

## **Representation from Hertingfordbury Parish Council**

### **Joint Examination of Welwyn Hatfield Local Plan 2013-32 (WHLP) and East Herts District Plan 2011-33 (EHDP) – Birchall Garden Suburb East of Welwyn Garden City**

#### **Hearing Representatives:**

**Cllr Gary O’Leary BSc MBA Dip M.** Chairman Hertingfordbury Parish Council (HPC). Also current Chairman of the Central Herts Green Corridor Group, the Friends of Panshanger Park & Hertingfordbury Parish Neighbourhood Plan Group. Member of Herts Local Access Forum and Herts County Council Strategic Advisory Group for Panshanger Country Park.

**Mr. Keith Seaman BSc. Dip. Cert. CBiol MRSB. MCIEEM.**

Main Author of “Ecological Evaluation – Proposed Birchall Garden Suburb Area and Environs”. Professional qualifications include full membership of the Royal Society of Biology (RSB), registered as a Chartered Biologist and full member of Chartered Institute of Ecology and Environmental Management (CIEEM). Mr. Seaman was also Landscape Conservation Officer, dealing with all ecology matters, for Welwyn Hatfield Council until 2002.

#### **1 Hearing Statement**

##### **Executive Summary - HPC view on Legal Soundness of WHLP & EHDP in relation to Birchall Garden Suburb (BGS)**

The proposed development of BGS is a cross border strategic development for WHBC & EHDC.

As well as satisfying the legal principles of soundness within NPPF and other associated legislation. Section 33A of the Planning and Compulsory Purchase Act 2004 (as amended by section 110 of the Localism Act 2011) applies an additional and particular ‘duty to co-operate’ on each Council with regard to this site selection.

The 'duty to co-operate' is on going and requires the Council's to gather necessary evidence, and to evaluate the outcomes of that evidence in their decision-making. For example potential constraints should be fully understood, to ensure housing allocations are deliverable and viable when considering a strategic cross border site.

It is the opinion of Hertingfordbury Parish Council (HPC) that both Councils have failed to act reasonably or diligently, in executing their duty to co-operate on critical issues.

These issues, if properly assessed, may have affected the decisions to allocate BGS East of Welwyn Garden City in both plans. These issues, based on evidence now available, call into question the deliverability and viability of the site.

Areas that were identified to the Councils, for further investigation and due diligence included:

- Biodiversity, ecology and ecosystem services.
- Land contamination and potential impact of development on, or adjacent to, the closed Cole Green landfill site.
- Impact on heritage assets of potential development.
- Green belt. The assessment of purpose and justification of 'exceptional circumstances' for alteration of boundaries to accommodate BGS development.

These areas were all highlighted and discussed with both Councils in representations before and at a meeting of 25th August 2016 chaired by the Chairman of the HPC Neighbourhood Plan Group.

Both of the WHBC & EHDC Heads of Planning attended along with the lead Borough/District Executive Council Members for each Local Plan. The meeting also included subject matter experts on the above areas.

The meeting raised 25 important questions (**Appendix 1**). These were shared in advance of meeting and covered the key areas, which HPC and other experts believed needed to be assessed **in advance** of allocating the site. No reasonable answers were given before or at the meeting by the Councils, as to why this

work was not being completed and there has been insufficient follow up on the key areas identified. **Only now at the joint Inspectors Hearing are the areas of concern being more thoroughly examined and discussed.**

Such were HPC concerns, regarding ecology, following the meeting with the Councils. HPC commissioned an "Ecological Evaluation of BGS and its Environs" (**Appendix 2**).

HPC is also aware of and supportive of additional work completed by the Welwyn Garden City Society, Herts Garden Trust, Central Herts Green Corridor Group and Gascoyne Cecil Estates on other key areas of concern that were covered at the above meeting.

A BGS Memorandum of Understanding has been agreed between WHBC, EHDC and HCC (March 2017). That MOU states that **"informed by technical evidence** the plans propose to accommodate approximately 2,550 homes over the plan period".

HPC believes that technical or other studies on key matters were not completed **prior to decisions to allocate the site** into the Local Plans.

The Inspectors for the WHLP & EHDP plans are, only now, looking to inquire more deeply into the key areas. **HPC welcomes this and are pleased to see the range of matters and questions being asked at the joint hearing.**

With regard to the legal tests in relation to the BGS site allocation. HPC believe that both plans fail the following legal tests of soundness.

The BGS plans are **not justified** when considered against reasonable alternatives based on proportionate evidence.

The BGS plans are **not effective** and unlikely to be deliverable (or viable) over the plan periods.

The BGS plans are **not consistent with national policy** and will not therefore be able to achieve sustainable development in

accordance with the Framework's policies.

In addition, in the view of HPC, both Councils have **failed in their 'duty to co-operate'** on a cross border strategic site allocation.

HPC believe it is difficult for the Councils, in light of site allocations made in absence of the necessary evidence, to provide remedies to the situation at this stage.

**HPC believe the BGS site should be withdrawn from both plans and would ask the Inspectors to consider this modification, should they be in agreement, following the joint hearing.**

To do otherwise could leave both plans at risk of further legal challenge. Considering the time and resources expended to date by WHBC, EHDC and many other unfunded and voluntary groups, this would be unfortunate. In light of a legal challenge and further delay, both Councils would be vulnerable to further planning by appeal from developers.

Throughout the BGS discussions, the promoter has indicated that they would be bringing a planning application forward imminently. This however has never transpired. **HPC would welcome the opportunity to comment on a planning application brought forward by the landowner.** For the reasons above and below HPC is confident that such a planning application(s), based on the currently proposed sites, would fail.

HPC present the following information to the Inspectors Matters & Issues and specific questions as follows.

## **Matter 1 – Green Belt**

### **Issues** Questions (1) to (5)

Exceptional circumstances have not been identified. There is no evidence of how the Councils worked together with regard to this site selection and the excessive scale of Green Belt boundary alterations that have been suggested. The Green Belt in question on the north side of the A414 plays a key role in maintaining openness, both for travellers on the A414 and local residents. The Green Belt south and southeast is preventing urban sprawl and prevents increased coalescence with the local village of Hertingfordbury Parish, in particular Cole Green. It would also further significantly narrow an important Green Belt open countryside space between Welwyn Garden City and Hertford.

## **Matter 2 – Green Corridor**

### **Issues** Questions (6) to (8)

HPC endorses and supports the comments of the Central Herts Green Corridor Group (CHGCG) with regard to this matter. HPC recognizes the Green Corridor (to the west of A1) runs the full length of the northern side of the A414 through to Hertford and provides key existing green infrastructure and ecosystems services.

There is no evidence presented on how the two councils have worked together (cross border) to ensure the Green Corridor will flourish. HPC as a supporter of the CHGCG and as part of its Neighbourhood Planning activities sees the current Green Corridor being further enhanced without the need for the BGS development. Work is already underway with the Herts Local Access Forum, HCC Rights of Way, HCC Public Health and landowners to improve access across the corridor. Through the 2017 S106 associated with restoration of the Panshanger Park

Capability Brown landscape adjacent to Panshanger Lane, new footpaths and bridleways are being provided. HPC see this work of enhancement of the Green Corridor, whilst maintaining and enhancing its ecosystems services, continuing. It is not reliant on development that would cause material damage to the corridor.

The 'Rising to the Challenge' August 2017 publication by bettertransport.org.uk (a paper supported by a wide range of national bodies) looks at future priorities for England's Strategic Road Network. It recognises the landscape scale importance of roadside green corridors for wildlife, people and heritage.

### **Matter 3 – Ecology**

Birchall Garden Suburb contains a number of international and local wildlife sites as well as areas of ancient woodland, some of which contain protected species. The NPPF at paragraph 117 requires that planning for biodiversity should be undertaken at a landscape-scale and across local authority boundaries. It also says that the planning system should minimize impacts on biodiversity and provide net gains in biodiversity where possible.

Through the HPC 'Ecological Evaluation of BGS and its Environs' it was established that the study area supports: 8 Country BAP Habitats, 9 Local BAP Habitats, 1 Local Nature Reserve, 7 Local Wildlife Sites, 4 Ancient Woodlands. It further identified 158 protected/important plants, invertebrates, amphibians, reptiles, bats, mammals and birds.

EHDC refer in its Natural Environment policy to a use of a Biodiversity Impact Assessment Calculator and offsetting, to assess and mitigate ecological impacts of development. **HPC concur with the concerns set out by the House of Commons Environment Audit Committee:**

"The Government's Green Paper does not provide an evidence

based analysis of how offsetting would deliver “biodiversity gain”, according to the MPs. The twenty minute assessment for calculating biodiversity losses at a site, as been proposed by Ministers, is also overly simplistic. It should include particular species, local habitat significance, ecosystem services provided – such as pollination and flood prevention - and ‘ecosystem network’ connectivity to reflect the full complexity of habitats, according to the Environmental Audit Committee. For sites of special scientific interest, the weightings in the metric must fully reflect their value as national, as well as local, assets. Ancient woodlands should be even more rigorously protected” **Joan Walley MP (Chair of the EAC)** further added:

“The assessment process currently proposed by the Government appears to be little more than a twenty minute box-ticking exercise that is simply not adequate to assess a site’s year-round biodiversity. If a twenty minute assessment was carried out in a British wood in winter, for instance, it would be easy to overlook many of the migratory birds that may use it as habitat in summer.”

NPPF states that designated sites, ecological networks, wildlife corridors and stepping-stones are important and local plans should have policies for their protection. The HPC ecological evaluation study has demonstrated that the BGS area supports features deemed important under NPPF. **The study author Mr. Keith Seaman will be present at the Hearing to provide further comment and support to the Hearing as required.**

### **Issues** Questions (9) to (18)

9) Has an overall holistic survey of the wildlife importance of this area that looked at the interrelationship between the various sites been undertaken, together with risk assessments? **No**

10) If so, has this led to a strategy to minimize the impacts on and achieve net gains to biodiversity within the area during and following the development? **Holistic survey not completed.**

11) In the context of the area's wildlife, is the Sustainability Appraisal sufficiently robust to act as a justifiable basis for an overall assessment of this development proposal? **No.**

12) Has a joint Sustainability Appraisal been undertaken to ensure that the overall cumulative impacts of this proposal, within the two local authority areas, have been fully assessed and considered? **No.**

13) Is there a cross boundary biodiversity plan at a landscape-scale that looks at the cumulative impact of the whole development? **No.**

14) What mitigation measures are proposed to maintain the functioning of the area's ecological assets? And what confidence can be placed on their robustness and adequacy to minimize any impacts on biodiversity and provide net gains in biodiversity where possible? **As above-mentioned surveys have not been completed, any suggests of mitigation and minimizing of impact would be highly spurious.**

15) Has sufficient attention been paid to the protection and enhancement of wildlife sites and their inter-linkages? **No.**

16) Will the priority habitats of species of national and international importance found in the area be preserved, restored and/or recreated when this development is implemented?

**Without the baseline study data it is impossible to say.**

17) If so how will this be achieved? **Without the baseline study data it is impossible to say.**

18) Are the requirements of Section 40(1) of the Natural Environment and Local Communities Act 2006 likely to be met through this development if it is implemented as proposed?

**No.**

## **Matter 5 – Other Environmental Considerations**

### **Issues** Questions (21) to (28)

HPC would refer to and support the comments of the Central Herts Green Corridor Group and the investigative work of the Welwyn Garden City Society with respect to landfill contamination effects. HPC are in particular concerned with the **potential public health effects on current homes** within the Parish of disturbance of the historic landfill. HPC would also be concerned with the **public health issues that could affect new homes** built in the parish, on or close to a historic (and potentially disturbed landfill) with unknown and/or dangerous waste products.

### **Noise and air quality**

29) Has there been an assessment of noise and atmospheric pollution levels along the northern side of the A414?

No surveys have been seen by HPC at this point

30) If so do these demonstrate that an acceptable residential environment can be achieved in the vicinity of the road without the need to resort to mitigation?

The noise of the A414 is already of considerable concern for residents of the Parish, in particular within Birch Green, Cole Green, Letty Green and Hertingfordbury. It would seem highly inappropriate from a residential amenity perspective to build close to the A414. A significant buffer is required to reduce the detrimental noise affects that affect public health. Environmental Noise Directives would suggest the location of houses as suggested at BGS are inappropriate. High car usage and associated increases in air pollution would be generated from the

proposed site.

## **Matter 6 – Sustainable location and movement**

### **Issues** Questions (31) & (32)

HPC supports the comments of the Central Herts Green Corridor Group on these matters.

## **Matter 7 – Historic Heritage and urban design**

There are a number of historic heritage assets within or close to the site, some of which are of national significance. In preparing Local Plans the NPPF requires Local Planning Authorities to recognize that heritage assets are an irreplaceable resource that should be conserved in a manner appropriate to their significance. The Planning (Listed Buildings and Conservation Areas) Act 1990 also requires them to have special regard to the desirability of preserving the setting of listed buildings.

### **Heritage Assets** Questions (33) to (37)

HPC supports the comments of Herts Garden Trust on these matters.

With regard to impacts of BGS on the Grade II\* landscape, park and gardens of Panshanger Park, HPC is particularly concerned.

The Parish has secured through HCC an enhanced restoration scheme for the western end of the park, through a new S106 agreement for inert material import for restoration of the Capability Brown landscape adjacent to Panshanger Lane.

The new Historic England planning guidance issued in December 2017 "The Setting of Heritage Assets Historic Environment Good

Practice Advice in Planning Note 3 (Second Edition)” enhances NPPF guidance on settings. HPC believes this guidance is of material concern to all proposed sites in the vicinity of the Grade II\* park. Councils and Inspectors should be able to utilise this advice in their decision-making.

## **Garden City principles**

### **Issues (38) & (39)**

HPC supports the comments of WGC Society, CHGCG and Herts Garden Trust on these matters.

In addition, HPC believes the integrity of Welwyn Garden City, the worlds second Garden City, is under threat from the BGS proposals. The civic boundaries of WGC were set with a particular purpose in mind and extending the Garden City into East Herts in a wholly anomalous manner, clearly breaks with these planning principles.

## **Matter 10 – Waste**

An extensive area within the central part of this site has been historically filled with household refuse. There do also exist waste operators with functioning premises in the area.

### **Issues**

Questions (45) to (53)

HPC supports the concerns raised by the investigative work of Gascoyne Cecil Estates and the Welwyn Garden City Society. HPC have raised the issue of public health risks with Welwyn Hatfield BC.

## **Matter 11 – Implementation**

### **Issues**

54) Is the site realistically likely to deliver over 2,500 dwellings within the plan period? **No.**

55) What are the implications if one part of the allocation is found to be unsound? The viability of the whole site (and its delivered infrastructure, schools etc.) has been claimed to be contingent on 2,500 dwellings. If a significant part of the allocation is found unsound, the viability of the remainder is in question.

It would not be legally sound for one part of the strategic cross border BGS site to be removed, whilst retaining the other. BGS has always been promoted as a single development and has been allocated by the Councils as such. The site would likely be unviable if an alteration of this scale were made. It would also call into question whether other sites, previously screened out by either council, would need to be further considered.