

**Welwyn Hatfield Borough Council Local Plan Examination
Stage 9, Sessions 50 and 51
Consultation response to EX221 and EX223
Aurora Properties (UK) Ltd
February 2021**

Prepared by:
Aurora Properties (UK) Ltd
Deloitte Real Estate

Stage 9, Sessions 50 and 51 – Consultation response to EX221 and EX223

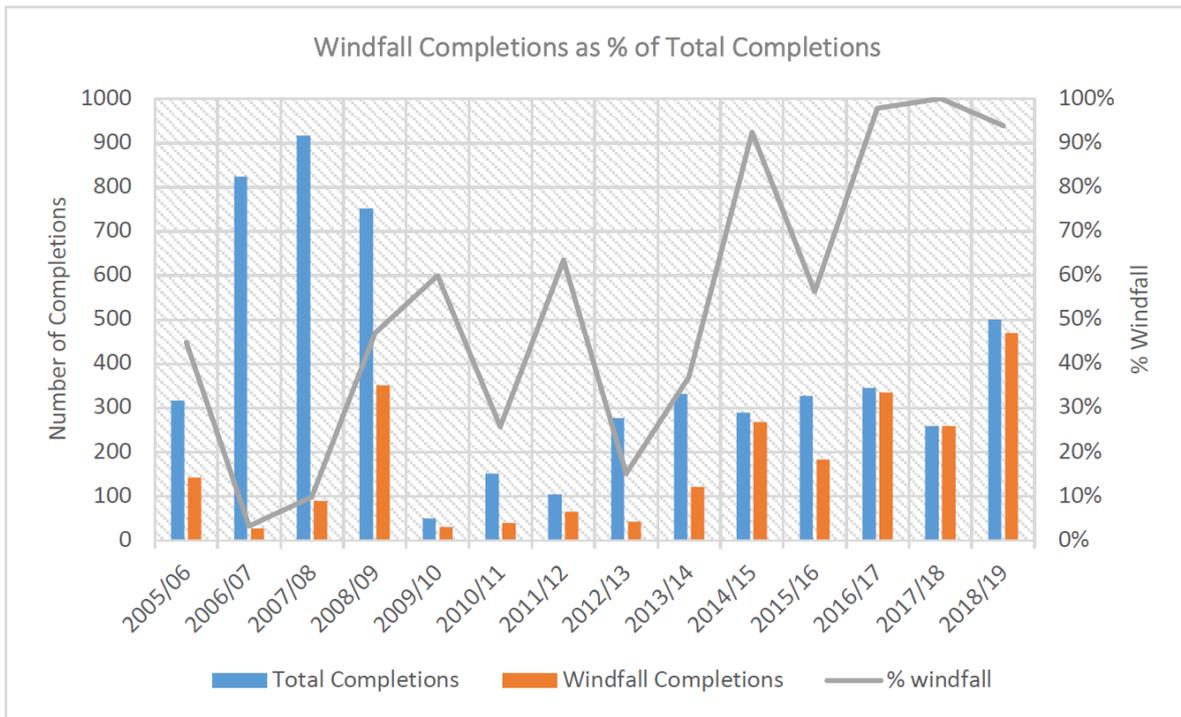
Introduction

1. On behalf of Aurora Properties (UK) Ltd (Aurora), we write in response to your emails of 10 and 18 January 2021 regarding the Welwyn Hatfield Local Plan consultation published by the Inspector in relation to 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 on the following documents:

EX ref.	Date published	Document title	Consultation deadline
EX221	December 2020	WHBC Windfall Update	8 February 2021
EX223	December 2020	WHBC Green Belt Boundaries Approach	8 February 2021

EX221 – WHBC Windfall Update

3. Paragraph 48 of the National Planning Policy Framework (NPPF) 2012 states that:
*“Local planning authorities may make an allowance for windfall sites in the five-year supply if they have **compelling evidence** that such sites have **consistently become available** in the local area and will **continue to provide a reliable source of supply**. Any allowance should be **realistic** having regard to the Strategic Housing Land Availability Assessment, historic windfall delivery rates and expected future trends, and should not include residential gardens.”* [emphasis added]
4. The justification for a windfall allowance must therefore be compelling, demonstrate that there is a consistent and reliable source of supply, and be realistic.
5. The average windfall delivery against which WHBC justify the proposed windfall allowance is skewed by a significant increase in the proportion of windfall completions from 2014/15 to 2018/19, which are as a result of an out-of-date District Plan and permitted development of B1 accommodation to C3.
6. It is clear from the following extracted graph from EX221, that the period from 2005 to 2011, when the previous Plan remained up to date, is the most appropriate benchmark for establishing a realistic and compelling basis for windfall delivery. Except for an increase in 2008/09, the average level of windfall completions was closer to 50-60 dwellings per annum, in contrast to the average of 107 dwellings per annum proposed in EX221 (which itself is backloaded as described in paragraph 7 overleaf).



Extract from WHBC EX221 of Windfall Completions as % of Total Completions

- The windfall allowance proposed by WHBC (EX221) increases significantly in the final five years of the plan period. For the period of 2031 to 2036, the windfall allowance accounts for 47 per cent (695 dwellings) being nearly half of all the 1,486 dwellings to be provided (as set out below). The majority of this windfall assumption is comprised of ‘other land uses’. At paragraph 1.8 of EX221, WHBC identify an annual average forecast of 88 dwellings per year for ‘other land uses’, but no compelling evidence for this assumption is provided. The Council’s housing windfall supply (EX221) and its housing trajectory (EX224A) is therefore wholly unsound.

	2031/32	2032/33	2033/34	2034/35	2035/36	Total
Windfall and % of Total	139 (42%)	139 (48%)	139 (47%)	139 (46%)	139 (53%)	695 (47%)
Overall total supply by year	331	289	297	305	264	1,486

Extract from WHBC EX224A, Appendix 1, Local Plan Housing Trajectory, December 2020

- It appears that WHBC’s justification for this optimistic windfall allowance is derived from the high level of reliance it has had since 2014 as a result of the out-of-date District Plan, driven almost entirely by Use Class B1 conversions to Use Class C3. This is not considered to be a defensible or robust approach, particularly given the clear requirement that Local Plans are to be kept up-to-date and reviewed regularly.
- Moreover, the Council’s speculative reliance on an inflated windfall allowance in the final years of the plan period suggests that sufficient land has not been identified for housing delivery, and that Green Belt boundaries may again need to be altered at a review of the Plan or at the end of the development Plan Period, contrary to paragraph 85 of the NPPF 2012.

10. It is also noted that EX224B seeks to increase the windfall allowance from 1,315 dwellings in the submitted Plan housing trajectory (which the Inspector has not yet found to be sound) to 1,402 dwellings in EX224A, which is not based on robust evidence.
11. Our planning system is one which is plan-led; however, the proportion of homes WHBC expect to deliver through a windfall allowance, particularly in the final years of the Plan Period, does not reflect a plan-led system. If delivery which is to be relied upon is windfall, then there is no certainty that these homes will be delivered, at all, or that the Council will be able to ensure a sustainable pattern of development, or meet the wider social and infrastructure needs of those new homes. It is less likely that windfall sites will be of a scale that generate a critical mass to meet these infrastructure needs.
12. The submission draft Local Plan sets a site threshold of 11 new dwellings or a site area of 0.5ha or more for the provision of affordable housing. Therefore, an over-reliance on windfall developments, which are often of small-scale sites, may not meet this threshold and could exacerbate issues of affordability that exist within the borough. To address issues of affordability it remains important that sites are allocated that will also deliver affordable housing, rather than a reliance on windfall provision.
13. In respect of residential uses from Use Class B1 office buildings, the Plan Period Windfall Allowance 2020 Update (EX221) includes 204 dwellings for years 2023/24 and 2024/25 (within the first five years of the plan). This is either speculative or reliant on extant permitted development rights of Use Class B1 to C3 about which the Council is already aware. The former is not justified as windfall and the latter should be identified in the Plan and included in the housing target, not as windfall.
14. WHBC describe that on average 104 dwellings per annum were delivered since office to residential permitted development rights were introduced in 2013, however since October 2020, an Article 4 Direction has been introduced by WHBC to remove these rights. Therefore, to emphasise the point made above, any prior approvals for office to residential conversion that were granted prior to October 2020 should be included in the commitments allocation of the Council's housing supply.
15. At paragraph 2.4 of EX221, WHBC considers the impact of the new permitted development rights introduced in 2020, which include the demolition of commercial buildings and their replacement with blocks of flats/single dwellings (Class ZA), and the addition of self-contained flats on top of existing blocks of flats (Class AA). The Council confirms that it intends to introduce Article 4 Directions towards the end of 2021 to control these permitted development rights in particular areas.
16. As EX221 sets out, it is difficult to predict how much windfall these new permitted development rights will provide. WHBC use the existing office to residential conversion permitted development right as a benchmark for potential windfall from Class ZA, however this new permitted development right cannot yet be demonstrated to provide a consistent or reliable source of supply.
17. Class ZA remains an emerging permitted development right and the list of conditions and exclusions that a building must conform with are extensive. There are restrictions that, *inter alia*, preclude buildings that were constructed after 31 December 1989, that exceed 1,000 square metres, are greater than 18m in height, have not been vacant for a period of at least 6 months immediately prior to the prior approval application, where the proposed building footprint would fall outside the existing footprint, or where the height would be more than 7m higher

than the previous building or more than 18m total (whichever is the lower). In addition to these exclusions, the Council must grant prior approval for the proposal against 13 considerations, including design, highways impacts, impact on heritage, noise, contamination and flood risks.

18. This is a new and unproven permitted development right, which on the basis of the conditions and exclusions, are likely to only reasonably apply in a small number of instances. Moreover, with the forthcoming Permitted Development Right Class ZA Article 4 Direction proposed by WHBC, there is only a narrow window for such rights to be utilised.
19. The nature of the buildings that may meet the requirements of Class ZA means that they are likely to deliver new one or two bedroom flats, rather than family accommodation. As set out in the submission draft Local Plan, the predominate need within the borough is for family houses.
20. The suggestion of WHBC that 204 dwellings will be provided within the first five years of the Plan period on office sites is both speculative and optimistic. It is not supported by compelling evidence and has not been tested or demonstrated to be a consistent and reliable source of supply.
21. Similarly, for the period 2026/27 to the end of the plan period, WHBC assume a windfall allowance of 21 dwellings from office uses each year. This is justified on the basis of an annual average of 21 dwellings granted through planning applications since 2013/14. However, this figure is again based on a period when the District Plan was out-of-date. As set out in the December 2019 HELAA report (paragraph 5.12), the average level for windfall from offices prior to the introduction of permitted development rights was 9 dwellings per annum.
22. For the above reasons, it is evident that WHBC continue to over-estimate and be overly reliant on the historic windfall allowances made during a period where those assumptions have been skewed through data generated over a period in which the District Plan was out-of-date.
23. Given the fact that the Council's planning officers have identified sufficient suitable and sustainable sites to meet its FOAHN in full (see Report to CPPP on 23 and 29 January 2020), there is no reason to permit the Council to adopt an exaggerated and speculative windfall allowance in the submission Plan, based on evidence that is neither compelling nor justified.

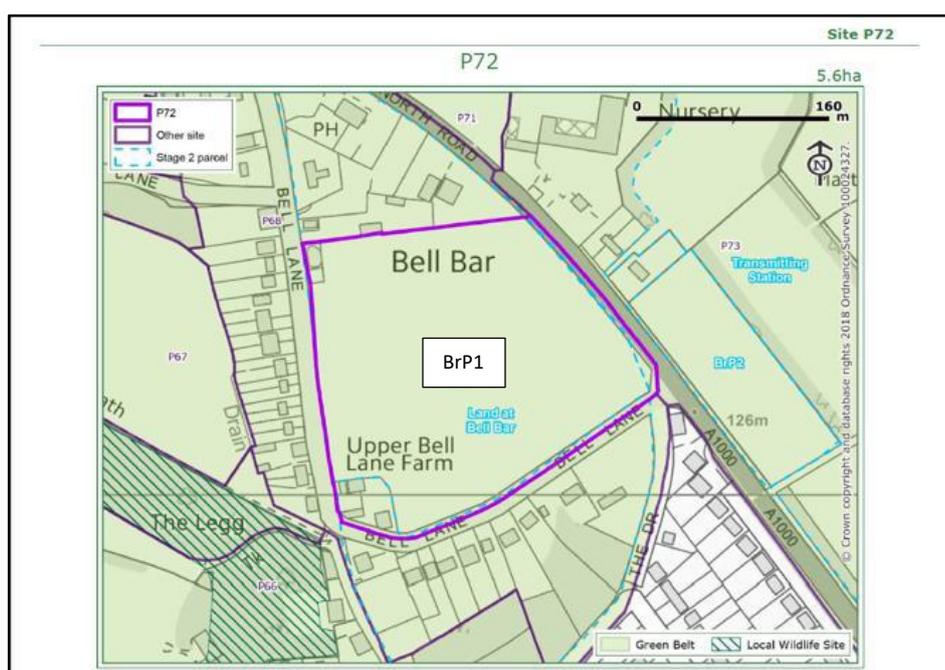
EX223 – WHBC Green Belt Boundaries Approach

24. In document EX223, WHBC provide an overarching note in relation to the treatment of Green Belt boundaries to allocations in the Local Plan.
25. NPPF 2012 makes clear at paragraph 79 that the essential characteristic of Green Belts are their openness and permanence.
26. Paragraph 83 states that, having regard to their intended purpose, Green Belt boundaries should be capable of enduring beyond the plan period.
27. Paragraph 85 requires that Green Belt boundaries should be clearly defined using physical features that are readily recognisable and likely to be permanent.
28. It is clear from the NPPF and Planning Practice Guidance that a permanent Green Belt boundary (railway line, main road, river etc.) should not be breached, particularly where the consequent Green Belt boundary would be significantly weaker. The breach of a strong, well-defined and permanent Green Belt boundary, to be replaced by a much weaker boundary (i.e. new tree

planting and hedgerow – green buffers), which is not well defined or would take many years to become established and could be easily removed, would clearly not comply with NPPF paragraphs 79, 83 or 85.

29. Having regard to specific site allocations in the submitted Plan and listed in EX223, the Council has put forward a number of sites for allocation, notably BrP4/HS22 and Hat11/HS11, which breach existing very strong, well-defined and permanent Green Belt boundaries. Also, for example, BrP7/HS24 is in open countryside (with extensive long-range, medium-range and local views from numerous receptors), in conflict with NPPF paragraphs 79, 83 and 85. Indeed, “openness” has been recognised as being both visual and spatial. Such allocations cannot be justified or sound, particularly where other more suitable and sustainable sites, which have been recommended for allocation by the planning officers (but rejected by Members) are available for allocation.
30. The Calverton test provides guidance in this context. It states;
“In a case such as the present, it seems to me that, having undertaken the first-stage of the Hunston approach (sc. assessing objectively assessed need), the planning judgments involved in the ascertainment of exceptional circumstances in the context of both national policy and the positive obligation located in section 39(2) should, at least ideally, identify and then grapple with the following matters: (i) the acuteness/intensity of the objectively assessed need (matters of degree may be important); (ii) the inherent constraints on supply/availability of land prima facie suitable for sustainable development; (iii) (on the facts of this case) the consequent difficulties in achieving sustainable development without impinging on the Green Belt; (iv) the nature and extent of the harm to this Green Belt (or those parts of it which would be lost if the boundaries were reviewed); and (v) the extent to which the consequent impacts on the purposes of the Green Belt may be ameliorated or reduced to the lowest reasonably practicable extent.”
31. It is points (iv) and (v) in Calverton which are most relevant to the strength of Green Belt boundaries.
32. Firstly, the nature and extent of harm to “this” Green Belt clearly requires a site specific comparative assessment of the nature and harm between “this” Green Belt and any alternative sites which present less harm to the Green Belt in terms of nature and extent (which includes boundaries).
33. Secondly, the extent to which impacts on the purposes of the Green Belt can be “*ameliorated or reduced to the lowest reasonably practicable extent*” would reasonably start by weighing the nature and strength of the existing Green Belt boundary against the proposed new Green Belt boundary. To comply with paragraphs 83 and 85, such boundaries should be recognisable, defined, permanent and capable of enduring beyond the Plan period.
34. The NPPF does not say that extensive or substantial new Green Belt boundaries can be created by planting “green buffers”. The opposite is true. NPPF requires well-defined physical features that are readily recognisable, and likely to be permanent. Over-reliance on the creation of weak Green Belt boundaries, particularly those which could be easily removed, would not meet the requisite tests of paragraphs 79 to 85 in the NPPF 2012 and would fail the Calverton test. The starting point for any such assessment should therefore be to compare the definition and permanence of an existing Green Belt boundary against the proposed new Green Belt boundary and, wherever possible, to seek to avoid the diminution in the definition and permanence of that boundary.

35. There are numerous Green Belt sites within the borough which have well-established, strong and permanent Green Belt boundaries which the Council Members have not allocated, against the advice of its planning officers. Most of these sites are in the highly sustainable large villages.
36. EX223 makes specific reference to BrP1 where it states; “*Landscaping within site, revised green belt boundary is formed by a major road.*” In fact, BrP1 is entirely surrounded and contained by existing urban development and the A1000 to the east. The Council is therefore correct to require landscaping within the site, but this would be principally for landscaping purposes, not to provide a Green Belt boundary.
37. Furthermore, LUC has identified Bell Bar as a village which has the potential to be inset into the Green Belt, as it does not have an open character and does not make a significant contribution to the openness of the Green Belt (EX88B, LUC August 2018, paragraph 5.9, page 47). It was therefore concluded that it should be considered by the Council for exclusion from the Green Belt under NPPF paragraph 86.
38. It is therefore reasonably expected that the A1000 to the east of Bell Bar will provide the permanent Green Belt boundary to the east of that settlement, with the urban edge of existing residential and commercial developments providing the Green Belt boundary to the north and west. The village of Brookmans Park physically joins Bell Bar to the south.



BrP1 Existing Site Boundaries

39. In its report to the Cabinet Planning and Parking Panel (CPPP) on 23 and 29 January 2020 the planning officers stated (paragraph 18.10); “*The addition of sites BrP1 and BrP34 are also considered to have less impact on the Green Belt. **BrP1 is entirely enclosed by existing development** and would lead to ‘moderate’ harm.*” And at paragraph 18.12; “*The release of BrP1 is not thought to increase the merging of Bell Bar and Brookmans Park settlements given the existing enclosed nature of BrP1.*” (emphasis added).
40. BrP1 was again recommended for allocation in the planning officers’ report to CPPP on 17 November 2020.