

WELWYN HATFIELD BOROUGH COUNCIL
CABINET PLANNING & PARKING PANEL – 21 JULY 2022
REPORT OF THE HEAD OF SERVICE (PLANNING)
LOCAL PLAN – INSPECTOR'S LETTER AND PROPOSED MODIFICATIONS TO THE PLAN

1. Executive Summary

- 1.1 The purpose of this report is to consider the Inspector's response to the Council's letter dated 12 February 2022 and his further response dated 5 April 2022 advising him of the Council's decision relating to the Local Plan and additional sites. His response is published as [EX283](#) and his further response is published as [EX285](#).
- 1.2 The Inspector has indicated that the strategy for 13,279 dwellings would not be sound but has indicated that a plan which identified sufficient sites to meet the five year land supply and to provide at least 10 years supply from the point of adoption could be made sound. This report also considers options for adding in sufficient sites to meet this requirement.
- 1.3 Appendix A to this report provides a schedule of sites and a summary of options for adding sites to the housing land supply. Appendix B provides maps of the settlement with options for additional sites. Appendix C set out the Housing Trajectory for all sites. Appendix D sets out the different approaches to calculating the housing requirement for 'ten years' worth of sites. Appendix E provides a summary of the first results from the 2021 Census. Appendix F sets out a Schedule of the Main Modifications for the Topic Specific Policies.

2 Recommendations

- 2.1 That Members of this Panel
- i) Consider the implication of different approaches to managing the shortfall over the remaining plan period set out in the report and the appendices.
 - ii) Agree to recommend to Cabinet and Council that the additional sites set out in Table 6 of the report and which offers the best opportunity for reaching a sound plan be submitted to the examination as modifications to the Local Plan, and;
 - iii) Recommend to Cabinet and Council that public consultation take place on Main Modifications to the Local Plan at the earliest opportunity once the Inspector has confirmed the content of the Main Modifications required to make the Plan sound.

If Members do not agree to recommendation ii and iii above

- iv) Agree to recommend to Cabinet and Council that the additional sites set out in Table 4 of the report that responds to the relationship of the Full Objective Assessment of Housing Need to the Employment Strategy and the need for housing to be provided alongside new jobs.

- v) Members recommend to Cabinet and Full Council that public consultation take place on Main Modifications to the Local Plan at the earliest opportunity once the Inspector has confirmed the content of the Main Modifications required to make the Plan sound.

3 Background

- 3.1 On 13th January this Panel considered a report which presented options for meeting the Full Objective Assessment of Housing Need (FOAHN) of 15,200 dwellings for the Local Plan period 2016-36. The papers included an update to the Housing Sites Selection Background Paper Addendum which took into account the Inspector's findings and guidance and the Sustainability Appraisal Addendum. The Site Selection Addendum sets out the infrastructure implications associated with additional sites.
- 3.2 Officers identified several options for delivering 15,200 dwellings. However, these were rejected by Members. Instead, the Panel proposed that the Council's previous strategy agreed in November 2020 be put forward for consideration by Cabinet and Council. This strategy identified a supply of sites for 13,277 dwellings to meet what the Council considered should be the FOAHN of 13,800 dwellings. Appendix A to this report lists the sites (NB the capacities of those sites reflects the updated assessment arising from current planning applications or decisions and takes into account where completions have occurred). Appendix B provides a series of maps with sites under consideration.
- 3.3 This recommendation was considered by Cabinet alongside an analysis from officers of the changes in the evidence since November 2020 which impacted on the strategy. This included several sites being found unsound by the Inspector, changes to the windfall allowance, and another year of completions and commitments. As a consequence, some amendments to the strategy were made to arrive at a distribution of 13,279 dwellings. This was presented to Council at a special meeting on 27th January 2022. Members considered the implications for the five year land supply and the phasing of delivery across the plan period. It was noted that the availability and size of sites resulted in most of the development being delivered in the first ten years post adoption. The Council's letter to the Inspector is published as [EX282](#).
- 3.4 The Plan is being examined under the policy requirements set out in the 2012 National Planning Policy Framework (NPPF) rather than the revised policy requirements first set out in the 2021 NPPF. This means that the housing requirement for the Plan is established through an assessment of the FOAHN rather than the standard housing methodology. Local Planning Authorities are required to positively seek to meet the FOAHN although lower housing requirements can be set in circumstances which are justified by other policies in the NPPF. Recent Local Plan examination in Hertfordshire have resulted in the housing requirement meeting the FOAHN (East Herts, Broxbourne, and Stevenage).
- 3.5 North Herts further main modifications consultation confirms that in addition to meeting their FOAHN they are also meeting some of Luton's unmet housing needs.
- 3.6 The assessment of the FOAHN is a technical exercise which informs the housing requirement which is set as a target in the Local Plan and upon which the performance of the Council is monitored.

- 3.7 In allocating sites, the Local Planning Authority is required to identify a supply of housing which as a minimum meets the housing requirement or target. Whilst the Local Planning Authority set the housing requirement it must be justified by the evidence and is required to meet the tests of soundness. Because this Local Plan is being examined under the transitional arrangements the plan is required to provide for as a minimum objectively assessed needs for housing unless NPPF which protect areas or assets provide a strong reason for doing so or the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF (paragraph 11). The Inspector has concluded they do not.
- 3.8 National Planning Practice Guidance sets out the methodology for calculating the FOAHN for those plans being examined under the transitional arrangements. New plans would have to use the figures derived from the Standard Methodology. The current approach to calculating the requirement for 2022/23 results in a requirement of 888 dwellings per year (dpa) and is likely to result in a requirement for 892 dpa for 2023/22.
- 3.9 Paragraph 47 of the 2012 NPPF sets out that planning policies should identify specific deliverable sites for years 1-5 of the plan period and specific developable sites or broad locations for growth for years 6-10 and where possible years 11-15.
- 3.10 The Inspector's response to the Council's submission of sites equating to 13,279 dwellings is published on the Council's website as [EX283](#). In EX283 he first addresses why he considers the FOAHN of 15,200 to still be appropriate. This is in part driven by the plan's employment strategy which has been found sound. He then sets out that despite the Green Belt harm that will result from this level of provision he does not consider the circumstances warrant a lower housing requirement.
- 3.11 However, he has looked sympathetically at an approach based on identifying sites for the ten year period following adoption. This would provide an opportunity to review the performance of the plan as well as determining which additional sites should be allocated. The review would also be undertaken in the context of housing need, national policy, and other relevant circumstances prevalent at the time of the review.
- 3.12 If the Council wishes to follow this approach rather than withdraw the plan it must set out a timetable for finalising the Main Modifications for consultation. In paragraph 16 he sets out a number of requirements for the Main Modifications which will need to acknowledge the FOAHN for the period to 2036 and the impact of the shortfall in provision to date on the annual residual requirement so that the five year land supply can be calculated. This will need to take account of housing completions to March 31st 2022.
- 3.13 The Inspector's response also updates his conclusions on the soundness of the sites put forward by the Council for removal from the Plan. HS24 (BrP7) in Little Heath and SDS6 (HAT15) Symondshyde are now unsound whereas HS29 (Cuf7) and HS30 (Cuf12) in Cuffley are now sound. A fifth site HS22 (BrP4) had previously been found sound and the Inspector has confirmed that this remains the case.
- 3.14 In [EX285](#) he acknowledges that the planning issues have not been easy but that the plan can only move forward if the Council accepts the conclusions of the independent examination and carries out consultation on the recommended Main Modifications (MMs).

- 3.15 He stresses that he is not now asking for the supply of land to meet the full twenty-year plan period (2016-36) but that a supply to meet the requirements for the ten years post adoption would be appropriate including the residual amount that was not achieved between 2016-22.
- 3.16 To have a realistic prospect of adoption by 2022 he set a deadline of 8th July 2022 for the submission of evidence sufficient to demonstrate a ten year housing land supply with main modification consultation commencing shortly thereafter.
- 3.17 Unfortunately, because of the need to call a by-election it has not been possible to meet that deadline and a revised programme has been put together which will result in the Council submitting the evidence following its meeting on 26th July 2022.
- 3.18 The Inspector has responded to the revised timetable advising that if modifications are submitted to him on matters he has already agreed prior to this meeting and the outstanding matters straight after this meeting it may still be possible to prepare the plan on the basis of the five and ten year period commencing on 1st April 2022. The Main Modifications for the Topic specific policies are attached as Appendix F to this report.
- 3.19 The Levelling Up and Regeneration Bill proposes reforms to the plan making system. The Bill and policy notes which accompany it have not indicated any changes to the approach to identifying housing numbers. It was expected that a consultation version of proposed changes to the NPPF would be published in July. It is possible that this timetable may now be put back given the change in Ministers in the Department of Levelling Up Housing and Communities.

4 Explanation

The Housing Requirement

- 4.1 The FOAHN for the borough is 15,200 dwellings this equates to a 10 year target of 7,600 dwellings. The list of sites submitted to the examination do meet the 10 year FOAHN but the buffer and shortfall in provision since 2016 also need to be added to the figures in order to calculate the residual requirement and the to find figure for additional sites. Table 1 sets out the requirement for a ten year period before the shortfall is taken into account.

Table 1 Ten Year Requirement

Housing Requirement	2016-2022	10 Year Requirement	Cumulative 10 year total
Target	4,560	760 x10	7,600
Buffer (20%)	N/A	760-422.2	7,937.8

- 4.2 The Council has updated its monitoring of commitments and completions for the period to March 2022 in order to calculate the shortfall and update the housing supply data for the borough. These equate to **2,731 dwellings** and compares with the target of **4,560 dwellings** (760 x 6) resulting in a shortfall of **1,829 dwellings**.

- 4.3 Table 2 sets out the residual requirement calculations. This adds the shortfall of 1,829 to the 10 year requirement of 9,302 and results in a residual requirement of 12,469 (15,200 – 2731) and an average residual annual requirement of 891 dpa as indicated in Table 2. The Inspector’s letter indicates that he would use this figure to set the annual requirement for the remainder of the plan period unless the Council could justify a stepped target.

Table 2 Residual requirement for the Plan period

Housing Requirement	Completions 16/17 - 21/22	Years 1-5 (2022/23-2026/27)	Years 6-10 (2027/28-2031/32)	Years 11-14 (2032/33-2035/36)	Total residual requirement	Total Years 1-10
Target		4,453	4,453	3,563		
Buffer (20%)		890.6	-494.8	-395.8		
Total Required	2,731	5,343.6	3,958.2	3,167.2	12,469	9,301.8

- 4.4 The Planning Practice Guidance and the National Planning Policy Framework (NPPF) state that the shortfall should be made up over the first five years and this needs to be factored into the calculations. However this is not always possible and plans have been found sound with shortfalls made up over a longer period. The different approaches to managing the shortfall across the plan period are set out in Appendix D to this report.
- 4.5 In [EX288](#) the Inspector has indicated that unless main modifications are submitted on 22nd July the five and ten year period requirements would need to commence from 1st April 2023. The 10 year ‘to find figure’ increases to varying amounts as a consequence of later start dates and the approach to managing the shortfall.
- 4.6 It seems unlikely that the Council will be able to meet the requirement for Main Modifications to be submitted by 22nd July 2022. This report therefore examines the options for achieving a sound plan on the basis of meeting the targets using 1st April 2023 targets, however the target for 1st April 2022 are also set out in Appendix D for information. The targets for the later plan period range from 10,009 to 9,462 and five year land supply of 6,931 to 4,560.
- 4.7 Members will be aware that the first results from the Census have been published. A short note on the results and their relationship with the population projections is included as Appendix E. The demographic projections are the starting point for setting the FOAHN.

Trajectory

- 4.8 In [EX283](#) the Inspector has stated that he will need sound evidence to demonstrate that at adoption the plan will ensure a supply of housing land capable of delivering five year’s housing against the plan’s housing requirement, with flexibility to respond to changing circumstances. Officers have updated the evidence of the deliverability of all sites under consideration. Not all promoters have responded to officer’s request for information which would mean that the NPPF test for clear evidence relating to their inclusion in the five year supply would not be met. Appendix C sets out the Housing Trajectory for all sites.

- 4.9 The housing trajectory demonstrates that it will be impossible to meet the shortfall in the first five years of the plan but there are options for making up the shortfall over the first 10 years of the plan period and such a strategy would give the Council the best chance of securing a sound plan. This approach results in a minimum 'to find' figure of a minimum of **9,861** dwellings and a five year land supply of **4,560**. It should be noted however that this approach would not make provision for a five year land supply associated with the residual requirement (891dpa) and would require a stepped target. Ideally then a five year land supply of **5,344** should be sought. The options for delivering this are discussed in paragraphs 4.12 onwards.
- 4.10 Members will recall that the FOAHN was increased to 15,200 dwellings because of the Council's Employment Strategy set out in the Local Plan which seeks to make provision for additional jobs to meet the needs of a growing population. The borough has seen a loss of employment land in recent years and it is anticipated that new employment land will not deliver additional jobs from the Marshmoor site until year 4 onwards. It could therefore be argued that it is inappropriate to front load this part of the shortfall in provision whilst the borough continues to see an overall and continuing loss of employment land since the start of the plan period.
- 4.11 It could therefore be argued that the use of the Liverpool methodology which spreads the shortfall across the full plan period is more appropriate to the borough's circumstances. The report therefore also considers options for delivering this approach. This would result in a 'to find' figure of **9,462** and a five year land supply requirement of **5,472** which also meets the requirements for the five year land supply associated with the residual requirement.

Options for additional sites and updates to capacity

- 4.12 Table 1 of Appendix A sets out the updated completions data and changes to capacity assumptions associated with the sites which previously made up 13,279 and the reasons for those changes. Table 3 below provides a summary.
- 4.13 The most significant of these changes relates to SDS3 Broadwater Road West. The Council previously agreed to an increase in capacity of 600 dwellings on this site as it was known that applications for the north and southern parts of the site would propose an increase in dwelling capacity. However whilst the Inspector has concluded the allocation is sound he has not considered the deliverability of the additional 600 dwellings. It is anticipated that revised applications will collectively now deliver an additional 300+ but there is still a level of uncertainty. It may be more prudent to revert to the numbers associated with the original planning permission which resulted in 1,403 dwelling equivalents and which is partially being implemented as 208 dwellings are expected to complete on this site this year.
- 4.14 Site SDS4 also lies within the Broadwater Road West Policy area it comprises the Pall Mall and BioPark areas. It is proposed to combine the two comprise a single allocation as they relate to the same policy area and are covered by the Masterplan. This will also allow greater flexibility for decision making across the individual parcels.
- 4.15 The remaining changes to capacity reflect submitted planning applications or recent consents as set out in the Table 1 Appendix A.

- 4.16 It should also be noted that some sites proposed for allocation have some completions or are currently under construction and therefore part of the site's capacity whilst contributing to overall supply during the plan period cannot be included in the 10 year post adoption figure. This is set out in the notes in Table 1 of Appendix A and detailed in Appendix C the Housing Trajectory.
- 4.17 Table 3 below provides a summary of the changes and indicates that whilst the sites agreed by Members would deliver ten years' worth of sites against the target they would not make up the shortfall or deliver a five year land supply when measured against the residual requirement.

Table 3 - Update to Housing Supply since January 2022 Special Cabinet

Supply Source	January 2022 - Special Cabinet	Updated capacity	10 year Capacity	5 Year Capacity
Completions	2,514	2,731	n/a	n/a
Estimated completions 2022/23	n/a	613	n/a	n/a
Commitments – minus estimated 22/23 completions	806	486	486	462
Windfall	1,668	1,529	1,112	417
Small Sites	14	13	13	5
Site Allocations (see Appendix A) – less any expected completions 22/23	8,277	7,403	6,906	4,408
Total	13,279	12,775	8,517	5,292

- 4.18 The approach to the selection of additional sites still needs to meet the criteria set by the Inspector in his previous reports and Members should refer to [the Housing Sites Selection Background Paper Addendum](#) produced by officers and reported to Members of this Panel in January 2022. However, Members should be aware that since that report was prepared the Inspector has reaffirmed the soundness of HS22 (BrP4) in Brookmans Park and confirmed the soundness of HS29 (Cuf7) and HS30 (Cuf12). He has also confirmed that SDS6 (Hat15) Symondshyde and HS24 (BrP7) in Little Heath are unsound and therefore can no longer be included as potential allocations. The release of these three sites all result in high harm to the Green Belt but evidence to the examination indicates that this can be mitigated with the use of landscape buffers.
- 4.19 Another 448 dwellings can therefore be added to the supply figures resulting in a total of **8,965** dwellings for the 10 year period.
- 4.20 The Inspector has indicated that more land should be removed from the Green Belt than indicated for HS22 (Brp4). This additional land **BrP4a** could be treated as safeguarded land but as the land is to be removed from the Green Belt and as it would also assist in the provision of a primary school it is recommended that this area be included as an additional allocation. However, this additional land would not contribute to the five year land supply.

- 4.21 As the Inspector considers the omission of some small Green Belt sites which do not contribute to high harm to the Green Belt has yet to be justified a review of the smaller sites which will improve the five year land supply has been undertaken. These are listed in Table 3 of Appendix A to this report. Cumulatively they would deliver a potential capacity of 598 dwellings and therefore collectively would more than meet the Liverpool approach to managing the shortfall.
- 4.22 The majority of this group of smaller sites result in only moderate harm to the Green Belt. These include **StL1** for 90 dwellings in Stanborough whilst **StL15** also in Stanborough (8 dwellings) does not have a harm assessment. Neither of these sites were previously recommended for inclusion in the Local Plan in January as discussed in the Site Selection Addendum this would result in the doubling of size of the settlement and would be disproportionate for a settlement which has no facilities or services.
- 4.23 **StL13** in Lemsford also results in only moderate harm to the Green Belt. An application for 33 dwellings has been submitted. The HELAA assessed the site as being suitable for 27 dwellings and it is considered the capacity estimate could be increased to 30 dwellings. The inclusion of the site would assist in meeting the needs of the settlement arising from natural growth.
- 4.24 **WGr3** would also result in moderate harm to the Green Belt. It also was not recommended for inclusion in the Local Plan as Woolmer Green has already met its proportionate share. Furthermore it is really an extension to Knebworth. However, it is a small site for 25 dwellings in a sustainable location and would not represent a significant increase in provision.
- 4.25 **WeG6** and **WeG12** would also result in moderate harm to the Green Belt and have been included in every single option developed by officers as they perform well against the site selection criteria. With regards to WeG12 the Inspector has indicated that this site could be restricted to land south of the Pylons thereby potentially reducing its capacity from 83 to 45. Only part of **WeG15** would be accepted by the Inspector as this results in 'moderate to high' harm to the Green Belt and is open in character. As previously set out the capacity of the site has been reduced to 56 dwellings. It could additionally accommodate a primary school if required in order to provide sufficient land for a primary school in Welham Green.
- 4.26 **OMH9** and **Dig1** were previously recommended for inclusion in response to the Inspector's report as they provided additional dwellings in the Welwyn Parish area.
- 4.27 Assuming WeG12 is developed for 83 dwellings then this group of sites would deliver a total 10 year figure of **9,465** and improves the five year land supply from 5,292 to **5,812**. This would meet the Liverpool approach to meeting the shortfall and meets the five year land supply requirement associated with the residual requirement. However not all the shortfall would be met during the first ten years and some settlements are taking a larger share of the allocations when measured against the Local Need range set out in Table 5. Welham Green in particular would be almost 100 dwellings over the Local Needs Range but the Inspector considers Welham Green to be the most sustainable of the excluded villages and that this consideration is enhanced further by the allocation of employment land at Marshmoor.
- 4.28 The Local Need Range is defined in the Site Selection Addendum reported to Members of this Panel in January this year. It responds to the Inspector's reports and his advice

on the approach to be taken to the selection of sites. The range at the lower end relates to need arising from natural growth which is the minimum that settlements should be achieving and at the higher end the proportionate share of the FOAHN. Windfall is not included in the settlement figures as by definition their location is unknown.

Table 4 Recommended Additional Sites to meet Liverpool approach

Settlement	LP / HELAA ref	Site	Dwellings
Woolmer Green	WGr3	Land adjacent to 52 London Road	25
O&MH	OMH9	Land to the rear of 19-23 The Avenue	25
Digswell	Dig1	Land east of New Road	80
Lemsford	StL13	Land at Roebuck Farm, Lemsford	30
Welwyn Green	WeG6	Skimpans Farm, Welham Green	73
Welwyn Green	WeG12	Pooleys Lane, Welham Green	83
Welwyn Green	WeG15	Potterells Farm, Welham Green	56
Brookmans Park	HS22 (BrP4) & Brp4a	Land West of Brookmans Park Station	428
Cuffley	HS29 (Cuf12)	Land North of Northaw Road East	73
Cuffley	Hs30 (Cuf7)	Wells Farm, Northaw Road East	75
Total			948

Table 5 Settlement Distribution for Plan period

Settlement	Completions 1 Apr 2016 - 31 Mar 2022	Commitments (1st Apr 2022)	Allocations	Total	Local Need Range
WGC	1,416	251	4,257	5,924	1,464 – 6,797
Hatfield	853	230	2,607	3,690	995 - 4,621
Woolmer Green	76	0	209	285	43 - 201
O&MH	25	9	56	90	89 - 413
Welwyn	178	12	76	266	112 - 521
Digswell	12	20	80	112	47 - 219
Lemsford	0	0	30	30	7 - 30
Stanborough	17	2	0	19	9 - 41
Welham Green	12	1	528	541	96 - 445
Brookmans Park & Bell Bar	64	20	452	536	109 - 506
Little Heath	6	0	98	104	34 - 158
Cuffley	52	9	335	396	132 - 611
Rural Areas	20	165	0	185	137 - 635
Total	2,731	719	8,728	12,178	

4.29 However as previously indicated government guidance requires the shortfall to be met as soon as possible. This requires a further 396 dwellings to be added to the supply and requires consideration of the larger sites. Table 4 of Appendix A lists the larger sites and their capacities. There are options in Welwyn, Brookmans Park and Cuffley,

4.30 Apart from **BrP1** (moderate harm) all the sites would all result in 'moderate to high' harm to the Green Belt whereas the majority of the smaller sites result moderate harm or less. However **BrP12** is sequentially preferable to BrP1 in sustainability terms. Both sites would contribute to the five year land supply. However Brookmans Park has already met its proportionate share of the FOAHN for the plan period as has Welham

Green and Woolmer Green. The Inspector has indicated that such settlements would be exempt from the early review of the Plan.

- 4.31 Both Welwyn and Cuffley currently have allocations less than their proportionate share. The Inspector has expressed concern at the lack of housing in the submitted plan in the northern villages. The only remaining opportunities in the northern villages lie in Welwyn village which to date has had more completions than any of the other villages in the borough.
- 4.32 The sites in Welwyn require the construction of a new bridge over the River Mimram and the widening of the road and collectively would deliver 248 dwellings. The River Mimram is a chalk stream and objectors have expressed concern on the impact on the Mimram arising from new development and in particular the new bridge. The Environment Agency have raised no in principle objection stating that the design of the bridge can be left to the planning application stage. The two larger sites Wel1 and Wel2 are required to make this viable once these sites are allocated it is likely that Wel15 would come forward it might be possible to leave Wel6 in the Green Belt as it lies on the other side of the road. There is a pending Village Green application for Singlers Marsh which could impact on the deliverability of the highway improvements. These sites are more likely to deliver in years 6-10.
- 4.33 There would still be a shortfall in provision for the ten year period. The only opportunity for additional sites in Cuffley is Cuf15 which the Inspector has indicated should only come forward if an additional amount of new development is to come forward in Cuffley. This would deliver an additional 176 dwellings. This site is further from the station and shops than BrP12 in Brookmans Park. However BrP12 would only deliver 125 dwellings and is insufficient to make up the shortfall.
- 4.34 With the addition of the Welwyn and Cuffley sites the supply figure would increase by 424 dwellings giving a surplus of 28 dwellings. Table 6 sets out the additional sites associated with this target for making up the shortfall over the ten year period.

Table 6 Recommended Sites to meet the target associated with managing the shortfall over a ten year period

Settlement	LP / HELAA ref	Site	Dwellings
Woolmer Green	WGr3	Land adjacent to 52 London Road	25
O&MH	OMH9	Land to the rear of 19-23 The Avenue	25
Digswell	Dig1	Land east of New Road	80
Welwyn	Wel1	Land at Kimpton Road	178
Welwyn	Wel2	Land adj Wel Cemetery	40
Welwyn	Wel15	Fulling Mill Lane	14
Welwyn	Wel6	Land at Kimpton Road	16
Lemsford	StL13	Land at Roebuck Farm, Lemsford	30
Welham Green	WeG6	Skimpans Farm, Welham Green	73
Welham Green	WeG12	Pooleys Lane, Welham Green	83
Welham Green	WeG15	Potterells Farm, Welham Green	56
Brookmans Park	HS22 (BrP4) and Brp4a	Land West of Brookmans Park Station	428
Cuffley	HS29 (Cuf12)	Land North of Northaw Road East	73
Cuffley	HS30 (Cuf7)	Wells Farm, Northaw Road East	75
Cuffley	Cuf15	King George V playing Fields	176
Total			1,372

- 4.35 The settlement distribution that would result is set out in Table 7 and indicates that this is a more proportionate spread of dwellings relating to the Local Need Range. As with Table 5 windfall development is not included in these figures.

Table 7 Settlement Distribution

	Completions 1 Apr 2016 - 31 Mar 2022	Commitments (1st Apr 2022)	Allocations	Total	Local Need Range
WGC	1,416	251	4,257	5,924	1,464 – 6,797
Hatfield	853	230	2,607	3,690	995 - 4,621
Woolmer Green	76	0	209	285	43 - 201
O&MH	25	9	56	90	89 - 413
Welwyn	178	12	324	514	112 - 521
Digswell	12	20	80	112	47 - 219
Lemsford	0	0	30	30	7 - 30
Stanborough	17	2	0	19	9 - 41
Welham Green	12	1	528	541	96 - 445
Brookmans Park & Bell Bar	64	20	452	536	109 - 506
Little Heath	6	0	98	104	34 - 158
Cuffley	52	9	511	572	132 - 611
Rural Areas	20	165	0	185	137 - 635
Total	2,731	719	9,151	12,602	

Next Steps

- 4.36 The infrastructure requirements associated with different levels of growth have previously been assessed but the infrastructure section of the draft Local Plan will need to reflect the agreed strategy. The Infrastructure Delivery Plan will be amended as well to reflect the agreed strategy.
- 4.37 The Inspector has asked for a copy of the main modifications so that consultation can commence as soon as possible following the Members decision. Officers will amend the Main Modifications Schedule to set out the additional sites and any site specific criteria which would need to be taken into account along with other policies in the Plan when determining any planning application. These criteria were set out in the Site Selection Addendum reported to the January meeting of this Panel. The modifications will also need to be subject to Sustainability Appraisal.
- 4.38 The Policies set out in the Overarching Strategy relating to How Much Growth and the Settlement Strategy will need modifying to reflect the FOAHN, the level of growth met by site allocations and the need for an early review which would address the shortfall in the context of the planning system and the approach to housing numbers existing at the time the Review of the Local Plan is examined.
- 4.39 Consultation on the Main Modifications would need to run for 6 weeks. Officers anticipate this will take place in August and September. The representations would need to be forwarded to the Inspector and if any new substantive issues are raised which have not previously been considered by the examination there may be a

requirement for a further hearing session. Although such matters could be dealt with by written statements. The Inspector would need to issue his final report in the autumn which would then need to be considered by Full Council along with the final set of modifications required to make the Plan sound. The Council would need to allow for a six week legal challenge before it could formally adopt the Local Plan.

5 Legal Implications

- 5.1 The preparation of the Local Plan is governed by legislation, most notably the Town and Country Planning Act 1990, the Planning and Compulsory Purchase Act 2004 and the Localism Act 2011, as well as case law and secondary legislation set out in regulations. It also has to comply with relevant legislation relating to the preparation of Sustainability Appraisal and Habitats Regulatory Assessment.
- 5.2 The legislation requires that the Local Plan is prepared in accordance with the Local Development Scheme (LDS), the Statement of Community Involvement (SCI) and, under the transitional arrangements, the 2012 version of the National Planning Policy Framework (NPPF).
- 5.3 The legislation requires that local planning authorities seek to deliver sustainable development when preparing the plan.
- 5.4 The NPPF sets out the Tests of Soundness against which the Local Plan is examined. That is that the plan is positively prepared, justified, effective and consistent with national policy.
- 5.5 The Inspector has made it clear that only he can remove sites from the Submitted Local Plan if he considers them to be unsound. Should Members no longer wish to proceed with all the sites considered to be sound in the submitted plan the only option would be for the Council to withdraw the Plan and start again.
- 5.6 The Council can only lawfully adopt the Local Plan if the Examining Inspector finds it “sound” and only in the form which the Inspector has found it sound (i.e. the Council would not be able to make material changes to the version of the Plan which the Inspector has found sound). Should the Inspector find the Plan to be unsound the Council would be unable to adopt the Plan and, in this eventuality, the Council would not have an up-to-date Plan.
- 5.7 Whilst it would be open to the Council to bring a case in court to challenge the validity of the Inspector’s conclusions it is unlikely that such a challenge would succeed as the court intervenes only in clear cases of legal error. Given that the decision whether a Plan is “sound” is, inherently, one of planning judgment the courts heavily incline to leaving things in the hands of the examining inspector.
- 5.8 The Local Plan process could be subject to legal challenge if any party considers that it has not been prepared in accordance with legislation and national guidance.

6 Financial Implications

- 6.1 The financial implications of not having a sound Local Plan is that the Council would have to start the process again. This would require updated evidence, another call-for-

sites exercise, updated site appraisal, updated sustainability appraisal and habitats assessment and further public consultation.

- 6.2 In the meantime the Council is likely to continue to receive speculative planning applications for both urban and green belt sites (both those that are currently favoured in the plan and those that have been rejected) and could face costs if these were successfully appealed and the Council was held to have acted unreasonably.

7 Risk Management Implications

- 7.1 The Inspector has made it clear that unless the Council adds in more sites to the Local Plan it will be found unsound. He has also made it clear that decisions upon which sites to add into the Plan need to be based on sound planning grounds which are applied consistently and transparently.
- 7.2 The current adopted District Plan is considered to be out-of-date, particularly with regard to policies relating for new residential development. If this Plan is withdrawn or found unsound then the Council would have to rely on policies in the NPPF for decision making. Emerging policies in the Local Plan would no longer have any weight in decision making.
- 7.3 Without an adopted Local Plan the Council's five year land supply figures will continue to be based on the Government's standard methodology, which is currently 888 homes per year. Because the Council no longer has a five year land supply the presumption in favour of sustainable development already applies. As a consequence, policies seeking to protect areas from residential development would carry less weight and the Council is more likely to lose decisions on appeal. This will impact on the Council's performance figures, which could place it at risk of government intervention.
- 7.4 The Housing Delivery Test results in a requirement for a 20% buffer being added to the five year land supply figures. In future years, without an adopted plan, it is likely that performance will fall below 45%, resulting in a risk of special measures.
- 7.5 Regulations now require a plan to be reviewed every five years and particularly where there are significant changes in the housing need figure. Paragraph 74 of the NPPF 2021 states:

“The supply of specific deliverable sites should in addition include a buffer (moved forward from later in the plan period) of:

- a) 5 % to ensure choice and completion in the market for land; or*
- b) 10 % where the local planning authority wishes to demonstrate a five year supply of deliverable sites through an annual position statement **OR recently adopted plan** (Footnote 40), to account for any fluctuations in the market during that year; or*
- c) 20 % where there has been significant under delivery of housing over the previous three years, to improve the prospect of achieving the planned supply (Footnote 41)”.*

Footnote 40 states: *“For the purposes of paragraphs 74b and 75 a plan adopted between 1 May and 31 October will be considered ‘recently adopted’ until 31 October of*

the following year; and a plan adopted between 1 November and 30 April will be considered 'recently adopted' until 31 October in the same year".

Footnote 41 states: *"This will be measured against the Housing Delivery Test, where this indicates that delivery was below 85 % of the housing requirement".*

- 7.6 Should housing completions not increase the Council will come under pressure to carry out an immediate review of the Local Plan. Members should note how short the period is for an up-to-date adopted plan to count towards a five year housing land supply figure. New demographic and household projections are published every two years. The results of the 2021 census will also be used to inform projections in the future.
- 7.7 Members should also note that because the plan is being examined against the 2012 NPPF it may, once adopted, need to be updated to bring it in line with the 2021 NPPF. Wherever possible Officers will seek to ensure there is not likely to be a conflict.
- 7.8 In proposing modifications to the plan, the Council has to ensure that it has not proposed so many changes that it is, in essence, a different plan, which even if found sound might make it subject to legal challenge. Nevertheless, the Council is allowed to make changes to make the plan sound and these must by definition be substantive otherwise they would not be needed to make the plan sound. Substantive changes which are not required to make the plan sound cannot be made.

8 Security & Terrorism Implications

- 8.1 There are no security and terrorism implications arising from this report.

9 Procurement Implications

- 9.1 There are no procurement implications arising from this report.

10 Climate Change Implications

- 10.1 There are climate change implications arising from the identification of land for housing and employment. The Sustainability Appraisal judges that there will be greater energy use and emissions of greenhouse house gases and reductions in air quality.
- 10.2 The effects of this will be mitigated through the implementation of policies in the plan on sustainable design and construction and delivering sustainable development.
- 10.3 Minimising the need to travel by locating development in accessible locations close to a range of facilities and services and/or where they are close to public transport and cycle paths will assist in this or, alternatively, requiring through Section 106 or Community Infrastructure Levy (CIL) to improvements to public transport infrastructure, cycleways and footpaths.
- 10.4 Ensuring the balance of employment provision alongside housing will also help to address this.

11 Link to Corporate Priorities

- 11.1 The subject of this report is linked to the Council's Business Plan 2018-21 and, in particular, Priority 3 Our Housing - to plan for current and future needs and Priority 4 Our Economy – sustainable growth.

12 Health and Wellbeing Implications

- 12.1 Providing sufficient housing and jobs have health and wellbeing benefits for residents as does the quality of the environment.

13 Human Resources Implications

- 13.1 Should the Council decide to progress with Main Modifications the Council will need to ensure the policy team is fully staffed to meet the timetable. The Local Plan will continue to be prepared by the policy team. Regardless of whether the Plan is found sound, withdrawn or found unsound, it is likely to increase the number of planning applications and the caseload for development management officers.

14 Communications and Engagement Implications

- 14.1 Officers will work closely with communications colleagues to ensure that Local Plan progress is communicated to the public through newsletters, information on the website, press briefings, etc.
- 14.2 Public consultation has been carried out in accordance with the Statement of Community Involvement.

15 Equality and Diversity Implications

- 15.1 All of the policies in the Submitted Local Plan were subject to equality impact assessment.
- 15.2 Any policies which are subsequently proposed for main modification will be subject to an updated equality impact assessment.

Author

Sue Tiley, Planning Policy and Implementation Manager

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Appendices

Appendix A – Schedule of Sites
Appendix B – Maps of potential sites by settlement
Appendix C – Housing Trajectory of All Sites
Appendix D – Housing Requirement Note
Appendix E – Census (2021) Note on first results
Appendix F - Draft Main Modifications (Topic Policies)

Background Documents

Committee papers for Cabinet Planning and Parking Panel 13th January 2021