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**For the attention of Louise St John Howe**

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1 November 2019

**Our ref** CHBG/CAP/NT1953.00214

Dear Madam

**Welwyn Hatfield Local Plan Examination  
Birchall Garden Suburb  
Inspector's letter dated 9 October 2019 ("Inspector's Letter")**

We are instructed by Tarmac in connection with the Welwyn Hatfield Local Plan Examination and have been provided with a copy of the Inspector's Letter regarding Birchall Garden Suburb which Tarmac and its predecessor companies have been promoting for some 12 years.

Our client is very concerned by the contents of the Inspector's Letter. We would also observe that the Inspector's Letter refers to a note of the 30 January 2018 joint hearing which was published only on 14 October 2019.

**Issues Raised**

The Inspector's Letter appears to raise several issues which we distil to the following:

1. Green belt impact (southern part of the proposed allocation only)
2. Noise (southern part of the proposed allocation only)
3. Atmospheric pollution (southern part of the proposed allocation only)
4. Seepage / leaching from the landfill site (southern part of the proposed allocation only)
5. Green Corridor (whole of the proposed allocation)
6. Ecology (whole of proposed allocation)

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Please would you ask the Inspector to confirm that these are the only issues being raised by him in relation to the proposed allocation and upon which any further information is said to be required.

**Evidence submitted by Tarmac and Welwyn Hatfield Borough Council on the issues raised**

The following is a list of all the relevant evidence submitted by Tarmac and Welwyn Hatfield Borough Council to the Examination:

<i>Document</i>	<i>Submitted by</i>	<i>Date of submission</i>	<i>Document ref</i>
<i>Birchall Garden Suburb Documentation (Land Quality)</i>	<i>Tarmac</i>	<i>December 2017</i>	<i>EX35</i>
<i>Birchall Garden Suburb Documentation (Ecology)</i>	<i>Tarmac</i>	<i>December 2017</i>	<i>EX36</i>
<i>Birchall Garden Suburb (Landscape and Visual Impact)</i>	<i>Tarmac</i>	<i>December 2017</i>	<i>EX37</i>
<i>Birchall Garden Suburb (Statement of Common Ground)</i>	<i>WHBC, EHDC, HCC, Tarmac</i>	<i>25 January 2018</i>	<i>EX58</i>
<i>LQM Review of contamination evidence at Birchall Garden Suburb</i>	<i>WHBC</i>	<i>April 2018</i>	<i>EX70</i>
<i>LUC Greenbelt Study Stage 3</i>	<i>WHBC</i>	<i>March 2019</i>	<i>EX99A-E</i>
<i>Birchall Garden Suburb (Land Quality Assessment) (14 June 2019) – Royal Haskoning DHV</i>	<i>Tarmac</i>	<i>14 June 2019</i>	<i>EX106 – EX153</i>
<i>Birchall Garden Suburb: Cole Jarman Noise Assessment</i>	<i>Tarmac</i>	<i>13 September 2019*</i>	<i>EX157</i>
<i>Birchall Garden Suburb: Non-technical summary of noise assessment</i>	<i>Tarmac</i>	<i>22 August 2019</i>	<i>EX158</i>
<i>WHBC Response to Royal Haskoning Report</i>	<i>WHBC</i>	<i>August 2019</i>	<i>EX159</i>

\* recorded in examination documents as 13 September 2018

In addition, on 15 March 2018, Tarmac submitted to WHBC drafts of the Design & Access Statement, Environmental Statement, Transport Assessment and Travel Plan for its forthcoming planning application for Birchall Garden Suburb. Furthermore, on 9 October 2019, Tarmac submitted to WHBC an Air Quality Technical Note, which demonstrates that the proposed 60m buffer of BGS to Burnside and the A414 is acceptable in air quality terms.

That Air Quality Technical Note is underpinned by the air quality assessment undertaken as part of the Environmental Impact Assessment, which had been submitted to WHBC in March 2018. A copy of that Air Quality Technical Note is enclosed with this letter and hereby submitted to the Examination.

### **Inspector's observation on the independence of the evidence**

In the Inspector's Letter it is said:

*"I ... note that the landfill and noise documents have been prepared on behalf of the site promoter. Such a course of action is hardly likely to be seen as objective by some of the representors. A subsequent independent review of only the pollution report appears to have been prepared on behalf of yourselves but to date there is nothing independent before the Examination concerning noise and atmospheric pollution".*

We would point out that the documents submitted by Tarmac were commissioned from experts subject to professional obligations. The fact that an expert is paid by a party does not compromise his or her independence. There is well-established case-law on this. The Inspector must give weight to that evidence. The test of whether experts are independent is not, and cannot be, whether it is likely to be seen as objective by objectors.

### **Extent of the Allocation**

The whole of the BGS site was included in the Plan submitted to the Secretary of State for examination. It is that Plan which includes the allocation of Birchall Garden Suburb which is being examined.

Tarmac strongly opposes the proposal made to split the consideration of the site, such that the southern part of the site is regarded as a product of Welwyn Hatfield Borough Council's second call for sites. It is not; it forms part of a site allocated in the Plan submitted for examination and must be examined as such.

The only issue is whether the allocation of the site is sound.

It is not a proper function of the examination process to consider a site which is allocated "*in comparison with all of the other potential new Green Belt sites*", as is now being proposed.

We also note that the Inspector's comments appear to disregard the fact that LUC's Green Belt Study Stage 3 on behalf of WHBC (EX99A-E) already includes a separate assessment of the part of the allocation to the east of Holywell Hyde Lane (P24a).

Our view, and that of our client, is that the only proper course is examination of the proposed allocation as a whole.

### **State of current evidence**

The Inspector's Letter suggests that some of the evidence has gaps and is "*not fit for purpose*". Please ask the Inspector to precisely identify what evidence he is referring to in this regard.

### **Further evidence**

The following additional evidence is to be submitted in response to the current consultation that closes on 4 November 2019:

- Design study of the edge of BGS nearest Burnside which demonstrates that the proposed 60m buffer is acceptable in noise terms.

**Detailed Housing Layouts**

We understand the Inspector is requesting detailed layouts for housing but such a request is not reasonable at the allocation stage.

**Conclusion**

We look forward to receiving the Inspector's response to the matters raised above.

For the avoidance of doubt this letter is written without prejudice to any other matters that may be raised by or on behalf of Tarmac in the future.

Yours faithfully

**CMS Cameron McKenna Nabarro Olswang LLP**

Enc. Air Quality Technical Note