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FAO: Mr. M. Middleton

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By email only

Dear Sir,

Welwyn Hatfield Borough Council Local Plan Examination

In the round up Hearing session held on 18 December 2019, our client, Aurora Properties (UK) Limited, agreed that we would provide a supplementary note on the matters discussed in the OAN hearing session on 17 December. This letter sets out those points.

The WHBC plan, as submitted, commences in 2013 and expires in 2032. However at the earlier Hearing sessions, the Council confirmed that the submitted Plan should run until 2033 (a 20 year plan period) in order to maintain a 15 year horizon after adoption.

The Plan was submitted based on an OAN of 625 dwellings per annum, but the Council has subsequently agreed and formally reported to its committees that, based on robust evidence in the Turley SHMA, the OAN should be 800 dwellings per annum for the plan period 2013 to 2033. That would be 16,000 dwellings.

Establishing a proper Plan Period

As a result of delays to the Examination, the Council has now recognised that, in order to continue to maintain a fifteen year horizon after adoption, it will be necessary to extend the Plan until 2036, which the Council confirmed at the Examination, and this is the basis on which we now expect the Plan to proceed.

The historical under-delivery of homes and the affordability ratio within the borough is now so acute that it requires urgent intervention and remedy. The Council's latest proposal to move the commencement date for the plan forward from 2013 to 2016 and to write off all of the past under-delivery is simply a continuation of the negative approach to planning for new housing, which has been a feature of the process since 2011. The delay in preparing a new Plan has been responsible for the under provision from 2011, which continues, as clearly illustrated in Figure 3.1 of EX103B.

The most obvious, practical and compliant solution to provide for under-delivery whilst also maintaining a fifteen year horizon after adoption, would be to leave the commencement of the plan, as submitted, at 2013 and to extend the plan by three additional years in 2034, 2035 and 2036.

The OAN would simply be extended by 2,400 dwellings to take proper account of the need in the last three years of the plan to 2036 where that need will exist, in any event. There is no evidence that the need will not exist over the period 2033 to 2036. To remove three years of past under-delivery in 2013, 2014 and 2015, to be replaced by three additional years in 2034, 2035 and 2036 is false accounting. The housing need in 2034, 2035 and 2036 will be in addition, not instead of, the submitted plan's housing need.

The attempt by WHBC to write-off the under-delivery of homes in 2013, 2014 and 2015 is in direct conflict with Planning Practice Guidance (PPG) which specifically states that, unless the Standard Methodology is being used, past under-delivery must be taken into account¹.

Planning ahead of the OAN

We now wish to turn to the question of how the OAN matter is then applied. It is vital, at this stage of the examination, to keep in sharp focus the fact that the Council does not have a five-year housing land supply but instead is seeking to adopt a stepped housing trajectory with just 498 dwellings per annum in the first five years. This is woefully short of the OAN, with far too much reliance on three large strategic sites to deliver new homes at the back end of the plan period.

This is even more important where that under-delivery is to be recovered either (1) in the first five years of the Plan period (the Sedgefield method) or (2) spread over the whole plan period (the Liverpool method) taking note that the Government PPG² advocates the Sedgefield method. There is clearly not a recognised "method" for simply moving the start date of the plan forward and ignoring past under-delivery, as now advanced by WHBC, which contradicts the SHMA evidence that underpins the submitted plan. That would be new territory, with the risk of legal challenge.

A target needs to be set by the Council which ensures a step change in housing delivery is sustained throughout the Plan Period. This was not on the agenda for the Examination this week and it is not clear when the question of the housing target and the robustness of the housing supply will be considered. It is also not clear what the Council's approach will be. We are very concerned they will take the lowest level of OAN, or even a number which falls short of the OAN.

The timing of the Council's decision taking process and its relationship to the Examination is of extreme concern. We understand that you will be issuing an interim conclusion on the OAN one or two days before the Council publish their list of sites. The Council must therefore be prejudging the outcome of your conclusion, it certainly will not have a proper period of time to consider the implications of your conclusions.

We would urge you to provide guidance to the Council on how to apply their OAN; they should be bringing forward a supply of housing that ensures a five-year supply throughout the Plan Period, has the capacity to deliver more than the OAN to allow for the inevitable slippage in sites, and should provide a full range of small, medium and large sites distributed across the borough to reduce the reliance on the three strategic sites (which include Symondshyde and Birchall Garden Suburb, neither of which is necessarily deliverable).

Lessons to be learnt from the Guildford High Court Judgement

On the 4 December 2019, Sir Duncan Ouseley, sitting as a High Court Judge, handed down his judgement on the challenge of the Guildford Borough Council Local Plan³.

This is a very recent judgement, which addresses issues that are directly relevant to the WHBC Plan. It considers a Local Plan in circumstances almost identical to WHBC – a local authority with three large strategic sites, a number of excluded villages and a need to release land from the Green Belt.

A complete copy of this judgement is enclosed, and for ease the pertinent matters are set out below.

Guildford is adopting a housing target of 14,602 against an OAN of 10,678 for the specific purpose to allow headroom and flexibility. The Inspector has approved the Plan and Sir Duncan Ouseley has fully endorsed the positive and pragmatic approach adopted by Guildford Borough Council.

¹ Planning Practice Guidance, Paragraph: 011 Reference ID: 2a-011-20190220

² PPG Reference ID: 68-031-20190722: "The level of deficit or shortfall will need to be calculated from the base date of the adopted plan and should be added to the plan requirements for the next 5 year period (the Sedgefield approach), then the appropriate buffer should be applied. If a strategic policy-making authority wishes to deal with past under delivery over a longer period, then a case may be made as part of the plan-making and examination process rather than on a case by case basis on appeal."

³ Compton Parish Council & Ors v Guildford Borough Council & Anor [2019] EWHC 3242 (Admin)

The Inspector's Report [IR] summarised the following conclusions in respect of the OAN [emphasis added]:

"IR42. The housing trajectory indicates that there is potential to deliver 14,602 homes over the plan period. The difference between this and the total housing requirement of 10,678 homes has been raised during the examination in the context of whether there are exceptional circumstances to release land from the Green Belt. This is dealt with in more detail under Issue 5. But purely in terms of housing supply, **there is enough headroom to ensure that the Plan remains robust in the event that there is slippage in the delivery of housing from the allocated or committed sites**, avoiding the need to allocate reserve sites; and enough headroom to provide for the anticipated level of unmet need from Woking, bearing in mind that there would be a continuing level of undersupply over the period of Woking's newly reviewed plan. **The overall plan provision would also provide more affordable housing and go further to address serious and deteriorating housing affordability.**"

"IR84. Secondly, **the plan needs to be robust and capable of meeting unexpected contingencies such as delivery failure or slippage on one or more sites. It needs to be borne in mind that the housing requirement is a minimum figure, not a target.** A robust strategy is particularly relevant for Guildford where longer term housing delivery is largely by means of large strategic housing sites. There is also uncertainty about the timing of the A3 RIS [road improvement strategy] scheme...; **The headroom provides some flexibility over timing and ensures that if a degree of slippage does occur, the Plan is not vulnerable.** The amount of headroom between potential housing provision and the housing requirement means it is not necessary to create safeguarded land which would have to be removed from the Green Belt to meet longer term development needs, or to identify reserve sites to be brought forward should sites fail to deliver as expected. In any case, if it had been necessary to identify reserve sites, they would almost certainly have had to be on land removed from the Green Belt."

"IR85. Thirdly, that **Plan needs to be effective over its life and have regard to potential changes in circumstances.** To that end it contains a balance of short- and long-term sites. This can be seen in the housing trajectory...; The permitted and commenced sites and smaller allocations deliver the 5 year supply. **These include for example the allocations at West Horsley, Send, Send Marsh/ Burnt Common and Ripley and on land at the inset villages. Land needs to be released from the Green Belt to allow these sites to be developed, in order to meet housing needs in the first 5 years of the Plan. When delivery from these sites starts to diminish, that from the strategic sites builds up.** But large strategic sites have long lead-in times and development periods - their timespan may cover a number of plan reviews and housing requirement re-calculations. Circumstances may change, and new strategic sites cannot be brought forward quickly to meet revised housing requirements; they have to be planned well in advance. Therefore, by making the allocations now, the Council have aimed to future proof the Plan. This is in accordance with the NPPF which says that plans should have sufficient flexibility to adapt to rapid change. **The Plan clearly demonstrates a flexible, integrated and forward-looking approach towards meeting present and future needs in the Borough and towards encouraging more sustainable modes of travel.** Removing one or more sites would significantly diminish the Plan's ability to meet these objectives."

Sir Ouseley reached the following judgement in respect of the Inspector's assessment of the OAN, housing need and supply:

"96. First, **I see nothing illogical in the Inspector's thought process, requiring a buffer of some significance and treating the total of the allocated sites as creating an appropriate buffer.** There was no need to calculate a spuriously precise headroom figure, and then match it with sites. Sites do not present themselves or come forward in precisely matching dwelling numbers either. The headroom figure was a judgment based on the sites which were available to meet a

requirement figure somewhat over 10678, and to do so in such a way that, over the initial and subsequent years of the plan, the rolling five year housing supply, with a 20% buffer for some years, would be maintained. The three would provide assurance that the requirement would be met, not just in total, but over the five year rolling periods. As the IR showed, the scale of the headroom was in part required because the sites to be released were themselves large, and could face delays on that account.

97. The Inspector asked, as part of the soundness judgment, whether those sites provided, not just the housing required, but did so with a good balance of location, size, meeting other needs such as for employment land, creating a coherent spatial distribution strategy. He asked whether there were significant advantages if more housing was provided than the OAN, in view of the pressing housing needs in Guildford, in terms of affordability and affordable housing. The way in which the buffer can meet the needs matters. The larger sites permitted other needs to be catered for, without peppering the area with Green Belt releases, or releases in more sensitive areas. The question that then arose, in view of the extent of the headroom which those sites created, was whether there should be a reduction in release. This was specifically addressed in the IR. That is a logical approach.

98. The IR's analysis of the need to release land from the Green Belt considered the need for housing, IR79, the need for land for business uses which could not be met other than by Green Belt releases, IR80, the lack of scope for increasing housing on land within the urban areas, IR82, the need for a sound and integrated approach to the proper planning of the area, IR83, and the need for flexibility, IR84-5, along with the Local-level exceptional circumstances in relation to the major sites and issues. The question was then asked whether that was too much and one or more sites should be removed from the allocations. **It was not a simple question of defining a need and then deciding where to meet it; the process was in reality more iterative. The number of dwellings for which land supply was allocated, was determined in the first place by the OAN, but in addition a buffer had to be provided and a satisfactory delivery trajectory provided for; the selection of sites was affected by where the needs could best be met, with least impact on the Green Belt, catering for other needs, and making a coherent strategy; the land thus allocated yielded the total supply, adjudged to be a sufficient buffer but not so much larger as to require the removal of sites from the allocations.** In all of this, the Inspector would obviously have been aware of the function of the Green Belt, and the importance of keeping land permanently open and free from development. That permeates his whole consideration of exceptional circumstances; it is why he is considering them."

Sir Ouseley then turns to the consideration of a level of housing that is in excess of the identified OAN:

"104. Again, I do not think that Mr Harwood is grappling with IR84 read as a whole, in which context that particular sentence has to be read. The real thrust of IR84 is that **the Plan has to be robust and capable of meeting unexpected contingencies: reliance on large sites made that particularly important, and there were various uncertainties about them. In those circumstances, the Plan ought to provide more than the bare minimum of supply in allocations; if that led to more than the minimum, that was not a reason not to make the provision;** see also IR79. Besides the headroom meant that safeguarded or reserve land did not have to be provided; its provision would still have meant that land would "almost certainly" have been removed from the Green Belt. I do not accept that submission of Mr Harwood either."

"105. Moreover, the prospect that a level of housing in excess of the OAN might be achieved can contribute to exceptional circumstances. I have set out under Issue 1, the pressing nature of the housing problems in Guildford BC. This is not just a question of totals. **There would plainly be significant benefits, as the Inspector was well aware in this context, in terms of affordability, and affordable housing if more were provided.** Taken as part of the whole group array of exceptional circumstances, there is nothing unlawful about that being seen as a useful even significant advantage, in line with NPPF housing policy, and as a contributor to exceptional

circumstances. I accept that the OAN figure makes some allowance for those problems, but recognises that the problems are of a degree and scale that they cannot be resolved to a large extent. However, that does not mean that the advantage of a higher level of housing supply cannot contribute to exceptional circumstances. Once land is to be removed from the Green Belt for housing allocations, and a suitable buffer, the exceptional circumstances for their capacity can include the planning soundness of choosing sites which contribute most to the other requirements of the Plan.”

This is a key judgement that must be considered for the purposes of the WHBC Examination and the soundness of the submitted plan. It makes a clear case for an aspiration housing supply buffer in excess of the OAN to account for slippage in supply and to address pressing housing needs, particularly in terms of affordability and affordable housing. The approach taken in Guildford advocated a positively planned approach, one which went beyond the bare minimum of supply in allocations, providing headroom to the housing need.

Concluding remarks

WHBC is seeking to promote an alternative and negative strategy which will artificially reduce the housing requirement over the plan period and, consequently reduce the delivery of new dwellings, with no headroom and no flexibility.

In WHBC, Turley produced a detailed SHMA on behalf of the Council in 2014, which has been updated in 2015, 2016 and 2017. This is the evidence which underpins the submitted Plan. It clearly identifies an OAN of 800 new dwellings per annum. However, the Council has now commissioned a new study by Turley, EX103A and EX103B which effectively renders the previous SHMA evidence redundant through its 're-basing' and its new assumptions. At this stage of the Examination, that is entirely without justification and will make the plan unsound.

It is clear from the existing and new Turley evidence that the Council agrees that the OAN is 800 dpa, whether the plan commences in 2013 or 2016. The only issues are therefore (i) the date on which the plan commences and the (ii) number of years over which the plan should run. The submitted plan commences in 2013 and there is no cogent reason to change that date.

A rational approach, given the reason for the ongoing delays, would be to require the plan to commence in 2013, as submitted, with full delivery of the five year land supply, plus a 20% buffer and with a fifteen year horizon after the plan is adopted. That might spur the Council into progressing the plan towards adoption sooner, rather than later.

In your note to the Council in December 2017 (EX39), you suggested that the Council should seek to identify sites for 20,000 dwellings in order to provide safeguarded land beyond the plan period (which would specifically include 2034 to 2036). It is interesting that Guildford took the view that sites should actually be allocated (rather than safeguarded), which has the benefit of providing both present and future capacity and flexibility. This is a matter of great concern in WHBC because, if the same approach is taken when this plan expires, the borough will face another ten year period of housing under-delivery.

We await the long-overdue additional site allocations, which the Council has now stated will be made public in the week commencing 6 January 2020. If those proposed allocations continue to evade the allocation of the most suitable and sustainable sites and the most sensible and deliverable housing distribution in the borough, we trust that you will take firm action in the context of the Guildford judgement.

Yours faithfully,

John Adams
Deloitte LLP