

**Rebuttal Planning Evidence of  
Russell Gray BA (Hons) DIP UP MRTPI**

**Appeal by Aurora Properties (UK) Ltd**

**Land North of Bradmore Way,  
The Brookmans Park Estate,  
Brookmans Park, Hertfordshire  
(BrP12a)**

**Appeal Ref: APP/C1950/W/22/3307844**

**January 2023**



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# Contents

1	INTRODUCTION.....	2
2	THE WEIGHT TO BE GIVEN TO THE EMERGING LOCAL PLAN .....	3
3	CONSIDERATION OF THE SITE THROUGH THE EMERGING LOCAL PLAN PROCESS.....	9
4	THE SUSTAINABILITY OF THE SITE .....	13
5	HARM TO THE GREEN BELT .....	15



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# 1 Introduction

- 1.1 This rebuttal evidence has been submitted in response to the proofs of evidence of Matthew Wilson and David Elmore on behalf of Welwyn Hatfield Borough Council (“WHBC”), and Jed Griffiths on behalf of the Combined Objectors Group (“COG”).
- 1.2 As some of the matters raised overlap in the respective topics of these witnesses, I cover them by subject below, rather than by individual proof.
- 1.3 The matters this rebuttal evidence addresses are as follows:
  - The weight to be given to the emerging Local Plan;
  - Consideration of the site as part through the emerging Local Plan process;
  - The sustainability of the site;
  - Harm to the Green Belt.

## 2 The Weight to be given to the Emerging Local Plan

- 2.1 Matthew Wilson suggests at paragraph 2.1 of his proof of evidence that the emerging Local Plan (“eLP”) should be given significant weight as a material consideration in the determination of this appeal having regard to paragraph 48 of the NPPF (2021), which he quotes at paragraph 2.15. His position is then adopted by David Elmore in his evidence on planning balance.
- 2.2 Whilst Mr Wilson provides an overview of the process of preparation of the eLP in paragraphs 2.2 - 2.14 of his proof, his justification for giving the Plan that level of weight is limited to paragraphs 2.16 - 2.17. There he notes that the Plan has progressed to Main Modifications consultation and that *“the Inspector has indicated that, subject to the modifications being consulted upon, the Local Plan is likely to be capable of being found legally compliant and sound”* (My underlining).
- 2.3 I note Mr Wilson provides no commentary, however, on the extent to which there are unresolved objections to the Plan, one of the criteria in paragraph 48 of the Framework for determining the weight emerging plans should be given.
- 2.4 Since the examination hearings closed in March 2021 there has been no opportunity for other participants to comment on matters that have subsequently transpired, with all the discussions having taken place solely between WHBC and the Inspector. This includes issues that have a fundamental bearing on what the Plan will ultimately look like, that being substantively different to the Submission version. For example, reducing the Plan period to 10 years (the Submitted Plan covered a 20-year horizon) and it not meeting the FOAHN in full, even for 10 years (See paragraph 1 of EX292, **CD 6.119**) which the Inspector acknowledged in EX290 (**CD 6.84**; see para. 4) means the Plan will not be *“fully consistent with the framework”*.
- 2.5 I consider it is highly likely that there will be substantial objections to the Main Modifications on these points.
- 2.6 In the presentation given to Members at the Full Council meeting of 20th December 2021 Mr Wilson advised (See minute 13.19 of the full transcript at **Appendix RGR2** to this rebuttal) that the Main Modifications are the first public consultation on the eLP since 2016.
- 2.7 As I now come onto explain, the inclusion of the high harm Green Belt sites (HS22/BrP4, HS29/Cuf12 and HS30/Cuf7) in the Plan, but also Green Belt

release generally, is also inevitably going to attract considerable objection.

- 2.8 As acknowledged by Mr Wilson at paragraph 2.11 of his proof, the Council resolved on 27<sup>th</sup> January 2022 to put forward a revised strategy of sites which was not dependent on the release of high harm land from the Green Belt. Members of WHBC have also made very public comments about the matter of the 3 high harm Green Belt sites, not least in letters to the then Prime Minister (CD 6.116) and Housing Minister (CD 6.117), where they state that under no circumstances would the Council adopt a plan that includes them. Therefore, the fact that they remain in the eLP is highly likely to attract substantial objections from those opposed to development in the Green Belt. That concern will only have been amplified by the content of the Written Material Statement of the Secretary of State of 5<sup>th</sup> December 2022 (CD 8.39) and the consultation on proposed changes to the NPPF, which have been widely reported in the national press.
- 2.9 Indeed, I regard it as very likely that there will be considerable pressure to abandon or substantially amend the plan to reduce considerably the amount of Green Belt release in light of the WMS and consultation on changes to the NPPF.
- 2.10 I note at paragraph 2.13 of his proof, Mr Wilson refers to the need to add three sites to the supply identified by the Council in July 2022 to achieve 9,200 dwellings, but he neglects to mention that these are the three “high harm” sites. He also suggests that the 9,200 dwellings is the requirement identified by the Inspector, which is not correct. As noted in paragraph 2 of the Inspector’s letter to WHBC of 6 September 2022 (EX290; CD 6.84), the 9,200 dwellings is the supply that could be adopted on sites WHBC has submitted to the examination. The 10-year requirement is actually suggested to be 9,460 dwellings.
- 2.11 The draft Minutes of the Full Council meeting of 20<sup>th</sup> December 2022 (Copy included at **Appendix RGR1**) highlight the sensitivity of this issue. Paragraphs 9 - 11 of draft minute 37.2 state:

*“Members raised concerns over the accuracy of the minutes from the Cabinet Meeting on 16 December which state that the Council is “being compelled to consider consulting on a Local Plan which included three sites the Inspector has found sound and insists the council includes, against the Council’s wishes as expressed in recent years and recent decisions”. By way of clarification, it was noted that this was in reference to the Inspector’s letter to the Council in June 2021 following the stage 9 hearing sessions (EX 271). Paragraph 5 of the letter states: “There are circumstances whereby I could find the plan unsound if I consider there to be potentially sound sites that have not*

*been submitted but are clearly more sustainable than ones that have and/or are likely overall to be less harmful to the green belt. I will make that judgement when I receive details of additional sites from the Council and have read the accompanying justification for the basket of sites that have been selected". The Inspector required the Council to submit those sites which are both sustainable and less harm to green belt in preference to the High Harm sites. The Inspector has not made any judgement in advance of those sites being submitted.*

*Members were concerned at the damage that would be caused by developments in areas that have been deemed as high harm or where it is clear that there will be substantial and possibly irreversible damage to natural ecosystems and existing green space. Members wanted to protect the green belt and the heritage of the Borough.*

*Clarification was sought regarding the scope of the consultation. And whether a decision specifically around the development of HS22, HS29 and HS30 would be included. Officers confirmed that the consultation would cover all the main modifications which the Inspector considers are required to make the Plan sound. The sites in question have been in the plan from the start, and with these modifications to the whole Local Plan, the community and stakeholders can now have their say. Following the consultation the inspector will take all views into account when writing their report for the council to consider."*

- 2.12 I explain in detail in paragraphs 5.15 - 5.37 of my main proof a number of further reasons why I consider that no confidence can be placed in the eLP ever reaching a point whereby it will be adopted and why it should only be given **limited weight** and not the significant weight suggested by Mr Wilson. In paragraphs 2.8 - 2.23 below I provide further reasoning as to why my view on the weight is correct.
- 2.13 At paragraph 5.16 of my main proof, I observed that the Officer presenting the reports to the meetings of WHBC's Cabinet Planning and Parking Panel, Cabinet and Full Council, along with the Executive Member for Resources and Planning, advised Members multiple times that voting to proceed with the Main Modifications consultation does not bind them to voting to adopt the Plan at a later date.
- 2.14 By way of example, the fifth paragraph of draft minute 37.2 of the Full Council meeting on 20<sup>th</sup> December 2022 (Appendix RGR1) states:

*"The Council can withdraw the plan at a later date depending on the outcome of the consultation and any further assistance from*



*legislation. It also gives the Council a certain amount of time to consider any new legislation and consider the results of consultation”*

2.15 The thirteenth paragraph of the minutes add:

*“It was noted again that the progression to consultation does not prejudice a future decision on the adoption of the plan as there were concerns that going out to consultation, including the three sites, automatically includes these within the local plan”.*

2.16 Minute 13.19 of the transcript of the Full Council meeting of 20<sup>th</sup> December 2022 confirms that Mr Wilson advised Members during his presentation:

*“.....So progression to main modifications in January and February would ensure the continued progression of the local plan examination, keeping the plate spinning. It allows the plan to be material in the determination of planning applications and at appeals. It would be the first public consultation since 2016. It does set the plan on a path towards adoption but it does not prejudice a future decision on adoption. It does not prejudice a future decision on adoption. It does mean delivery of 13,392 dwellings not 15,200 dwellings. As I have said, progressing a plan based on the current standard method is a worse option. Emerging reforms to the planning system may inform a decision on adoption.....”*

2.17 Minute 21.4 of the full transcript confirms that Councillor Boulton, Deputy Leader of the Council and Executive Member for Planning and Resources, advised in his comments prior to the debate on the item:

*“.....It would of course be perfectly proper to withdraw the plan at a later date, depending on the outcome of the consultation and any further assistance on legislation but as I have said before we have had false dawns with legislation and it may be some time. It is interesting that I had thought that some of this would be dealt with through the NPPF but from what Matt has said now, it will actually go through legislation in Parliament which will obviously take some months. This recommendation to go out to consultation is not binding on members or the Council to adopt the plan. That will be for the Council to decide at a later date, probably late Summer, or Autumn depending on what the Inspector says but as I’ll just repeat, this decision tonight is to go out to consultation, it does not bind the Council to accept the result of that and the final plan.....”*

2.18 I explain in paragraphs 5.19 - 5.21 of my main proof the issue with the timescales for the remainder of the eLP process in the context of the local

elections being held in May 2023. I note that Mr Wilson's evidence confirms my view that the Inspector's Report will not be received in sufficient time for the Council to adopt the Plan prior to the pre-election (purdah) period ahead of the local elections in the Borough in May, assuming the Plan is found by the Inspector to be sound (See para. 2.17 of Mr Wilson's proof, where he suggests adoption of the Plan in the Summer).

- 2.19 At paragraph 5.20 of my main proof, I suggest that a change in control of this Council is a real possibility following the local elections given the slim majority held by the Conservative Party. I note the references to this by Conservative Councillors Thusu and Kamsumu at minutes 27 and 41 respectively of the full transcript of the Full Council meeting of 20<sup>th</sup> December 2022 (**Appendix RGR2**).
- 2.20 I also comment in paragraph 5.21 of my main proof that such a scenario could lead to the Plan not being adopted even if it is found to be sound. The comments of Councillor Chesterton at minute 23 and Councillor Zukowskyi at minute 25 of the transcript of the Full Council meeting of 20<sup>th</sup> December 2022 (**Appendix RGR2**) demonstrate the concerns of opposition Members to the eLP and illustrate this point.
- 2.21 At paragraph 5.14 of my main proof, I listed a number of local planning authorities that have paused or delayed work on their emerging local plans since the Written Ministerial Statement of the Secretary of State of 5<sup>th</sup> December 2022 was published. Included at **Appendix RGR3** is an article published in Planning Magazine on 19<sup>th</sup> January 2022. This identifies 7 LPAs, some of which I have already referred to at paragraph 5.14, that have specifically cited the WMS of 5<sup>th</sup> December or the subsequent consultation on the NPPF as a reason for delaying plan-making. These are:
- Horsham;
  - Isle of Wight;
  - Mole Valley;
  - North Somerset;
  - South Staffordshire;
  - Stockport; and
  - Teinbridge.
- 2.22 The article also identified 12 further LPAs that have delayed plan-making since September 2022, with a number of these citing changes in, or concern over, Government policy as a reason, including:

- Basingstoke and Deane;
- Dorset;
- Hinckley & Bosworth;
- Nuneaton and Bedworth;
- Swindon;
- Tandridge; and
- Three Rivers.

2.23 As already noted in my main proof, this makes the Council's sudden decision to accelerate its local plan timetable all the more surprising, particularly given its long history of prevaricating in the preparation of additional evidence requested by the examining Inspector.

2.24 These points all reinforce why the eLP should be given only **limited weight** in the planning balance exercise, as I have done.

### 3 Consideration of the site through the emerging Local Plan process

#### *Consideration of the Site by Officers*

- 3.1 At paragraph 3.3 of his proof, Matthew Wilson states that “.... *Officers have not recommended the site for inclusion in the ELP on three occasions....*” with David Elmore echoing that comment at paragraph 6.7 of his evidence.
- 3.2 This comment is made in response to the Appellant’s SoC. In Section 6 of my main proof of evidence I provide a detailed overview of the consideration of the Local Plan. In this I note:
- BrP12 (a larger parcel of land containing the appeal site) was considered suitable for allocation in the Housing Site Selection Background Paper June 2016 (CD 6.112) produced by Officers of the Council. See Table 33. I explain at paragraph 6.4 - 6.8 that this larger site was subsequently not included as an allocation due to a perceived lack of education capacity, that was actually incorrect.
  - The HEELA 2019 (CD 6.12), also produced by Officers, confirms (table 26) that both parcels BrP12 and BrP12a pass the site assessment, whilst the proforma on page 314 confirms they are suitable for allocation.
  - Table 18.3 of the Housing and Employment Site Selection Background Paper 2019 (CD 6.10), again prepared by Officers, confirms that BrP12a (the appeal site) is considered suitable for allocation. Table 18.5 lists the sites recommended for allocation. This includes BrP12a.
  - The Reports to WHBC’s Cabinet Planning and Parking Panel (CPPP) of 23<sup>rd</sup> and 29<sup>th</sup> January 2020 (CD 6.96 and CD 6.118) recommend at paragraph 2.2 that the Panel recommend to Cabinet that the sites identified as Option 1 of the Site Selection Background Paper 2019, detailed in Sections 10-24 (BrP12a is covered in Section 18 as referred to above), be published for consultation as sites to be added into the Local Plan.
- 3.3 Whilst Mr Wilson does not explain the reason for his statement at paragraph 3.3, it appears to be in response to the wording used in the SoC. I phrase the position differently in my main proof, noting that the site has been found suitable for allocation on more than one occasion and recommend for inclusion

in the eLP by Officers. This does appear to be semantics, however, and I note that both Mr Wilson and Mr Elmore fail to acknowledge at any point in their proof that the site has been found suitable for allocation in the Site Selection Background Papers in both 2016 and 2019 and was recommended for allocation when the latter was presented to CPPP on 23<sup>rd</sup> and 29<sup>th</sup> January 2020.

- 3.4 As I note in my main proof, that is, in my view, a highly important material consideration, which neither Officer has referred to in their evidence.

*Consideration of the site by the Examining Inspector*

- 3.5 Mr Wilson also states at paragraph 3.3 of his proof “... *nor does the Local Plan Inspector recommend the inclusion of the site*”. Again, this is reiterated by Mr Elmore at paragraph 6.7 of his evidence. However, I do not claim in my proof that the Inspector has recommended the site for inclusion. What they do note is that from his assessment and comments on the site in EX273 it is evident that he considers it would cause less harm to the Green Belt than the Stage 3 Green Belt Study concludes on the larger parcel, that it is a sustainable location, and one that could contribute to the Council’s 5 year supply. Thus on any fair reading, Inspector Middleton considers the site to be a suitable one for inclusion in the Plan.
- 3.6 I note that neither Mr Wilson, nor Mr Elmore offer any comment or observation on the findings of the Inspector at paragraphs 115 - 121 of EX273 (CD 6.71) as a clear material consideration of relevance to this appeal. Instead, they appear to focus solely on the strict position that the Inspector has not formally recommended the site for allocation. Both Mr Wilson and Mr Elmore quote paragraph 7 of EX273 (CD 6.71) where Inspector Middleton says he has not concluded on the sites that have not formally been submitted for examination by the Council (including the appeal site), but “... *I have however, discussed, where appropriate, my findings on the evidence base, including the representations and hearing discussions, concerning these sites*”.
- 3.7 Paragraph 7 of EX273 (CD 6.71) also needs to be read in context, particularly with EX272 (CD 6.70), which is the Inspector’s Supplementary Report, published at the same time as his findings on the sites that passed the site selection process but have not been submitted by WHBC. In particular, paragraph 11, where he discusses the contribution these sites could make to the shortfall in housing. Specifically, he states:

***“In my view, 14 out of the 15 additional sites examined could be found to be sound in the right circumstances (footnote 5 see para. 6 above). These would provide opportunities to construct about another 1300***

***additional ds, making an overall total that exceeds 17,000 ds. on sites that have already been found to be sound or could be found to be sound.”***

- 3.8 Paragraph 6 referred to in footnote 5 after the Inspector’s reference to “*the right circumstances*” discusses the additional sites put forward by WHBC that had not previously been examined and then explains the circumstances in which they could be found sound. It states:

***“I therefore decided not to terminate the Examination at that point and proceeded to arrange to examine the additional sites at a series of virtual hearings in March 2021. My observations, following those events, are set out in a separate note (Footnote 1. Stage 9 Round-up note on sites (EX262)). With the exception of 4 sites (Footnote 2. Some of these could now be commitments, whilst others may come forward as windfalls), I have concluded that the additional sites that I examined, following their submission by you last November, could be found sound, although a further 2 are in doubt. For the most part their soundness will depend upon a justification that exceptional circumstances exist to remove the land from the GB in the context of their comparative harm to the GB and its purposes as well as their comparative sustainability and in the context of the overall development strategy (Footnote 3. These are planning judgements that the Council needs to make, on a justifiable basis, using a credible planning related evidence base). Excepting the unsound sites, the remaining sites could add about another 1,300 ds to those submitted at the Regulation 19 stage and subsequently found to be sound (about 9,000 ds). With development since 2016, commitments and windfalls, they could together deliver over 14,000 ds. In addition, there are a further 5 sites that have already been examined, which could be found sound. They could provide an additional 1,750 ds”.*** (My underlining)

- 3.9 What the Inspector is saying then, is that it is for the Council to submit the sites that it thinks are sound and meet the exceptional circumstances test for release from the Green Belt, having regard to their comparative harm to the Green Belt, their comparative sustainability and to the development strategy of the Plan. The Inspector has therefore not recommended any sites for inclusion, but has tried to assist the Council, whose task it is to submit the necessary sites to meet its full objectively assessed housing need, in doing so, by providing his findings on these sites, including the subject of this appeal.
- 3.10 As I cover in detail in Section 6 of my main proof, the appeal site is within a wider parcel that the Council’s own Green Belt assessment found would have least harm to the Green Belt of any assessed. Inspector Middleton in EX273 (CD 6.71 paras. 115 - 119) reaches the view that the appeal site would have less harm than the parcel it was assessed as part of in the LUC Stage 3 Green Belt Study. He also concludes at paragraph 120 that it is a sustainable location for

residential development and at paragraph 121 that it could contribute to the five-year housing supply. It is therefore undisputable that Inspector Middleton considers this to be a suitable site.

- 3.11 Mr Elmore fails to properly consider this highly material consideration in his discussion of the appellant's other considerations in Section 6 of his evidence, focusing solely on his narrow interpretation that the Inspector has not formally concluded on the site, ignoring the fact that the Inspector is not in a position to do so unless the Council submits it, and providing no consideration of the Inspector's findings and their implications for this appeal as a material consideration.
- 3.12 Mr Elmore also chooses, with no explanation, to have no regard to the fact that Officers have also found the site suitable, more than once, in the preparation of the eLP, and clearly recommended it for allocation in the Report to CPPP in January 2020. Again, this is a highly material consideration that Mr Elmore has simply ignored in his undertaking of the very special circumstances balance.

## 4 The Sustainability of the Site

- 4.1 At paragraph 6.33 of his proof, David Elmore argues that the site is a sustainable location, but not a highly sustainable one having regard to the scale, type and range of services and facilities in the village centre, frequency of rail and bus services and connections to towns/cities.
- 4.2 This position conflicts with the Council's own evidence to the eLP examination. Specially, in the Council's Matter 3 (Sustainability) Statement for the Stage 8 Hearings in support of the proposed allocation west of Brookmans Park Railway Station (BrP4) included at **Appendix RGR4**, it states at 99 f):
- “.... On this basis, the opportunity to support highly sustainable development at one of the borough's most sustainable locations and settlements, are thought to justify he sites allocation for housing.”***
- 4.3 Whilst these comments are made in support of the BrP4 allocation, they could equally apply to the appeal site, which the Council accepts is located such that the facilities, services and public transport opportunities in the village centre are all accessible. I note also, the description of Brookmans Park as one of the borough's most sustainable locations.
- 4.4 Mr Elmore goes on to suggest that as Policy H2 of the adopted Local Plan includes the criterion *“the location and accessibility of the site to services and facilities by transport modes other than the car”* the site's location is not an “other consideration/benefit” that forms part of the very special circumstances. I disagree and consider the opportunity to deliver hugely needed new housing in a highly sustainable location, that also happens to be, even on the Council's evidence, of least harm to Green Belt, to be very material. Failure to deliver housing in such a sustainable location is likely to result in it being provided somewhere less sustainable, assuming it gets provided at all.
- 4.5 The Council discussed the Inspector's position on the need to provide for housing in sustainable locations in EX180C, its Supplementary Note on Policy SP24 Symondshyde New Village (**Appendix RGR5**), where it states:

***“.... The Inspector is aware that there are four railway stations within the Borough outside of the two main towns and that these locations are well served by public transport. Whilst not familiar with the detailed geography and planning considerations of their surroundings, it seems to him that there is land within walking distance of at least***



*three of these stations (possibly all four) and within the Borough, that should be considered for release, in the context of paragraph 138 of the National Planning Policy Framework, before land that is not well served by public transport is assessed. Some of this is already proposed for development. A revised Sustainability Statement could well demonstrate that there are sound planning reasons justifying why other land cannot be removed from the Green Belt and that if the housing need being advanced by the Council is to be met, then less sustainable options from a transportations perspective, such as Symondshyde, should be considered.”*

- 4.6 As covered in my main proof, the Council has not provided sound planning reasons for not including the appeal site as an allocation as part of the examination process, with it having been recommended for allocation by Officers to help make up the shortfall in housing identified by the Inspector. The Members of the Council’s decision not to do so, see the minutes of 29<sup>th</sup> January 2020 CPPP meeting (CD 6.87), provided no justified reason for not doing so.

## 5 Harm to the Green Belt

- 5.1 Discussing paragraph 148 of the Framework at paragraph 5.8 of his proof of evidence, Mr Elmore makes the observation that the scale of substantial harm from the appeal scheme would be considerably greater than that of an extension, or a single building and he uses that as justification for suggesting that the harm, given substantial weight, should be at the high end of the scale. That position ignores completely the other side of the planning balance, in that whilst an extension or single dwelling may have less harm than the appeal scheme, they would also deliver little or no benefit.
- 5.2 I refer in my evidence (see paragraphs 7.91 and 8.7) to the extent of harm to the Green Belt resulting from the development being at the lowest end of the spectrum of harm that there could be, by which I mean from a development of the scale and nature of that proposed with all of its benefits. As I set out in my main proof, that limited extent of harm to the Green Belt, which is largely limited to the immediate site, is highly material to the determination of this appeal.

### *Evidence of Jed Griffiths for COG*

- 5.3 Mr Griffiths, at paragraph 6 of his proof of evidence, suggests that Green Belt purposes a), b) and c) are all relevant to the determination of this appeal, however, he offers little to no evidence of any actual harm or conflict. For example, he alludes to the Green Belt in Hertfordshire preventing the sprawl of London, presumably in reference to purpose a), but does not explain how the site contributes to it, or importantly, how its development would result in harm.
- 5.4 Mark Flatman deals with the point about coalescence/purpose b) in his evidence, however, I note that the Local Plan Inspector did not consider this to be a concern given the surrounding woodland - see paragraph 117 - 118 of EX273 (CD 6.71).
- 5.5 Mr Griffiths also suggests that with the BrP4 (High Harm) site, that Brookmans Park will provide more than its local housing need. This fails to acknowledge that Brookmans Park has been restricted by Green Belt since the current boundaries were adopted in 1993, whereas the two towns have continued to growth through brownfield redevelopment and office conversions. Officers of the Council also advised Members at the CPPP meeting on 13<sup>th</sup> January 2022 (CD 6.98 para 4.4), that:

*“Clearly the majority of villages will need to deliver more than the*

*local need or else it will not be possible to meet the FOAHN. The Inspector has indicated that the distribution should be proportionate but tempered towards the ‘tier 3 settlements and those villages with stations. These are:*

- *Tier 3 - Welwyn, Welham Green, Brookmans Park and Cuffley*
- *Villages with stations - Digswell, Welham Green, Brookmans Park and Cuffley.”*

5.6 I have also commented separately above and in my main proof on the Council’s previous resolution to remove BrP4 and do not repeat that here.

5.7 At paragraph 18 Mr Griffiths suggests that the 5 year housing land supply position is about to be remedied in Welwyn Hatfield Borough. I note that not even the Council is making that claim.

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