

**Memorandum of Understanding between Welwyn Hatfield Borough Council,
East Herts District Council and Hertfordshire County Council relating to
Birchall Garden Suburb**

1.0 Introduction

- 1.1 This MoU relates to land to the south-east of Welwyn Garden City. A site location plan is attached at Appendix 1. The site is located partly within East Herts District and partly within Welwyn Hatfield Borough.
- 1.2 Tarmac Trading Ltd (the Landowner) is promoting a strategic urban extension in this location.
- 1.3 East Herts District Council (EHDC) and Welwyn Hatfield Borough Council (WHBC) are the local planning authorities responsible for preparing up-to-date local plans for their area. Hertfordshire County Council is the minerals and waste planning authority.
- 1.4 Birchall Garden Suburb is included in both the emerging East Herts and Welwyn Hatfield local plans. The East Herts Council Pre-Submission Local Plan Consultation, November 2016, allocated the area of land within East Herts District for development. The Welwyn Hatfield Draft Local Plan Proposed Submission, August 2016, allocated the part of the site within Welwyn Hatfield Borough for development a more favourable site for housing. Both plans have the same, agreed policy wording for Birchall Garden Suburb, known as Policy EWEL1 – Land East of Welwyn Garden City in the East Herts plan and Policy SP19 – South East of Welwyn Garden City SDS2 in the Welwyn Hatfield plan
- 1.5 Informed by technical evidence the plans propose to accommodate approximately 2,550 homes over the plan period – 1,350 homes in East Herts District and 1,200 in Welwyn Hatfield Borough. It is also proposed that the site should accommodate a secondary school, two primary schools, two neighbourhood centres, Gypsy and Traveller provision, community facilities, open spaces for leisure and recreation and an employment area.
- 1.6 Development of the site has been promoted to EHDC and WHBC through the plan making process. Both Councils recognise that development of the site will need to accord with a jointly agreed masterplanning process.
- 1.7 The whole of the area lies within the known sand and gravel belt. Minerals in the south west of the area have previously been extracted with resources remaining in the north-east, to the north of Birchall Lane. National Policy states that Local Planning Authorities should set out policies to encourage prior extraction of minerals, where practicable and environmentally feasible, if it is necessary for non-mineral development to take place. As such, the adopted Minerals Local Plan includes a policy to avoid the needless sterilisation of mineral. Mineral extraction will be encouraged prior to other development taking place and any such application would be dealt with by the Minerals Planning Authority.

- 1.8 There are existing waste operations in the following locations which will need to be taken into consideration in the masterplanning of the site:
- in the centre of the site off Birchall Lane, straddling the boundary between Welwyn Hatfield and East Herts, which is not in Tarmac's ownership.
 - on the southern edge of the site at Burnside, which is not in Tarmac's ownership.
 - on the southeastern edge of the site – the Household Waste Recycling Centre operated on behalf of Hertfordshire County Council on land leased from Tarmac.
- 1.9 Hertfordshire County Council, as Waste Planning Authority, will safeguard these sites in line with the adopted Waste Local Plan. The likely impact of non-waste related development will be considered, together with other aspects of the safeguarding policy, in the overall masterplanning for the area.
- 1.10 Land at the Holdings, Cole Green Lane, adjacent to the operation at Birchall has recently gained planning permission for Class B uses.
- 1.11 The three authorities (EHDC, WHBC and HCC) are hereafter referred to as the 'Partners'.

2.0 Purpose of the MOU

- 2.1 The NPPF states that, *'Local planning authorities will be expected to demonstrate evidence of having effectively cooperated to plan for issues with cross-boundary impacts when their Local Plans are submitted for examination. This could be by way of plans or policies prepared as part of a joint committee, a memorandum of understanding or a jointly prepared strategy which is presented as evidence of an agreed position.'* (Paragraph 181)
- 2.2 The emerging proposals for Birchall Garden Suburb represent a strategic urban extension to Welwyn Garden City, involving a wide range of parties and issues which require effective coordination across administrative boundaries. The Partners therefore recognise the collective need for a coordinated approach in order to establish effective joint-working arrangements.
- 2.3 This MoU focuses specifically on matters and arrangements pertaining directly to Birchall Garden Suburb. A framework for co-operation between the Partners with respect to wider strategic and cross-boundary planning and development issues will be the subject of a separate MoU.
- 2.4 The purpose of this MoU is to establish principles for the masterplanning of the Birchall Garden Suburb site and to illustrate commitment to joint working in support of each authority's local plan processes in relation to this site. This MoU outlines an agreed approach to creating a supportive planning policy framework based on the current understanding of how the process is likely to proceed. The MoU can be reviewed at any stage. It is however anticipated that the MoU will be reviewed in full at the planning application submission stage to ensure joint working arrangements remain fit-for-purpose.

2.5 Although this MoU is not legally binding, it is a statement of joint intent which indicates the broad principles that the Partners will seek to apply when making decisions about Birchall Garden Suburb.

2.6 This MoU has taken into account requirements relating to the duty to co-operate set out in the Localism Act 2011, the National Planning Policy Framework and Planning Practice Guidance.

3.0 Limitations

3.1 The Partners recognise that there might not always be full agreement with respect to all the issues on which they have agreed to co-operate. For the avoidance of doubt this MoU will not restrict the discretion of any of the Partners in the determination of any planning application, or in the exercise of any of their statutory powers and duties or in their response to consultations and as such is not intended to be legally binding.

4.0 Objectives

4.1 This MoU has the following broad objectives relating to the masterplanning of Birchall Garden Suburb:

- To identify and manage spatial planning issues in so far as they impact on the delivery of the Birchall Garden Suburb project.
- To ensure that a shared policy and agreed approach on the masterplanning of Birchall Garden Suburb will appear in the East Herts District Plan and the Welwyn Hatfield Local Plan.
- As minerals and waste planning authority, Hertfordshire County Council's key objective is to safeguard existing waste facilities and mineral resources. The County Council will, as far as possible, be supportive of East Herts District Council and Welwyn Hatfield Borough Council in delivering their objectives for Birchall Garden Suburb by not compromising their ability to exercise their responsibilities. EHDC and WHBC will also, avoid compromising HCC in exercising their responsibilities.
- To ensure that the local planning and development policies prepared by EHDC and WHBC in relation to the masterplanning of Birchall Garden Suburb are, where appropriate, informed by the views of the other Partners with the intent of having an agreed policy approach.
- To ensure that Birchall Garden Suburb is planned and delivered in a comprehensive manner across the local authority boundaries in accordance with a joint Masterplan.
- To ensure that the infrastructure requirements associated with the Birchall Garden Suburb project are identified and agreed.

- To ensure joint working at the planning application stage and beyond.
- To ensure that there is compliance with the Duty to Co-operate.

5.0 Shared Principles

5.1 This MoU includes a range of principles which East Herts District Council and Welwyn Hatfield Borough Council have agreed to apply to their planning policies and policy implementation insofar as they relate to the Birchall Garden Suburb project. These are summarised below:

- A commitment that the Partners will work together in the production of a Masterplan for the whole of Birchall Garden Suburb setting out the quantum and distribution of land uses, access, sustainable design and layout principles.
- A commitment that the Partners consider that any pre-application and subsequent planning application process should be addressed jointly by them for the purpose of effective planning and efficiency.
- A commitment that the Partners will apply their development management policies consistently to development proposals across the whole of the Birchall Garden Suburb.
- A commitment to maintaining effective and regular communication between the Partners via the project governance structures outlined in this MoU (Section 7.0 below) to secure the timely delivery of the project.
- A commitment to maintain an open, transparent and on-going dialogue between the Partners and use reasonable endeavours to share and communicate decisions that may affect the project with the Partners prior to external parties.
- A commitment to work flexibly with each other to direct appropriate staff resources to the project to secure its timely delivery in accordance with agreed timelines.

6.0 The Preferred Planning Policy Approach

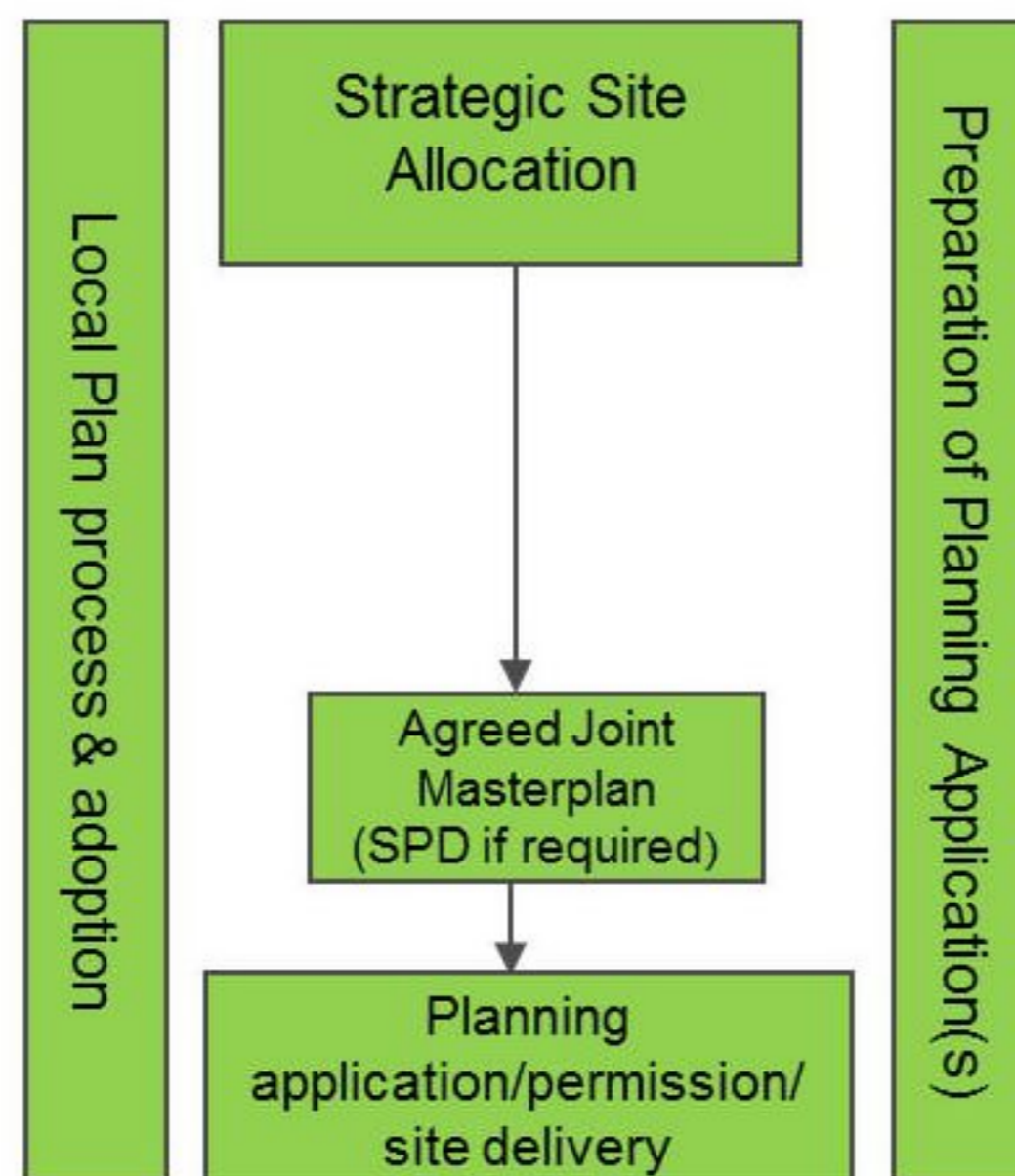
6.1 This MoU establishes a joint approach to creating a supportive planning policy framework and preparing further technical work to support the policy evolution process in tandem, taking into account the responsibilities of each of the Partner authorities. The outcomes of the work will form part of the evidence to be submitted to the Examination of each local plan to demonstrate the deliverability and viability of a high quality development on the site. It will also establish the basis for preparing planning applications and related supporting material.

6.2 The objectives include:

- The preferred policy vehicle to deliver the Partners' ambitions;
- A shared commitment to a Masterplan-led approach and agreement to the process through which it will be progressed.

6.3 To help meet housing needs in both East Herts District and Welwyn Hatfield Borough, Birchall Garden Suburb is allocated as a strategic site for a new neighbourhood in both Councils' emerging local plans supported by an indicative concept diagram. East Herts District Council's and Welwyn Hatfield Borough Council's preferred policy approach is shown in the diagram below and involves the allocation of the site through the emerging local plans. The Partners have worked closely to agree the exact policy wording, which is attached at Appendix 1, to secure a comprehensive, coordinated and high quality new development.

Figure 1: Preferred Policy Approach



6.4 The joint Masterplan will form the basis of a Supplementary Planning Document (SPD) produced jointly by East Herts District Council and Welwyn Hatfield Borough Council which will provide further guidance on site specific matters. Hertfordshire County Council will not adopt the joint SPD, but will be consulted before it is agreed. Any application for development, including minerals extraction, should be preceded by, and consistent with, the Masterplan. The potential scope for the Masterplan is attached at Appendix 2.

6.5 This MoU does not replace or substitute the statutory planning duties of the local planning authorities in relation to plan making. The formal preparation, consultation and adoption of a SPD would be the joint responsibility of East Herts District Council and Welwyn Hatfield Borough Council.

7.0 Project Governance and Project Management

7.1 The project will be managed in accordance with the structure set out below. The structure set up in this MoU will ensure that joint policy wording is agreed for the East Herts District Plan and the Welwyn Hatfield Local Plan and that the masterplanning of Birchall Garden Suburb is steered through the Councils' committees and Local Plan Examinations in Public. It will then be responsible for jointly considering any changes as a consequence.

7.2 The Project Group will be the focus of the day-to-day management of the project, with any issues being raised up the chain through designated Project Sponsors in the respective Partner organisations where necessary. The Group will meet as regularly as required, involving Project Sponsors as appropriate. Various sub-groups may be identified to review emerging technical information and discuss key issues. The results of the work of any sub-groups will be fed back to the Project Group.

7.3 A planning policy project officer and a development management officer have been identified for each local authority to help facilitate effective communication between the authorities adopting a 'development team approach'. At the plan making stage the planning policy project officers will be responsible for coordinating the project. As the development moves towards pre-application advice and a planning application, the lead officer will transfer to development management officers. In addition a lead planning officer has also been identified at HCC. These officers' roles will be to:

- Act as key contacts for the project on behalf of each Partner. Partners will use reasonable endeavours to ensure all communication is directed via lead officers.
- Agree and coordinate agenda items prior to each project meeting. The lead officers will also meet as and when required commensurate with the needs of the project to ensure effective coordination.
- Coordinate attendance from each Partner organisation commensurate with the needs of the Project over time and to help secure timely delivery.

Figure 2: Lead Officers in Project Group

Planning Policy Project Officers	Philip Wadsworth (WHBC), Jenny Pierce (EHDC)
Development Management Officers	Chris Carter (WHBC) Martin Plummer (EHDC)
HCC Lead Planning Officer	Gemma Nicholson Chay Dempster

7.4 Participants of the Project Group and Project Sponsors will be expected to be constructive, open and honest. Discussions in masterplanning meeting will be confidential until the minutes of those meetings have been agreed by all parties. Any issues that cannot be resolved by the Group will be referred back to senior officers and Members as necessary. The Project Group will operate as the main formal channel of communication between the Partners. All officers of the Project Group will be invited to attend all meetings involving developer interests.

7.5 The detailed brief for the Project Group is set out below:

- Identify and direct appropriate staff resources to enable the efficient progression of the Birchall Garden Suburb project, including the joint commission of external consultancy support where necessary;
- Identify and resolve any competing or conflicting issues between the Partners, or identify necessary work required for resolution. Escalate issues where necessary;
- Identify and agree shared priorities for the overarching vision and development objectives for the Birchall Garden Suburb project and review these as necessary;
- Oversee and co-ordinate the evolution of policy evidence necessary to support the development of a planning policy framework relating to Birchall Garden Suburb and to establish and agree a coordinated approach to policy wording and masterplanning including agreement on the nature and form of masterplan endorsement;
- Oversee and co-ordinate the processing and assessment of material for any planning application(s) to secure timely responses;
- Consider and agree meaningful engagement with the community, Members and with other stakeholders;
- Agree and monitor a project work programme to ensure work is kept to timetable.

8.0 Decision Making and Determination Framework

8.1 The local planning authorities recognise the value of aligned decision making in relation to any submitted planning applications. Following the submission of a substantive planning application the local planning authorities will consider further the arrangements for decision making of any such application(s) in the light of the principles below.

8.2 The Partners agree the following principles in respect of determining planning applications:

- Officers and elected Members from the Partners will liaise regularly in considering the common masterplanning and cross-boundary issues relating to the proposals, but the planning applications will be determined separately by East Hertfordshire District Council and Welwyn Hatfield Borough Council;
- East Hertfordshire District Council and Welwyn Hatfield Borough Council will appoint an individual case officer for each authority to handle two identical outline planning applications;
- Hertfordshire County Council will appoint an individual case officer to handle any minerals planning application;
- Where practicable, the Partners agree to respond jointly to requests for information or decisions from the Landowner in so far as it relates to the Birchall Garden Suburb project;
- The Partners agree to work jointly to draft and prepare a Committee Report dealing with the applications that is capable of being reported to the relevant Planning Committees;
- The Partners will use reasonable endeavours to coordinate and align committee dates or appoint a joint committee to secure the timely reporting, consideration and determination of committee reports;
- Welwyn Hatfield Borough Council and East Hertfordshire District Council will formally consider planning applications for Birchall Garden Suburb as soon as possible after both of the Inspectors' reports for their local plans have been published;
- Relevant planning officers and elected Members from each Partner will liaise closely to make sure that consideration of any minerals applications and drafting of subsequent planning conditions take into consideration the wider masterplanning of development at Birchall Garden Suburb;
- The Partners will co-operate in the production of a joint cross-boundary Section 106 Agreement. The Partners will use reasonable endeavours to

work up an agreed draft S106 Heads of Terms in advance of the examinations in public for the Welwyn Hatfield and East Hertfordshire Local Plans;

- To discuss and agree a common approach to commissioning and instructing external consultancy support in so far as it relates to necessary work in pursuance of the timely delivery of the Birchall Garden Suburb project;
- Welwyn Hatfield Borough Council and East Hertfordshire District Council will jointly procure legal advice in so far as it relates to the Section 106 for Birchall Garden Suburb project;
- It is assumed identical planning applications will be submitted to East Herts District Council and Welwyn Hatfield Borough Council in which case planning guidance indicates the planning fee should go to the largest authority but the Partners agree to spend a reasonable proportion of the fee on necessary joint-working to review and process the application, subject to discussions through the Project Group;
- As minerals and waste planning authority, Hertfordshire County Council will determine any planning application for minerals extraction.

9.0 Commissioning External Support

9.1 The Partners consider that obtaining professional advice in relation to a range of matters can be dealt with jointly. The Partners agree the following principles:

- **Procurement of professional advice.** A brief for seeking fee quotes and the engagement of any professional advice will be produced jointly. In relation to each consultant to be engaged, one of the LPAs will produce a draft brief that will be subject to consultation and agreement with the other LPA. Once agreed, fee quotes will be sought from an agreed range of potential consultants and, once fee quotes are received, the LPAs will jointly agree appointment of a consultant.
- **Management of consultancy work in progress.** In relation to each consultant appointed, the LPAs will agree the lead managing LPA for that consultant. The lead managing LPA will manage the work of the appointed consultant at all stages, seeking to secure work to an appropriate standard. At all relevant stages, the managing LPA will consult the other LPA in relation to any matter relating to the work being undertaken and share any draft outputs and final outputs as soon as they are available.
- **Costs of Professional Advice.** The LPAs will seek to ensure that the costs of professional advice and other matters relating to the progression of the proposals where they result in a cost to the LPAs will be sought from the Landowner.

- **Financial Management.** The LPAs shall agree that one of them shall act in respect of financial management in relation to both of them. The LPA acting in this capacity will deal with all ordering and invoicing matters in accordance with their own financial regulations.

10.0 Governance and Dispute Resolution

- 10.1 In this case, all actions to be taken in relation to this MoU will be delegated to the lead project officer. Where, in relation to any matter relevant to this MoU, agreement cannot be reached between the Partners, that matter will be referred to the Project Sponsors as set out in Figure 3.

Figure 3: Project Sponsors

East Herts District Council	Claire Sime
Hertfordshire County Council	Julie Greaves
Welwyn Hatfield Borough Council	Sue Tiley

- 10.2 These officers will engage in all reasonable actions, discussion and meetings with representatives from Partner organisations, to ensure that any matter of disagreement can be resolved.
- 10.3 Where agreement cannot be reached by the Project Sponsors on behalf of the Partners, that matter will be referred to the Heads of Service set out in Figure 4.

Figure 4: Heads of Service

East Herts District Council	Kevin Steptoe
Hertfordshire County Council	Jon Tiley
Welwyn Hatfield Borough Council	Colin Haigh

- 10.4 The Heads of Service shall refer any such matter to the relevant portfolio members, where this also appears necessary or helpful to resolve any matter of disagreement.

11.0 Member Involvement

- 11.1 The elected members referred to in this memorandum of understanding are the relevant portfolio-holders as indicated in Figure 5.

Figure 5: Elected Representatives

East Herts District Council	Cllr Linda Haysey	Leader of the Council
Hertfordshire County Council	Cllr Derrick Ashley	Executive Member for Environment, Planning and Transport
Welwyn Hatfield Borough Council	Cllr Mandy Perkins	Deputy Leader of the Council and Executive Member for Planning, Housing and Community

12.0 Variation / Dissolution


- 12.1 Each of the Partners shall be entitled to propose a variation to this MoU at any time by proposing such a variation to the other Partner. Such variations shall, where possible be agreed. If agreement cannot be reached, the dispute resolution process above will be followed.
- 12.2 Each of the Partners shall be entitled to seek to dissolve the MoU at any time by proposing such to the other Partners. Where any matter which is causing a Partner to propose dissolution cannot be resolved, each of the Partners shall take all reasonable steps to ensure that any work or action in progress is concluded in a reasonable and professional way before joint working ceases.

13.0 Signatures

13.1 This MoU is signed by and duly authorised for and on behalf of:

East Hertfordshire District Council

Name: LINDA HAYSEY

Signature: 

Position: Leader

Date: 29 Mar 17

Name: _____


Signature: _____

Position: _____

Date: _____

Welwyn Hatfield Borough Council


Name: AMANDA PERKINS

Signature: 

Position: EXEC MEMBER, PLANNING

Date: 30/3/17

Name: COLIN HAIGH

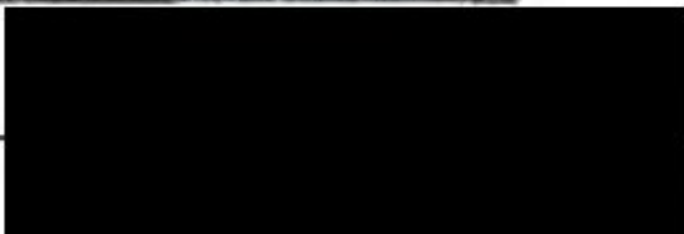
Signature: 

Position: HEAD OF PLANNING

Date: 30/3/17

Hertfordshire County Council

Name: DEBBIE ARTHUR

Signature: 

Position: EXEC MEMBER ENVIRONMENT, PLANNING & TRANSPO

Date: _____

Name: JON TILLEY

Signature:

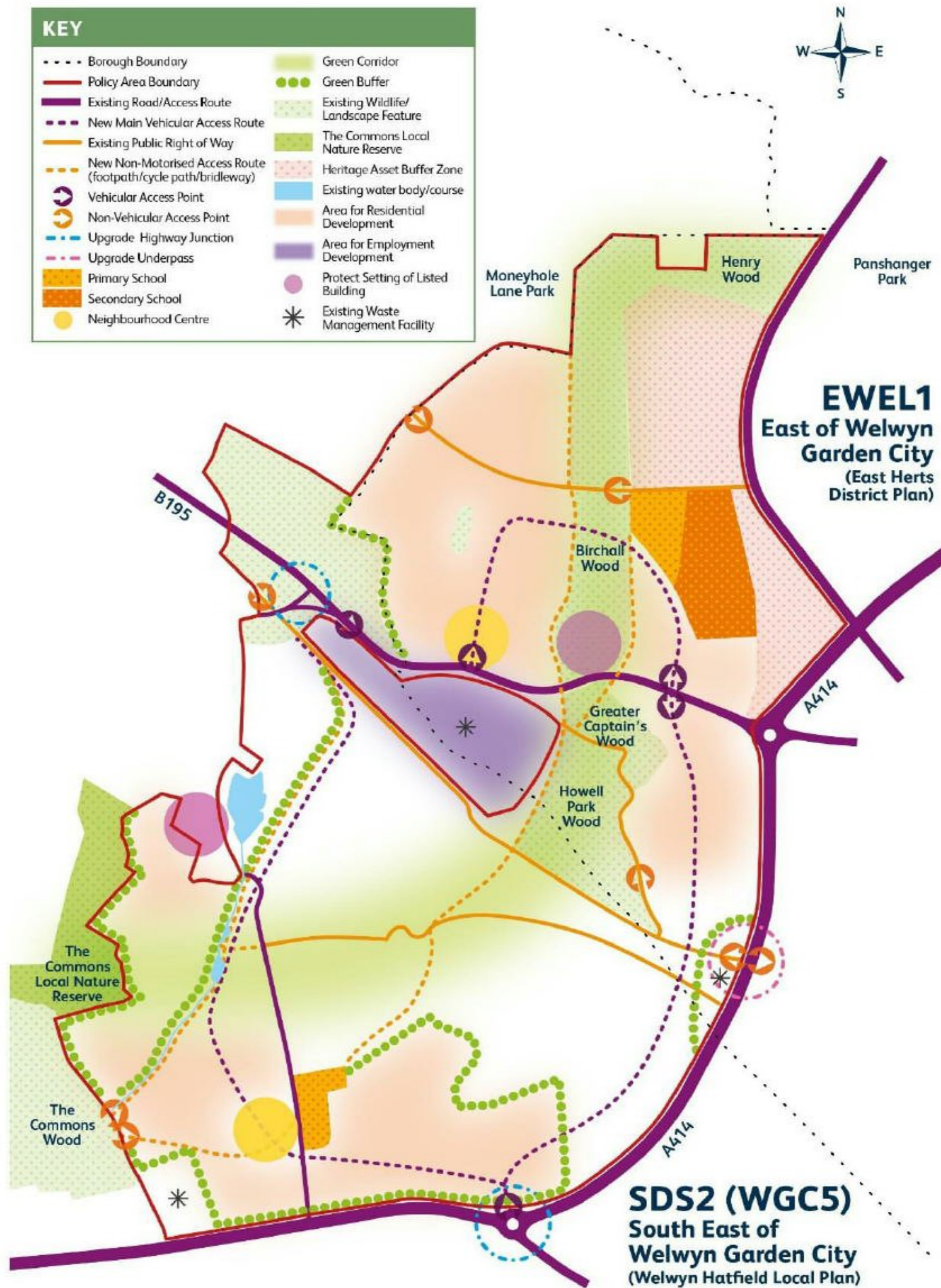


Position: Head of Spatial Planning & Economy

Date: 29/3/2017

Appendix 1: Strategy Diagram – Birchall Garden Suburb

Figure 12 Birchall Garden Suburb



Joint Policy Wording

Birchall Garden Suburb

Land at Birchall Garden Suburb is allocated for development in both the Welwyn Hatfield Local Plan (SDS2) and the East Herts District Plan (EWEL1), to accommodate approximately 2,550 new homes over the plan period, of which 1,200 will be in Welwyn Hatfield Borough and 1,350 in East Herts District.

East Herts District Council and Welwyn Hatfield Borough Council will continue to work together to ensure that the new suburb is delivered in a comprehensive manner across the local authority boundaries. Mechanisms will need to be established to ensure the effective delivery of infrastructure required to support the development.

A joint masterplan setting out the quantum and distribution of land uses, key views to protect heritage assets, access, sustainable design and layout principles will be prepared by Welwyn Hatfield Borough Council and East Herts District Council, working with the landowner and other key stakeholders. The Masterplan, which will be informed by the Strategic Diagram shown in Figure 12 below, will form the basis of a Supplementary Planning Document which will provide further guidance on site specific matters. Any application for development should be preceded by, and consistent with, the Masterplan.

The site will be planned comprehensively to create a new sustainable community incorporating Garden City principles.

The developer must demonstrate the extent of the mineral that may be present and the likelihood of prior extraction in an environmentally acceptable way has been fully considered. As a minimum, an assessment of the depth and quality of mineral, together with an appraisal of the consequential viability for prior extraction without prejudicing the delivery of housing within the plan period should be provided.

In accordance with the relevant Local/District Plan policies the site will provide:

- A wide mix of housing types, sizes and tenures, including affordable housing; housing for older people; and serviced plots of land to contribute towards meeting evidenced demand for self-build and custom housebuilding;**
- A Gypsy and Traveller site of an area sufficient to accommodate a total of 15 serviced pitches (4 pitches for East Herts' and 11 pitches for Welwyn Hatfield's needs) to contribute towards the needs of both authorities;**

- **A neighbourhood centre in the East Herts part of the development and a small neighbourhood centre in the Welwyn Hatfield part of the development, each in an accessible location to meet the day-to-day retail needs of new residents;**

- **An employment area in a visible and accessible location in accordance with an up-to-date assessment of need; this area would incorporate the Holdings in Welwyn Hatfield, together with land off Birchall Lane (currently allocated as a Waste Site (ref.AS008) in the Hertfordshire Waste Site Allocations Document) subject to there being no adverse impact on neighbouring residential amenity;**

- **Community facilities; including healthcare (in the East Herts part of the development) and leisure facilities;**

- **Education facilities, including one 2 form entry primary school with Early Years Provision for Welwyn Hatfield and an all-through school in East Herts comprising a 2 form entry primary school with Early Years Provision and a secondary school of up to 8 forms of entry. Schools should provide for the dual use of facilities for community purposes;**

- **Sustainable transport measures including the improvement of pedestrian links, cycle paths, passenger transport and community transport initiatives;**

- **Suitable access arrangements and any necessary wider strategic and local highway mitigation measures, including addressing impacts on the A414 in Hertford, the B195 and the A1(M);**

- **Formal and informal open spaces for leisure and recreation, including play areas, sports fields, allotments and community orchards. Spaces will contribute to wider ecological networks including a strategic green infrastructure corridor from St Albans through to Hertford. As such, spaces should:**
 - **be accessible to both new and existing communities;**

- provide north-south and east-west connections, providing upgraded routes for walkers and cyclists, including the Lea Valley Path and Cole Green Way;
- provide safe routes for wildlife, protecting and enhancing wildlife assets;
- balance the needs of recreation and nature, providing animal infrastructure and undisturbed areas

- Protection and enhancement of heritage assets and their settings, both on-site and in the wider area through careful masterplanning and appropriate mitigation measures;

- Landscaping and planting;

- Necessary utilities, including integrated communications infrastructure to facilitate home-working; and

- Sustainable drainage and provision for flood mitigation.

In order to ensure that the site is planned and delivered comprehensively, any application for development on part of the site will be assessed against its contribution to the masterplan, and will not prejudice the implementation of the site as a whole.

Appendix 2: Potential Scope of Masterplan

Chapter	Potential content
1. Introduction	Purpose & Status. Process & Collaborative Working
2. Vision & Development Objectives	A clear requirement of what is intended in the overall development
3. Baseline Summary (Technical studies under this section to be submitted as separate documents, with a summary of key constraints/opportunities to be included in the principal masterplan/ spatial framework document)	Summary of constraints and opportunities Explanation of approach to engagement & consultation
4. Design	Capacity testing/option testing
5. Spatial Framework/ Masterplan	
A) Land Use Framework	Proposed land use quantum, broad disposition & interrelationships, including housing, provision for Gypsies and Travellers, community facilities, employment, education, landscaping, open space, minerals and waste
B) Transport Framework	Proposed movement network, key access points & routes
C) Green Infrastructure Framework	Location, quantum, function of green space
D) Place-making Framework	Overarching principles (character areas, gateways, landmarks, views, focal points, hubs, interfaces and frontages).
E) Sustainability Framework	Site-wide and building scale opportunities for low carbon initiatives

6. Delivery and Implementation	<p>Physical and social infrastructure requirements and how and when will this be provided.</p> <p>Route Map for delivery, how each element will come forward. Planning strategy, phasing, viability. Partnership arrangements.</p>
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