) requires a LPA to;
  - "Boost **significantly** the supply of housing and;*
  - Ensure that the Local Plan meets the **full** objectively assessed housing needs for market and affordable housing in the market area as far as consistent with policies set out in **this** Framework". [Emphasis added]*
12. A Green Gap policy which seeks to introduce a new negative policy to constrain housing delivery would conflict with this core principle and the Government objective to significantly boost the supply of housing and to meet the full OAN.
13. The Green Gap would also be at odds with the Court of Appeal judgment in the case of Solihull Metropolitan Borough Council and (1) Gallagher Estates Limited and (2) Lioncourt Homes. In his judgement, Laws LJ stated:
  - "The NPPF indeed effected a radical change. It consisted in the two-step approach which paragraph 47 enjoined. The previous policy's methodology [PPS1, PPS 3, PPS12 and RSSJ] was essentially the striking of a balance. By contrast, paragraph 47 required the OAN to be made first, and to be given effect in the Local Plan save only to the extent that that would be inconsistent with other NPPF policies." [Emphasis added]*
14. Furthermore, at paragraph 5 of his judgment, Laws LJ stated:

*"... The NPPF put considerable new emphasis on the policy imperative of increasing the supply of housing. As reflected in the first words of the Ministerial Forward [...], in relation to dwellings, there was a policy objective to achieve a significant increase in supply. Therefore the NPPF imposes the policy goal on a local authority of meeting its full, objectively assessed needs for market and affordable housing, unless and only to the extent that other policies were inconsistent with that goal. Thus, paragraph 47 makes full objectively assessed housing needs, not just a material consideration, but a consideration of particular standing".  
[Emphasis added]*

15. The Inspector's Preliminary Conclusions in the EIP for Waverley Borough Council (WBC) in June 2013 are also relevant. The Inspector, Mr Hetherington, advised the Council to withdraw its housing strategy due to fundamental errors and omissions. At paragraph 17 of his Conclusions he informed WBC:

*"I do not underestimate the significance of the Borough's environmental assets and designations. However, any failure to meet the full, objectively assessed housing needs as a result of constraints arising from those designations would have to be clearly and specifically justified in the terms of the Framework's policies. As discussed at the hearing, and contrary to the views of some representors, those policies do not set out 'blanket bans' on housing development: they should however be read carefully and within the context of the Framework as a whole". [Emphasis added]*

16. The imposition of a Green Gap policy which has the effect of constraining housing supply would therefore be inconsistent with the NPPF, inconsistent with other Examinations and inconsistent with case law. The correct procedure is set out, quite clearly, in paragraph 14 of the NPPF (2012) where it states:

*"Local Plans should meet objectively assessed needs, with sufficient flexibility to adapt to rapid changes, unless;*

*(1) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in this framework taken as a whole; or*

*(2) specific policies in this framework indicate development should be restricted." [Emphasis added]*

17. As stated by Laws LJ, the NPPF has effected a radical change, with a clear requirement to boost significantly the supply of housing, subject only to the policies in the Framework. Those Framework policies do not identify "Green Gaps" as a "Policy", because such policy would inevitably impose the greatest effect on existing urban settlements, thus undermining the release of the most suitable and sustainable land for housing delivery, to meet the OAN and the five-year housing land supply.

18. The correct tests for site allocations is suitability and sustainability, giving "first consideration" to land which has been previously developed and/or is well served by public transport. So far, the Council has not applied the "first consideration" of public transport services (in particular the East Coast Mainline railway) to any of its site allocations in the Green Belt. The burden therefore falls upon the Council to meet its housing need in full, unless it can identify "significant and demonstrable adverse impacts, which outweigh the benefits" in accordance with policies in the Framework. The Council's proposed Green Gap policy falls way short of that test, and could be at risk of legal challenge.

### **A superfluous policy**

19. At paragraph 16, the NPPF 2019 makes clear that; "*Plans should...(f) serve a clear purpose, avoiding unnecessary duplication of policies that apply to a particular area...*"
20. Given the extremely high threshold set in national Green Belt policies for any non-exception development, there is no need for a Green Gap policy in the WHBC Local Plan to protect any Green Belt land from development.
21. To take a logical approach, a Green Gap policy overlaid on a Green Belt designation would be superfluous. It would take the recognised policy approach of the Green Belt and, using similar

justification, would then seek to introduce a Green Gap policy that is not recognised in the NPPF or Planning Practice Guidance.

22. The consequence is foreseeable that a site which has been released from the Green Belt for housing could then be refused planning permission because it is within a "Green Gap". This would be a perverse position that could undermine the effective implementation of the adopted plan, site allocations and housing delivery.
23. The LUC Green Gap assessment does not provide any clarity on how such a policy would be implemented and interface with the existing Green Belt designations within the Borough. LUC acknowledges (paragraph A2.9) that it has not identified any examples where both Green Belt and Green Gap designations exist in any Green Belt authority; our review of Local Plans supports this, and it is apparent that such an approach would be unprecedented and inconsistent.
24. Such policy would place the WHBC Local Plan at odds with all other Green Belt authorities.

### **Green Gap commentary**

25. The relationship between settlements and any harm to the Green Belt was considered in the preparation of the Plan, prior to submission – it was therefore unnecessary for this to be revisited with a further Green Gap policy.
26. For example, BrP12 was found "**suitable for allocation**" taking into consideration the gap between Brookmans Park and Welham Green. Appendix H of the Council's Housing Site Selection Paper (June 2016 – HOU20) states:

*"The proposed new Green Belt boundaries consisting of the extensive woodland, established tree belt/hedgerow and ordinary watercourse would be no weaker than the existing boundaries and could be clearly defined and defensible boundaries. A fragile gap would be shortened although only to a relatively small extent. The site is also contained and largely screened by the ancient woodland."*

27. The Council's description of the site's suitability and containment in Green Belt and the gap between Welham Green and Brookmans Park fails to mention the elevated East Coast Mainline railway to the west of the site, which provides a strong and permanent Green Belt boundary and would reduce any visual or perceptual narrowing (if any) of the gap between the settlements. Indeed, as a matter of fact, the allocation of BrP12 would not reduce the existing gap between Brookmans Park and Welham Green (See Liz Lake Associates Green Gap Assessment – Figure 2).
28. In the event that the Inspector considers a Green Gap policy to be sound, it would be necessary to examine all of the proposed gaps for errors. By way of example, in the gap identified by LUC between Welham Green and Brookmans Park, there is no reason or logic to extend the Green Gap policy area to the east of the railway line. The East Coast Mainline railway and Peplins Wood provides a very substantial and permanent separation physically, visually and perceptually between those two settlements, as recognised at page 36 of the LUC study where LUC state;

*"Welham Green lies to the west of the railway line and Brookmans Park to the east, with the railway line providing a physical barrier between the two. The gap at this narrowest point comprises small blocks of woodland set in mixed farmland – the hedgerows and copses prevent inter-visibility between the two settlements and ensure a robust gap." [Emphasis added]*

29. In fact, Peplins Wood is not a "small block of woodland" or a "copse", it is a very substantial area of long-established mature woodland (See Liz Lake Associates Green Gap Assessment – Figure 5).
30. LUC also recite at Appendix 2 paragraph A2.8 (page 134);

*".....the successful appeal against a decision by Wokingham Borough Council shows that the continued openness of land within a defined settlement gap must be important in maintaining*

*perceived settlement separation, as opposed to other features (for example a railway embankment).” [Emphasis added]*

31. That circumstance exists between Welham Green and Brookmans Park where the four railway tracks along an elevated section of the ECML provide a significant physical and visual barrier between the two settlements. As such the small extension of the proposed “Green Gap” to the east of the ECML is not necessary or justified. In the event that the Inspector agrees to a Green Gap policy in the Local plan, which we do not advocate, a more appropriate boundary for that Green Gap policy would be to the west of the railway line as shown in Figure 1 (See Figure 1 Liz Lake Associates Green Gap Assessment).
32. Furthermore, in accordance with the recommendations at paragraph 2.16 of the LUC Green Gap study, BrP12 offers significant opportunities for improved public access, to the countryside, recreational use and new green footpaths and cycle ways. The LLA landscape and biodiversity plan (See Liz Lake Associates – Figure 4) demonstrates the compensatory improvements that will be delivered through the allocation of BrP12, which enable improved public access and recreational use of the land.
33. One of the most fragile gaps in the borough is between the First Tier Settlements of Hatfield and Potters Bar (in Hertsmere), as shown on Figure 3 (See Liz Lake Associates Green Gap Assessment – Map between Hatfield and Potters Bar). LUC has failed to consider this fragile gap, at all, whilst claiming that it has identified cross boundary gaps. The fragile gap between Hatfield and Potters Bar presently contains the village of Welham Green, the Royal Veterinary College, the hamlet of Water End and a large solar farm. Furthermore, the Council has proposed the allocation of HAT11/HS11 in the very fragile gap between Hatfield and Welham Green and BrP4/HS22 in the fragile gap between Welham Green and Potters Bar. Both of these proposed allocations, to the west of the ECML, would cause significant harm to the fragile gap between two First Tier towns.
34. The accompanying report produced by Liz Lake Associates provides a technical review of the LUC Green Gap Assessment and addresses further issues with that study.

## **Conclusion**

35. We do not consider that the Green Gap assessment would result in a sound planning policy:
  - **Positively prepared** – it would be a negative policy that constrains housing supply, reduces the opportunity to meet the 5 year housing land supply and would be superfluous to the national Green Belt designation.
  - **Justified** – if the Council consider that land should not be developed in order to protect the gaps that it has identified, it should retain its existing Green Belt designation. A new Green Gap policy in the Plan is not therefore justified.
  - **Effective** – the proposed Green Gap policy areas include gaps that straddle local authority boundaries. However, there is no evidence that the Council has engaged with adjoining local authorities to consider this cross-boundary strategic matter. There would be an incoherent and limited effectiveness of a cross boundary Green Gap which is only protected by one authority.
  - **Consistent with national policy** – as set out above, a circumstance in which a site could be released from the Green Belt, but development subsequently refused by virtue of a local Green Gap policy, would conflict with the NPPF and would not meet the tests required in paragraphs 14, 17 and 47 of NPPF 2012.
36. The introduction of a Green Gap policy would further undermine the Council’s ability to meet its five year land supply, would reduce its Housing Target and would be counter to national policy.
37. For these reasons, we conclude that the LUC Green Gap assessment would create a policy that is unnecessary and inappropriate for an authority within the Green Belt.

This report has been prepared for Aurora Properties (UK) Limited, on the understanding that it will be made publically available. All copyright and other proprietary rights in the report remain the property of Deloitte LLP and any rights not expressly granted in these terms or in the Contract are reserved. No party other than Aurora Properties (UK) Limited is entitled to rely on the report for any purpose whatsoever and thus we accept no liability to any other party who is shown or gains access to this document. The information contained within this report is provided to Aurora Properties (UK) Limited with the Welwyn Hatfield Borough Council Local Plan. The report makes use of a range of third party data sources. Whilst every reasonable care has been taken in compiling this report, Deloitte cannot guarantee its accuracy.

Neither the whole nor any part of this Report nor any reference thereto may be included in any published document, circular or statement nor published in any way without our written approval as to the form and context in which it may appear.

© 2019 Deloitte LLP. All rights reserved.

Deloitte LLP is a limited liability partnership registered in England and Wales with registered number OC303675 and its registered office at 1 New Street Square, London EC4A 3HQ, United Kingdom.

Deloitte LLP is the United Kingdom member firm of Deloitte Touche Tohmatsu Limited ("DTTL"), a UK private company limited by guarantee, whose member firms are legally separate and independent entities. Please see [www.deloitte.co.uk/about](http://www.deloitte.co.uk/about) for a detailed description of the legal structure of DTTL and its member firms. Real estate services regulated by RICS.