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For and on behalf of
Bayard Developments Ltd
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Submissions regarding Examination Document EX221
Inspectors' Invitation of Comments on the WHDC Windfall Update November 2020
Welwyn Hatfield Borough Council Local Plan Examination Stage 9 Hearings – Session 50

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1.0 INTRODUCTION

- 1.1 This report is a response to the Inspector's invitation for additional comments in response to EX221 (windfall). These submissions do not seek to raise further general comments on the current status of the Examination.
- 1.2 Comments on this document are provided in the context of the potential revisions to the policies and proposals and the evidence on which the Council's proposed revisions are based. These comments should be read alongside representations to the Council's 2020 'Additional Sites' Consultation (specifically paragraph 19.5 – 'Windfall assumptions').
- 1.3 The reason for this is that the Council's position regarding supply from unidentified sites has had a direct bearing upon responses to the Inspector's request for additional work. Paragraphs 2.1 to 2.3 of EX221 illustrate that the Council's latest revised assessment is a specific response to the previous consultation proposals.
- 1.4 SPRU's April 2020 submissions to those consultation proposals provide a robust illustration of why the Council's proposals to include 2,249 units' supply from unidentified sites of a 13-year period (+846 units compared to the recommendation of 1304 units in the 2019 HELAA) was not justified, as acknowledged by paragraph 2.1 of EX221.
- 1.5 The Council is now seeking to claim that a lower forecast for supply from unidentified sites (comprising 1,402 units and using the HELAA2019 as the starting point) is appropriate when combined with the Council's recommendations regarding the additional sites that are proposed together with amendments to capacity on sites in the submission version Local Plan. Paragraph 2.3 of EX221 indicates that these site-specific changes can be read-across with the revised windfall assessment (see EX224 and EX219).
- 1.6 These submissions illustrate why this is not a sound approach.
- 1.7 It is firstly necessary to further review the Council's specific assumptions regarding supply from unidentified sites (i.e., windfall) over the remaining plan period in isolation.
- 1.8 Secondly, it is relevant to consider the Council's conclusions on additional capacity on specific sites in terms of deliverability and phasing and how this impacts upon the windfall assumptions previously subject to consultation in 2020. This is dealt with in separate comments on the revised trajectory (EX224).
- 1.9 Finally, it is necessary to consider the combined implications for the Council's latest position in terms of maintaining a rolling five-year supply of deliverable sites and meeting needs in full over the plan period. As part of submissions on these points it is necessary to consider both the overall reliance from unidentified sites as part of the proposed housing requirement and the implications of the Council's current position regarding the additional components of supply that would be required to deliver full objectively assessed needs of 16,000 dwellings over the plan period 2016 to 2036.

2.0 REVIEW OF THE COUNCIL'S WINDFALL ASSUMPTIONS IN EX221

2.1 Paragraph 1.6 of EX221 confirms that the starting point for the Council's revised assessment of windfall supply is derived from the 2019 HELAA and comprises the Council's assumptions regarding supply that has consistently become available from sources associated with **residential redevelopment; agriculture and rural buildings; and business** (offices).

2.2 The composite total for these sources within the 2019 HELAA comprises:

- Residential Development – 26 units per annum from 2023/24 to 2035/36
- Agricultural Development – 4 dwellings per annum 2023/24 to 2035/36
- Office Development – 21 dwellings per annum from 2023/24 to 2035/36 (based on development through planning applications); additional allowance of 103 units in 2023/24 and 52 units in 2024/25 based on forecast reduction in trends for permitted development. The Council's own evidence in the 2019 HELAA justifies this reduction as a result of the proposed introduction of an Article 4 Direction to remove Class O Permitted Development Rights.

a) The First Year to Include a Windfall Allowance

2.3 Paragraph 5.20 of the 2019 HELAA states:

*"Figure 9 summarises the total allowance made for windfall across the plan period. **There will be no windfall allowance in the first three years of the plan period (adoption is assumed to be in 2020/21). From 2023/24 windfall allowance has been made for former land uses which have showed consistent windfall supply - residential redevelopment, offices and agricultural/rural buildings.**" (SPRU Emphasis)*

2.4 EX221 has not revisited or updated this assumption. Adoption of the Plan is now impossible in 2020/21 and the Examination is likely to extend substantially into the 2021/22 calendar year.

2.5 On this basis alone the assumptions for windfall supply in EX221 should be amended to commence no earlier than 2024/25 and (given that the Council has sought to provide details of commitments as of September 2020) potentially 2025/26.

b) Allowance for Office to Residential Permitted Development within the Windfall Assumptions

2.6 In EX221 the approach the Council seeks to apply to the starting point provided by the 2019 HELAA is summarised as follows:

- Office Development – **21 dwellings per annum** from 2023/24 to 2035/36 (based on development through planning applications); **additional allowance of 103 units in 2023/24 and 52 units in 2024/25** based on forecast reduction in trends for permitted development **plus 98 units (spread evenly across 2024/25 and 2025/26)** based on 12 months of expected trends in Permitted Development for demolition and replacement of commercial buildings taking account of intended introduction of Article 4 Directions.

2.7 The Council has sought to update its position on commitments in EX219A and EX224B together with completions in 2019/20 (including those on B1-C3 Prior Notification schemes). The Council has not addressed that it would be appropriate to amend the previous HELAA2019 assumptions for 2023/24 and 2024/25 for schemes under existing (2013-based) Permitted Development Rights where further sites have come forward or been built out since this was published and therefore already form part of the pipeline. As pp.3 of EX221 notes **"An Article 4 direction was introduced in October 2020 to remove these permitted development rights in four of the key employment sites in the borough. This is expected to**

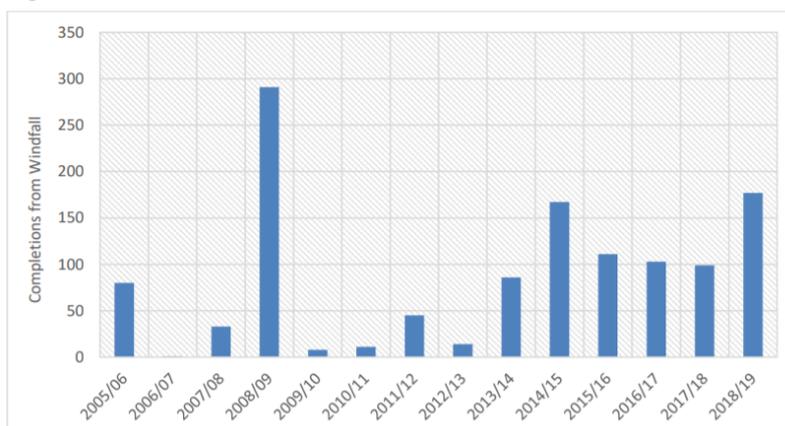
have an impact on windfall from office use in future years.”

- 2.8 The allowance of 103 units in 2023/24 and 52 units in 2024/25 is based on the earlier assumption in the 2019 HELAA with regard to the outcomes of developers exercising permitted development rights in Part O prior to the instigation of the Article 4 direction. Now the Article 4 direction has been made there is no evidence to support that previous levels of conversions will be delivered at rates which pertained when there was no Article 4 in place. As such the assumption for these two years should be deleted.
- 2.9 Turning to the +98 units suggested windfall in EX221 paragraph 2.5 this is based on a proxy of analysing the operation of the Part O Permitted Development rights; not the new permitted development rights outlined in paragraph 2.4. As such there is no evidence to support any windfall from this new category. This is a point that the Council itself highlights in paragraph 2.4.
- 2.10 The impact on the supply pipeline for any schemes submitted under Prior Notification before introduction of the Article 4 Directions will be reflected in current data for commitments. On this basis inclusion of either the assumption for +98 units on unidentified sites through *new* Permitted Development Rights or +113 units based on a continuation of trends under 2013-based Permitted Development Rights is not justified. Both of these components should be deleted from the Council's windfall assumptions in EX221.

c) Windfall Supply from 'Other Sources'

- 2.11 EX221 also retains the following assumptions regarding supply from identified sites from the analysis presented in the 2019 HELAA:
- Long term average of supply from other sources (HELAA2019 Paragraph 5.19): *“In 2008/09 three large developments were completed and not allocated which resulted in a spike in windfall for this year. **For these other land uses, the annual average of 88 dwellings per year has been forecast in the last five years of the plan period.**”*
- 2.12 Figure 8 of the HELAA2019 (see below) illustrates the actual trend, which is highly uneven although for the most part it shows low levels of completions when the last plan was adopted in 2005.
- 2.13 There is a clear anomaly in 2008/9 which is by far the highest year for windfall delivery from 'other sources' but relates to a single large site and as such would tend to over inflate future forecasts of windfall. Including all years from the series (including 2008/9) is necessary to generate the Council's average figure of 88 dwellings per annum, but this reflects a variety of different and specific circumstances impacting the period in time under assessment.

Figure 8: Other sources of windfall



Source: WHDC 2019 HELAA

- 2.14 Paragraph 5.19 and footnote 24 of the Council's December 2019 HELAA confirms the type of sites that make up "other sources" are of all sizes and comprise a range of previous uses including leisure, education, and community facilities. The HELAA itself does not differentiate between small sites and large sites or subject the historic supply to any further analysis (e.g., the relationship with loss of school playing fields or local healthcare facilities).
- 2.15 Given the delays to adoption of the Plan it would, as a minimum, be prudent to reduce the assumed period of windfall supply from 'other sources' to only the last four years of the Plan Period (i.e., 2032/33 to 2035/36) (-88 dwellings).
- 2.16 However, this would still leave the anomaly of 2008/9 within the trend period.
- 2.17 Also, without the analysis of the earlier historic trends it is not possible to establish those changes of use from office to residential that might have occurred prior to the introduction of Part O so there is the potential of double counting.
- 2.18 It must be recalled that both Welwyn Garden City and Hatfield are 'planned' towns offering more limited scope for large unidentified sites.
- 2.19 It is also the Council's case that they have undertaken a thorough search for all sites of over ten dwellings and considered their suitability for allocation in the Local Plan. This has resulted in a number of sites being identified and allocated within the urban area both small sites (like (Hol23) Neighbourhood Centre, Hollybush Lane, WGC (16 units)) and larger sites (such as Broadwater Road West). This includes sites forecast to deliver in years 6-10 and 11-15 and therefore by definition only currently considered 'developable' for the purposes of the definition in policy and guidance.
- 2.20 Sites which have not been allocated have been discounted based on an assessment of constraints to suitability or availability. As such there is little evidence that after such a search for sites in excess of 10 dwellings there are a substantial number of sites that have been missed and are likely to come forward especially in the early part of the plan period. More importantly there is little evidence supporting the continued delivery of sites of 10 dwellings plus providing a reliable supply of housing for the plan period.

d) Revised Assessment of Windfall Supply

- 2.21 A revised forecast of potential supply from unidentified sites justified by the specific adjustments identified by SPRU in the preceding commentary is set out as follows:
- Windfall allowance to commence in 2024/25 (three years following potential adoption)
 - Business - 21 units per annum (based on planning application records for office conversion) from 2024/25 to 2035/36
 - Residential Development – 26 units per annum from 2024/25 to 2035/36
 - Agricultural Development – 4 dwellings per annum 2024/25 to 2035/36
 - 'Other Sites' Allowance – no compelling evidence that sites of 10 or more dwellings this will provide a reliable source of supply given the site search that has been undertaken as part of the local plan process. The council have not provided an analysis of large and small sites to make any judgement with regard to disaggregating this figure.
 - Allowance for New Permitted Development – the council state in paragraph 2.5 of EX221 that there is no compelling evidence that these sites will provide a reliable source of supply

2.22 This would comprise a generous total of 612 units as follows:

Table 1. SPRU Revised Assessment of Windfall Supply

	2024/25	2025/26	2026/27	2027/28	2028/29	2029/30	2030/31	2031/32	2032/33	2033/34	2034/35	2035/36	Total
EX221 - SPRU Revised Assumptions	51	51	51	51	51	51	51	51	51	51	51	51	612

2.23 It should be noted that these revised assumptions have a more significant impact on the contribution from unidentified sites in the calculation of supply towards the housing requirement through 'windfall' in the years immediately following adoption of the Plan. This has specific soundness implications, especially when considered as part of the realism of the Council's overall trajectory as set out in EX224A-B.

3.0 COMPARISON WITH PREVIOUS CONSULTATION PROPOSALS AND PREVIOUS EVIDENCE

3.1 In paragraph 2.6 of EX221 the Council states:

“Whilst the total allowance [1402] is 87 dwellings higher than the 1,315 dwellings outlined in the submitted plan, this allowance was made over 12 years, so the revised per annum figure is actually just below at 108 dwellings compared with 110 dwellings in the submitted plan.”

3.2 However, given the Inspector's request for additional work the soundness of the previously assumed contribution from windfall supply has not been confirmed as part of the Examination to-date.

3.3 In paragraph 2.6 the Council also suggests that the overall 14-year average of 173 windfall completions per annum, or a median of 132 dwellings per annum, would be relevant comparisons. However, any decision to rely simply on total past rates of provision with no analysis of their source or the implication of an up-to-date plan falls considerably short of the compelling evidence required by the paragraph 70 of NPPF2019 (or paragraph 48 of the NPPF2012).

3.4 A relevant comparison on potential levels of windfall supply can be traced back to assumptions in the Council's 2012 SHLAA¹. Phase 3 of that Report assesses the potential for future windfall development by analysing past delivery rates for different types of sites, historic windfall trends, the types of sites identified in the SHLAA Phase 1 assessment (urban capacity) and expected future trends. The document identifies a windfall allowance of **290 dwellings for the period 2014 to 2029**, which equates to 19 dwellings per year.

3.5 Reference to this previous assessment of windfall supply can be identified in the Sustainability Appraisal for the draft Local Plan at paragraph 5.88 reflecting assumptions (290 units) for the preferred spatial strategy in the emerging Core Strategy (2012).

3.6 All subsequent assessments of the potential contribution to supply from unidentified sites (including the submission draft Local Plan) contain a substantially higher assumption for windfall supply than at previous stages of plan-making.

3.7 For the avoidance of doubt SPRU's alternative assessment of supply from unidentified sources (612 dwellings) should be applied in the context of addressing minimum full objectively assessed housing needs of 16,000 dwellings (800dpa) for the plan period 2016 to 2036. On this basis SPRU's revised estimate comprises a **reasonable 3.8%** of supply towards full housing needs. Windfall supply would comprise a total of 4.4% of the residual provision required once completion of 2,121 units 2016-2020 is considered (612 / 13,879 = 4.4%).

3.8 EX221 presents the Council's revised assessment of windfall supply as a proportion of the proposed housing requirement as set out in EX219 of 13,277 dwellings (as amended by EX227 and EX224 to 13,377 dwellings). Against EX219 the revised assessment of windfall comprises around 11% of total supply.

¹ https://www.welhat.gov.uk/media/6204/Strategic-Housing-Land-Availability-Assessment-Phase-3-Determining-the-Potential-for-Housing-Windfall/pdf/SHLAA_Phase_3_Windfall_October_2012.pdf?m=634859038940000000

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