

DATED 19th June 2020

JOINT STATEMENT

between

WELWYN HATFIELD BOROUGH COUNCIL

and

ARLINGTON BUSINESS PARKS GP LIMITED

**In relation to the availability of HAT2 ('the Site')
for development before 2036**

in response to examination document EX186C to the Welwyn Hatfield Local Plan Examination

1. INTRODUCTION

- 1.1 This statement is submitted in response to the Inspector's note (examination document **EX186C**) to the Welwyn Hatfield Local Plan Examination (Round Up session on 12 March 2020 on Birchall Garden Suburb and Symondshyde). Under the sub heading 'Symondshyde' the Inspector states: *'However, based on the information before the examination, I consider that the most sustainable location for a development of this critical mass in this part of the Borough, or an even greater amount of development, is much closer to the western edge of Hatfield than has been proposed. If this is not a deliverable option, I would invite the Council to prepare a statement for the Examination that clearly justifies why such an option on some of the land west of the existing/proposed extent of development between north of St Albans Road at Ellenbrook and west of Green Lane at Stanborough would not be available for development before 2036'*.
- 1.2 This statement has been agreed between Welwyn Hatfield Borough Council ("the Borough Council") and Arlington Business Parks GP Limited ("Arlington") (as the promoter and landowner of land to the west of Hatfield ("HAT2")). It is confined to a factual recitation of the availability of HAT2 for housing during the Plan period.

2. BACKGROUND

2.1 In January 2015, a Local Plan Consultation Document was published by the Borough Council and set out preferred options for the emerging Local Plan, in accordance with Regulation 18 of the Local Planning Regulations (2012). HAT2 was dealt with expressly at paragraphs 11.17-11.19 of the Consultation Document and the overall site-specific conclusion was that the majority of HAT2 was a 'more favourable' site for the development of an estimated 1100 homes. The Consultation Document also indicated that a potential 350 homes could be added to any allocation at HAT2 for future development needs. HAT2 is situated entirely within the Borough Council's administrative area.

2.2 On 13 June 2016, the Borough Council's Cabinet Housing and Planning Panel ('the Panel') considered sites to be included in the Local Plan Regulation 19 consultation. In written responses prior to the Panel, the Chair said in respect of HAT2:

'There has been dialogue between officers and the landowner's representatives concerning the effect of the existing Section 106 agreement for this land on the potential delivery of site HAT2. The Council has also taken legal advice on this. Although there are provisions in the Section 106 relating to a potential termination of any lease of the country park to a managing trust, in the event that planning permission for housing is obtained on some or all of the land, there is no provision in the Section 106 itself to permit housing development without a formal variation to that deed. The site could therefore only be made available for housing if there is agreement to a formal variation to the existing Section 106 in respect of the provision for the delivery of Ellenbrook Park. That variation would need the agreement of the landowner and the local authority parties to the original Section 106, Hertfordshire County Council, Welwyn Hatfield Borough Council and St Albans District Council. St Albans District Council has serious concerns about entering into a variation to the Section 106 without assurance that an area of satisfactory size and quality will be made available as a country park in place of the land which would be lost to the proposed housing development. In addition, officers of

this Council have set out concerns in the report before Panel tonight that the housing development would also be taking place in a context where minerals are being extracted over a long period on the remainder of the country park. Proposals have been made by the landowner to seek to address this, but these do not make provision for an adequate alternative to the existing Section 106 arrangements for the park, which has been open to the public since 2010. The report to this Panel is therefore not incorrect to refer to this difficulty.' The Panel voted 5-4 to remove HAT2 altogether from the Plan.

- 2.3** On the 20 July 2016, the Panel considered an amended draft Plan following the previous Panel's resolutions and voted to agree the Plan for Regulation 19 consultation with HAT2 removed.
- 2.4** The most recent Housing and Employment Land Availability Assessment (2019) has concluded the site to be:
- a. Not Suitable - *'already used as a country park'*
 - b. Available
 - c. Whether it is Achievable is considered *'Uncertain - (depends on S106 position)'*
- 2.5** The 2019 HELAA update states: *'The view of the Council has previously been that the site should not be allocated for housing as this would lead to the loss of a substantial part of the country park, without adequate compensating open space being provided'*. It also states: *'The Council's own legal advice however indicates that delivery might not be straightforward, due to the involvement of other local authority parties in the original S106'*.

3. PROVISION OF A COUNTRY PARK DURING MINERALS EXTRACTION

- 3.1** HAT2 forms part of the former Hatfield Aerodrome site, incorporating the former British Aerospace works which closed in 1993 resulting in the loss of 8,000 jobs. In 1998 limited alterations to the District Plan were adopted. The plan allocated part of the former Aerodrome for over 100ha of housing, employment and mixed-use development on land formerly designated as an 'Area of Special Restraint' i.e. land safeguarded for development beyond the previous plan period. The western part of the Aerodrome remained designated as Green Belt land. Arlington, the new owners of the Aerodrome funded a joint master-planning and planning exercise which was chaired and led by the Borough Council, in partnership with St Albans City and District Council ("the District Council") and Hertfordshire County Council ("HCC"). The Hatfield Aerodrome Supplementary Planning Guidance (SPG) sets out the agreed masterplan for the area of the site and was adopted by the Borough Council in November 1999. Figure 7 of the SPG sets out the landscape masterplan for the area identifying the key themes for different parts of the country park and green space within the development. The SPG can be found [online](#).
- 3.2** In 2000, a comprehensive outline planning permission (Welwyn Hatfield reference: S6/1999/1064/OP) was granted for what is now Hatfield Business Park, housing and other mixed uses. The planning permission was granted following completion of a Section 106 Agreement ("the Agreement") on 29th December 2000. The obligations in the Agreement include the provision of Ellenbrook Park as a country park of around **170ha**. The Agreement provides for Ellenbrook Park to be managed by the Ellenbrook Park Preservation Trust ("the Trust") to include representatives from Arlington, the Borough Council, the District Council, Hatfield Town Council, Colney Heath Parish Council and Watling Chase Community Forest. The Agreement proposes the grant of a 125-year lease of Ellenbrook Park to the Trust, with the proviso that Arlington can require the lease (in whole or in part) to be surrendered if

planning permission for housing development is granted in respect of any part of the Ellenbrook Park.

- 3.3** The country park area was identified in Policy MPG1 in the Minerals Local Plan 1991-2006 which was adopted in July 1998 as a Preferred Area for Mineral extraction for sand and gravel. This is also referred to in Section 9 of the SPG which sets a vision for land in the Green Belt and the phased delivery of the country park allowing for the extraction of minerals. The likelihood of mineral extraction on this land is recognised within the clauses of the Agreement relating to the provision of Ellenbrook Park. The land was confirmed as a Preferred Area for mineral extraction in the Minerals Local Plan Review adopted in March 2007, which remains the current adopted plan.
- 3.4** During 2010, recognising that the country park had not yet been opened to the public and that a planning application for mineral extraction was expected, the local authorities agreed with Arlington an interim scheme of planting and permissive public access to Ellenbrook Park, subsequently named by the landowner as 'Ellenbrook Fields'. The entirety of the Park opened to the public for access and informal recreation in late 2010 and has remained open since that time. Public access has been provided to Ellenbrook Fields in the form of a number of permissive paths, as well as from a single definitive right of way running north-south along its western boundary. Gates, seating, signage and interpretation boards were installed by Arlington as part of opening up public access to Ellenbrook Fields and the access and management arrangements were designed as an interim position to manage the site in advance of the intended minerals works in accordance with the SPG.
- 3.5** In 2011 a Green Infrastructure Plan for Welwyn Hatfield (examination library reference **ENV/3**) was prepared for the borough alongside the Strategic Highlights Green Infrastructure Plan for the County (examination library reference **ENV/4**). This identified the importance of the country park as a primary green infrastructure asset (see for example paragraphs 2.12

and 4.6 of document **ENV/3**). Policy SP12 of the Draft Local Plan as submitted deals with Strategic Green Infrastructure and identifies Ellenbrook Country Park for future links to the Welwyn Hatfield Green Corridor.

- 3.6** In 2016, a planning application was submitted by Brett Aggregates (who have a minerals operation agreement with Arlington) for minerals extraction of the southern part of Ellenbrook Fields (HCC ref: 5/0394/16). This was considered by the HCC Development Control Committee on 25th January 2017 when a resolution to grant consent was agreed subject to completion of a new Section 106 Agreement in relation to the proposed minerals operation and a variation to the Agreement to expedite the setting up of the Ellenbrook Park. The terms of the proposed new Agreement are now largely settled and the heads of terms for the separate Deed of Variation are agreed by the three authorities and Arlington.
- 3.7** The proposals by Brett would involve the extraction of minerals on a phased basis over a period of up to 35 years. During this period, public access will be maintained over those parts of the land subject to the mineral extraction permission, which are not subject to minerals operations. A detailed restoration plan has been proposed to HCC comprising a mosaic of grassland, woodland and wetland habitats. This restoration plan is designed to be in keeping with the country park objectives as set out in the SPG and the Agreement. Following extraction, each phase will be restored and reopened up for community access and the land transferred to the Trust.
- 3.8** There is no overlap between the red line boundary of the mineral extraction application (the proposed minerals lease land) and HAT2, which is also the subject of a current planning application with Welwyn Hatfield Borough Council (ref: 6/2018/2768/OUTLINE) for up to 1,100 homes, submitted by Arlington. Arlington estimates that the proposed built-up area within HAT2, if developed for housing, would be 32 hectares (including a 10-metre road corridor). The development of HAT2 is supported by phasing plans, a copy of which have been submitted by Arlington in support of its representations to the Local Plan examination.

The phasing plans (included in Appendix A of this Statement) indicate the area of open space that would be a country park (excluding green infrastructure as part of a residential development) available to the public over the years following commencement of development as set out below:

1-4 years	2023	148 hectares (366 acres)
5-8 years	2027	118 hectares (292 acres)
9-12 years	2031	108 hectares (267 acres)
13-16 years	2035	108 hectares (267 acres)
17-21 years	2039	107 hectares (264 acres)
22-25 years	2043	107 hectares (264 acres)
26-30 years	2047	109 hectares (269 acres)
31-35 years	2051	141 hectares (348 acres)

3.9 Following completion of minerals extraction and restoration, and the completion of development of HAT2, a total of 141 hectares of a country park would be available on Ellenbrook Fields (by way of comparison, Hyde Park in London is 142 hectares). This excludes 6 hectares of green infrastructure that will be provided as part of a residential development. It includes an additional area of about 10 hectares of land at the western end of the Park, also in Arlington's ownership, which is not included in Ellenbrook Park as set out in the Agreement and proposed lease plan.

3.10 It should be noted that even if the difficulties of agreeing a variation to the section 106 agreement were overcome the Borough Council does not agree that the first phase of

development would be completed by 2023 and consequently this would have a knock on effect on future phases. Arlington's position on delivery is that a planning application has already been submitted and a decision on that application including a deed of variation to the S106 could be concluded shortly after the adoption of the Local Plan. This would subsequently allow for a further two/three years for reserved matters to be approved and the first phase to be completed by 2023.

4. MODIFICATION AND/OR VARIATION OF THE AGREEMENT

4.1 It is common ground that, in order for housing development to take place, the Agreement would have to be modified or varied to remove HAT2 from Ellenbrook Fields either by consensus (i.e. a Deed of Variation) or upon application by Arlington (Section 106A of the Act) or upon appeal by Arlington (Section 106B of the Act). Whether this can be achieved in the Plan period is a key difference between the parties' respective positions as to whether HAT2 is available for development before 2036.

The Borough Council's Position

4.2 The Borough Council obtained legal advice from DAC Beachcroft and Wayne Beglan of Counsel.

4.3 The Borough Council considers that HAT2 is not suitable or available (in the sense used in the Inspector's letter or in accordance with the tests set out in the government's planning practice guidance Housing and Economic Land Availability) for development before 2036 because:

- (a) it would result in the loss of a community facility (a substantial part of an existing country park) that could not be replaced on other suitable land within Arlington's control during the Plan period. The Agreement in its current form as regards the extent of Ellenbrook Park therefore continues to serve a useful purpose and a Deed of Variation to exclude the area of HAT2 from the Park would not be appropriate,
- (b) the District Council (as well as the Borough Council) is an 'appropriate authority' pursuant to Section 106A and so would have to be a party to any variation of the Agreement and/or determine any application to modify the Agreement; and
- (c) the District Council objects to the development of HAT2 (and has concerns about entering into a variation of the S106) without assurance that an area no less advantageous to the community than the original S106 provision in terms of size and quality will be made available as a country park.

Arlington's Position

- 4.4** Arlington obtained legal advice from James Strachan QC (his written opinion forms part of Arlington's Regulation 19 representations).
- 4.5** Arlington considers HAT2 to be both available and suitable for development because the remaining country park area (as set out above in this statement) would in terms of its nature, quality, size and function (amongst other matters)) meet the original objectives of the Agreement (and the 2011 Green Infrastructure Plan) in accordance with the statutory test set out in Section 106A:
 - (a) the District Council (St Albans) objects to the loss of the country park unless suitable alternative open space can be provided that is no less advantageous to the community than Ellenbrook Fields as secured by the Agreement;

- (b) despite its objection to the development of HAT2, the District Council has not refused to enter into any Deed of Variation should this objection be overcome;
- (c) the District Council would in any event not have to be party to an agreed variation of the Agreement that only affected land in the Borough Council's area (i.e. HAT2) because it is not an 'appropriate authority' for land beyond its administrative area;
- (d) if the District Council did have to be party to any Deed of Variation of the Agreement and refused to enter into a Deed of Variation (notwithstanding sound planning reasons for such change and it needing to act lawfully and reasonably in its approach to the principle of such a variation), this would not prevent the Agreement from being modified upon an application to the Borough Council pursuant to Section 106A of the Act (the Borough Council being the 'appropriate authority' for the purposes of modifying any obligations in the Agreement that relate to HAT2);
- (e) if the District Council is also an 'appropriate authority' for an application under Section 106A, it would need to assess any such application lawfully e.g. if the Borough Council concludes there is a proper planning basis for such modification, then it would be reasonable to expect the District Council to reach the same conclusion;
- (f) even if the District Council disagreed, there is a right of appeal against such a decision under Section 106B of the Act that could be exercised by Arlington. The appeal would be determined by the Secretary of State.