



Representees: Carolyn Cottier, Linda Cottier, Barry Cottier, Zade Cottier-Wood Date: 13<sup>th</sup> September 2020  
Statement: Examination North Hertfordshire District Council Local Plan (2011-2031). Response: ED194  
Updated Schedule of Further Matters, Issues and Questions (14<sup>th</sup> August 2020)

## RESPONSE TO MATTER 22 – the supply of land for housing & the overall supply of land for housing

### Inspector's Matters and Questions:

#### Matter 22 – the supply of land for housing

Policy SP8 of the Local Plan sets out the housing requirement for the period 2011 to 2031. It commits to the delivery of 14,000 new homes to meet the needs of North Hertfordshire and 1,950 new homes to meet unmet housing needs arising from Luton—being a housing requirement of 15,950 in total. The Council has now provided a note which updates its estimates about the overall housing trajectory—the amount of new housing likely to be delivered for each year of the plan period—and the five year supply of land for housing. (Previous wording from MIQs January 2020)

ED191B updates the Council's estimates about the overall housing trajectory – the amount of new housing likely to be delivered for each year of the plan period – and the five year supply of land for housing. From the Council's updated estimates about when housing sites are now likely to deliver new homes, and its calculations of the level and timing of delivery against the overall and five year requirements, it appears that:

- the overall housing requirement in Policy SP8 as originally submitted cannot now be met for the period 2011 to 2031, although it could be if the housing requirement were to be modified to reflect the updated calculations of the OAN; and
- the Council will not be able to demonstrate a five year housing land supply when measured against draft Policy IMR1 (a policy which was put forward by the Council through a main modification, MM372) ED191B sets out the way in which the Council considers these issues can best be resolved.

### Inspector's Matters and Questions continued:

#### The overall supply of land for housing

22.1 To ensure that the overall housing requirement in Policy SP8 can be delivered, the Council proposes a main modification to reduce that requirement to 14,000 dwellings, to align it with the level of housing the Council considers deliverable from sources previously identified (i.e. sites proposed for allocation in the Local Plan, windfall sites etc). This is coupled with a commitment to an early review of the Local Plan. In arriving at this position, the Council has considered a number of alternative options, which are set out in its aforementioned note. (Previous wording from MIQs January 2020)

22.1 As mentioned above, the Council proposes to reduce that overall housing requirement to 13,000 dwellings - 11,600 to meet North Hertfordshire's housing need and 1,400 to help address Luton's unmet housing need. As I understand it, this is coupled with a commitment previously put forward by the Council to an early review of the Local Plan. The Council anticipates the delivery of 14,650 dwellings over the plan period. It does not propose to delete from the Local Plan any of the housing sites included within it, and argues that the difference between anticipated delivery above the requirement represents an appropriate 'buffer' (of around 13% of the overall housing requirement).

In arriving at these views, the Council has considered a number of alternative options, which are set out in its previous note and in ED191B.

## Matter 22 – the supply of land for housing



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### **Matter 22.1a**

a) Is reducing the overall housing requirement to 13,000 and undertaking an early review of the Local Plan, the most appropriate way forward? If not, why not?

a) Is reducing the overall housing requirement, and undertaking an early review of the Local Plan, the most appropriate way forward? If not, why not? (Previous wording from MIQs January 2020)

Reducing the overall housing requirement to 13,000 and undertaking an early review of the Local Plan is not the most appropriate way forward.

This proposal has many disadvantages.

Planning Practise Guidance (“PPG”) stipulates that all Local Plans must be reviewed within 5 years of their adoption.

An early review would therefore mean work needs to recommence a mere two years following that!

The Plan has already taken many years to get even to this point, and it has encountered constant widespread public resistance due it being extremely disliked for so many valid reasons. So for it to only serve communities merely two years after all of that effort and cost expenditure, this is certainly not a desirable result.

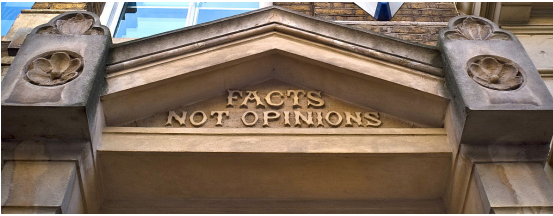
This course whilst appearing initially attractive to the Council, does not actually serve its interests in the long run, neither in terms of timing or economically.

That is because rushing this Plan would end up making the whole thing take longer.

The Inspector noted his own and the Council’s wish to hurry ahead, “1. Firstly, I am acutely aware that the Council is keen to progress the examination as expediently as possible. I fully understand the reasons for that. Indeed, it is a desire I wholeheartedly share.” [ED166 27 July 2020, Inspector’s Letter to Council]

Luton’s Plan, whilst adopted in November 2017, was also committed by the Inspector (Jeremy Youle) to an early review, and work for that is currently being undertaken. So would it not be logical that the two dove-tail, not that one gets reviewed and then two years later the other, so that they are constantly out of sync with one another.

There are only so many possible outcomes to this NHDC LP examination however. Each one has an attached time-frame which is also relatively predictable.



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Of them the trajectory towards greatest speed of adoption and least cost to the Council, is not the route that at first glance may appear swiftest and cheapest. Whilst the Council believes the fastest route is to just keep pushing onwards ignoring the Plan's structural weaknesses, hoping that the inherent legal flaws won't show through if enough glossy rhetoric can be purchased from consulting firms, and lavished upon the cracks - is to grossly underestimate the representees' level of determination, professionalism and ability to scrutinise effectively and leave no stone unturned. To rely upon representee gullibility will prove an expensive, time-consuming mistake.

The speediest route and most economical for the Council at this point, is to withdraw the Plan quickly without further ado and just undertake the significant amount of work required to make its figures and Green Belt redistribution balanced, logical, transparent, justifiable and legally sound in the first place.

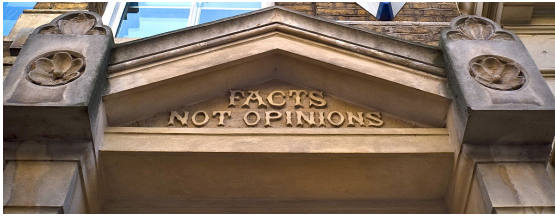
The Council are still counting on their Plan being passed and adopted by the end of the year in its present form with just a few modifications. There has been no discussion at the recent Planning and Development Control Committee Meetings, about any legal challenge, nor how that would be funded or whether there is need to withdraw the Plan in order to seal the many fault-lines that extend beyond what modifications can address.

Outlined below is the reasoning for why the advantages and disadvantages can be weighed against one another and clearly point rationally towards withdrawal NOW.

We all stand upon the precipice of an unknown outcome, but we do know it can only be limited to one of these four possible scenarios with their various associated time-frames:

A – Council withdraws Plan now and further critical work is immediately undertaken. Work undertaken for six months, resulting in (hopefully) a more legally compliant Plan which is re-submitted early-2021. Examination resumes in Spring 2021. Examination completed before Summer 2021 and Plan adopted Summer to Autumn 2021. Resulting in strong Plan and in time before Government's September 2021 deadline.

B – Council Continue to force the Plan refusing to withdraw it, improve it and address its core weaknesses. Inspector continues examination and hearings until end of October, then before end of year writes his reports. He orders Plan to be withdrawn and further critical work to be undertaken. Work undertaken for six months, producing more legally compliant Plan which is re-submitted mid-2021. Examination resumes towards the later part of 2021 continues throughout the rest of the year and Plan may be adopted sometime in 2022. The Plan will be delayed further and the Council will have exceeded the Government's September 2021 deadline.



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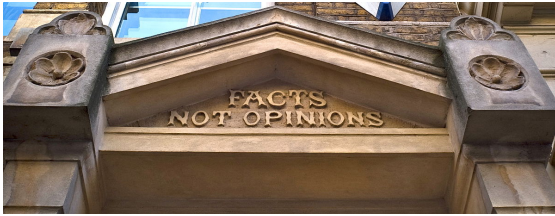
C – Council continues to force the Plan ignoring core flaws, refusing to improve it. Inspector continues with hearings anyway and before the end of 2020 he writes his report approving the Plan and the modifications so far; giving permission for the Plan to be adopted. Community applies for Judicial Review within six weeks and permission is granted for it to be under-taken. Legal proceedings commence middle of 2021 and continue throughout Summer 2021. Council loses the challenge and is ordered by judge to produce a new Plan according to Court’s various as of yet unknown stipulations. Council settles its debts; the legal fees and those of the complainant. Also pays for work to be recommenced upon the Plan throughout 2021, and the Plan is re-submitted early 2022. Consultation upon the new Plan is undertaken Spring to Summer 2022. Plan is re-submitted and Examination Hearings are paid for and occur throughout Autumn 2022. Plan may be accepted and maybe adopted sometime early 2023.

D – As above but Council wins Judicial Review and Plan adopted Autumn 2021.

Possibility A is the best option available to the Council. It trumps all other options in terms of timing, economics and certainty for them. The Council needs to withdraw the Plan now accepting it needs to do considerable further work to render it sound– such as the need to compile and produce a Housing Economic Land Availability Assessment to underpin evidence of having identified all land within its curtilage and need to address imbalanced ratio of Green Belt to Brownfield sites and proof that all other available alternatives have been considered. Resubmit modified Plan early 2021, with OAN figures up-dated, made accurate and justifiable along with an adequate evidence base supporting them.

Advantages of Option A	Disadvantages of Option A
As of September/ October 2020, there is still just enough time for the Plan to be improved AND to make the September 2021 deadline set by Government for all Council Local Plans to be adopted.	Council doesn’t get its own way immediately and will be cross.  But life is sometimes like that and unfortunately we just have to take it on the chin and deal with it.
If NHDC acts now swiftly, modifications and work could be undertaken over the next 8 months.	
By May 2021 Council could resubmit a better Plan with robust justifiable, accurate and up-to-date OAN figures, with a thorough land-site register (HELAA) and Brownfield/ Greenbelt usage balance thus far lacking.	



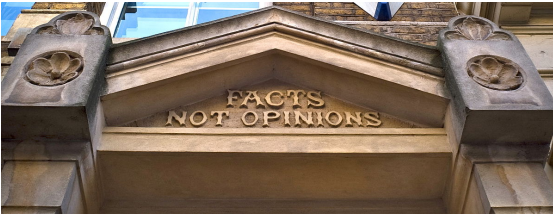


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<p>Tackling and removing its short-comings, enabling it to better gain support, as opposed to fierce cross-district and parish-wide opposition, ultimately sidestepping consequential legal challenge throughout 2021.</p>	
<p>This current Plan is technically vulnerable and under the detailed scrutiny of judicial review its holes will be exposed further. Several very determined communities are well prepared and Council nor Inspector are confident. Each know that were the Plan to be challenged at this stage in its current form it would not survive. This is indicated by Inspector’s suggestion that the Council maybe voluntarily withdraw the Plan followed by the Council’s reconciliatory attempt to offer instead promise of an early review.</p>	
<p>However communities won’t risk piecemeal consolations such as “early review” when they are so well aware that when the time comes Local Authorities can decide to make no alterations whatsoever. The Council is already viewed with distrust, so communities insisting upon a better Plan for their area at the outset will not be satisfied.</p>	
<p>Should the Plan be voluntarily withdrawn, there will be no further legal costs for representation this year to Council, nor any risk of having to pay the complainant’s legal fees should the Council not win Judicial Review. Council can also relax knowing they will not be sent back to the drawing board, both out of time and out of pocket. Whilst disappointing for them, taking responsibility now means they can still have time and money on their side.</p>	
<p>There would also be no accumulating of further unnecessary expenses to continue this particular already problematic examination in its current state.</p>	
<p>Because after further work, the Plan can be made robust and built fit for purpose, it can remain in place for the full five years serving the Council and community well into 2026.</p> <p>This is actually the fastest and cheapest route for the Council at this point.</p>	
<p>Legal challenge could be avoided, and all of the associated time delays; which will almost certainly take the matter well beyond September 2021 and maybe into 2022 if there are appeals...leading to earliest adoption being sometime 2023. This time-lag can be easily side-stepped entirely.</p>	
<p>By withdrawing now the necessary work can be completed, examination could be resumed and by the Summer of 2021 Consultation undertaken and by Autumn of 2021 in its revised form it could be adopted.</p>	

## **CONSIDERATIONS CONSTRAINING ALL SCENARIOS:**

The Government has stated a deadline of September 2021 - when all Councils must have an Adopted Local Plan. The Council will certainly miss that deadline if it pushes onwards remaining deaf to the many objections and without addressing core critical weaknesses



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- it will certainly find itself challenged via Judicial Review throughout all of next year. The only option that offers some immunity from that is Option A.

### **WHY THE COUNCIL'S "HOPED FOR BEST SCENARIO" CAN'T LEAD TO THE SUCCESS IT DREAMS OF:**

...Although Council hopes the current Plan's flaws can be overlooked, allowing it to be ushered through on a wistful and non-binding promise of an early review – is wholly dependent upon the community's response; which is something the Council simply cannot control – since the Council cannot prevent communities from filing Judicial Review against any decision. The Council has a blind-spot in this regards. They imagine, wrongly, this may not happen if they ignore the voices of descent.

If for arguments sake only though, let us imagine that all of the communities who have fought so bitterly hard for nearly ten years to get a better Plan for themselves and future generations, did just suddenly disappear overnight... then it's still a loser...

...Within merely 2 years the Council would have to start the headache of reviewing its policies all over again - paying further millions for expensive consultants, all associated costs of putting the thing back up for consultation and paying for it to go through more tedious expensive examinations YET AGAIN. Its weaknesses will only have become even more glaringly blatant. It will be as fiercely hated then as it is now, and the community outrage would only have had longer to fester.

So by 2023 the Council will be back again to this point poorer, even more tired, more despised and less credible than ever – still facing legal challenge and millions of pounds legal bills all over again.

Planning Practice Guidance states that in the case where changes recommended by the Inspector would be so extensive as to require a virtual re-writing of the local Plan, the Inspector is likely to suggest that the local planning authority withdraws the plan.

**See Appendix 4:** [Ref: PPG, Paragraph: 057 Reference ID: 61-057-20190315 Revision date: 15 03 2019].

So as a final word on this question, we should continue looking at guidance for:  
<https://www.gov.uk/guidance/plan-making#plan-reviews>



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22.1 b) If the housing requirement should be modified to 13,000 dwellings, should the supply of housing sites proposed in the Local Plan also be reduced? If so, how?

b) Is the selection of additional land for housing from previously identified sources the most appropriate way forward? If so, why? (Previous wording from MIQs January 2020)

**Recently the Council proposed to reduce its overall housing requirement to 13,000 dwellings - 11,600 to meet North Hertfordshire's housing need and 1,400 to help address Luton's unmet housing need.**

The Council anticipated the total delivery of 14,650 dwellings over the plan period.

But the Council now proposes to reduce the NHDC need to 11,600 dwellings plus retain an additional 1,400 "for Luton's unmet need".

11,600 plus 1,400 obviously equals 13,000 dwellings in total.

The delivery figure however still remains at 14,650 to be delivered in the Plan period.

That is 1,650 dwellings higher than the newly proposed need, 13,000.

The Council has declined to delete any housing sites to reflect this lower number.

Instead the Council claims they need a "buffer" or uplift of approximately 13%.

Here are the serious problems with that:

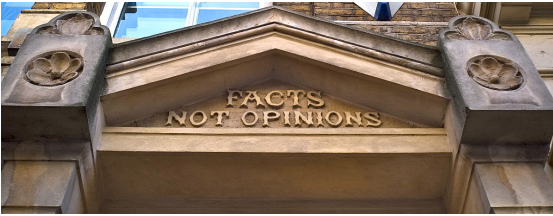
NPPF requires the presence of exceptional circumstances to warrant any consideration of Green Belt land release.

82 per cent of the Local Plan's total proposed sites are upon protected Green Belt, so this undermines a 13 per cent of those sites. This is a very large amount of Green Belt potentially saved from this desire to consume it.

No buffer is required, and even if it were, it would have to come from another place that doesn't require demonstration of exceptional circumstances.

This creates a further problem, because if there is no valid reasoning behind having a 13 per cent buffer then instead 13 per cent of the total sites must be removed.

This leaves behind the question of which ones and why those and not others?

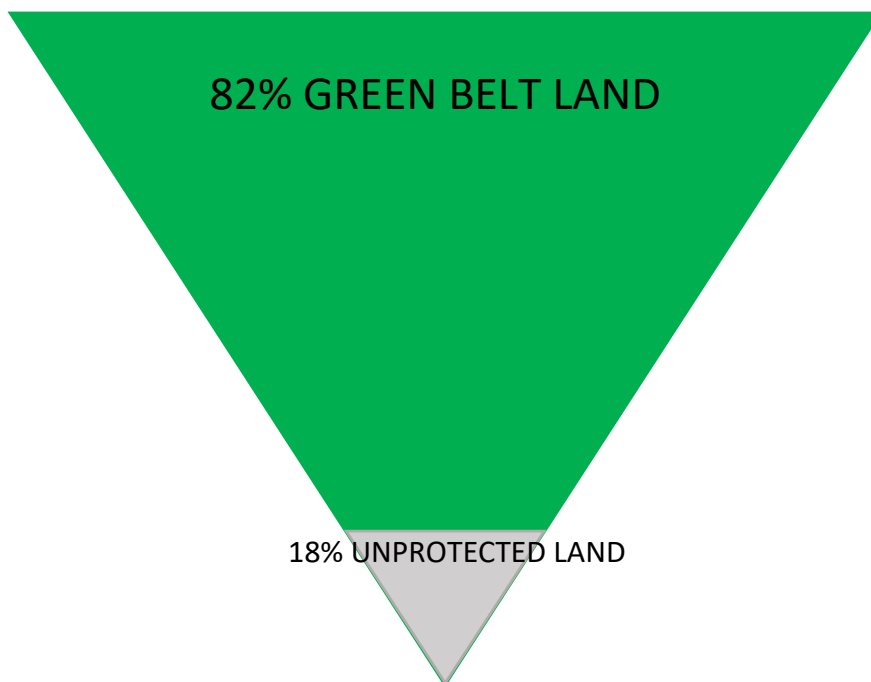


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Answering this involves much further work and the Council would need to make sustainability appraisal studies to reach that conclusion in a fair and considered way and hold consultation on these alterations.

**This constitutes real substantiated reason NOT to claim exceptional circumstances are present. In fact it illustrates the precise opposite constituting that the Council is merely stating its preference. So an optional additional buffer really cannot remain in the Plan with its current imbalanced Green Belt-82% versus 18% -non-Green Belt ratio.**

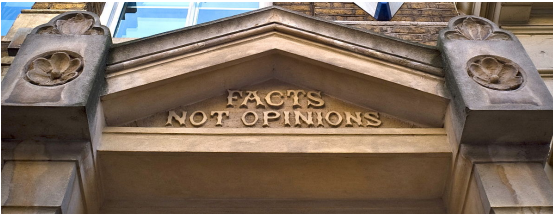
The disproportionate distribution of proposed land-sites can be seen here:



This is an unstable configuration to be working with. It will easily tip over. The Council does not propose to delete from the Local Plan any of the housing sites included within it, and argues that the difference between anticipated delivery above the requirement represents an appropriate 'buffer' (of around 13% of the overall housing requirement)!

The master mathematician at the Council might first consider this:





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Regardless of whether it would be beneficial for the Council to claim an optional buffer as evidence of exceptional circumstances, you can't claim a buffer before you have proven the foundational validity of the first figure.

The Council have yet to prove the buffer-less number is correct in the first instance.

There are four separate processes that must be analysed to bring clarity to this:

### **Logic Process 1:**

We must technically audit **how North Hertfordshire has calculated its OAN figure.**

This breaks into two branches:

- 1a) the 14,000 (original figure) and
- 1b) 13,000 (latest figure)

### **Logic Process 2:**

We must technically audit **how Luton has calculated its OAN figure.** This breaks into three branches:

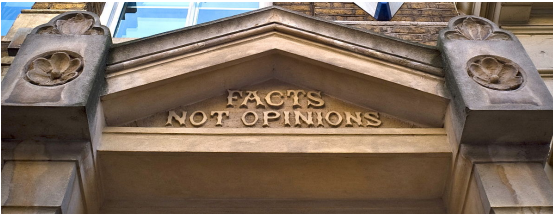
- 2a) the 1,950 (original figure)
- 2b) 1,400 (latest figure from NHDC) and
- 2c) any latest figures from Luton (since Luton's Adopted Plan is under Review).

### **Logic Process 3:**

Total individual dwelling capacity minus OAN figures equal claimed unmet need figure. So how much land has Luton revealed to be available within its boundaries?

Compared to how much land has Luton actually got available?

- 3a) What are the total land/ sites recorded in the Luton HELAA?
- 3b) What are the total land/ sites recorded in the Luton SHLAA?
- 3c) What are the total land/ sites recorded in the Luton SHMA?
- 3d) What are the total land/ sites NOT recorded in the Luton HELAA?
- 3e) What are the total land/ sites NOT recorded in the Luton SHLAA?
- 3f) What are the total land/ sites NOT recorded in the Luton SHMA?
- 3g) What are the total land/ sites NOT RECORDED IN SHLAA, SHMA or HELAA?
- 3i) What are the total land/ sites declared by Luton plus the land not declared/ recorded?
- 3j) What are the the total land/ sites actually available and what is the difference between what has been declared?
- 3k) Does a deficit of land/ sites exist for Luton or not? If so what is that deficit? If not what is that excess?
- 3l) Using the revised/ audited figure of land/ sites actually available, what is Luton's unmet need?



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3m) What is the difference between this revised/ audited unmet need and the previous unmet need being claimed?

3n) Does Luton have a greater or lesser unmet now all land actually available has been presented?

#### Logic Process 4:

How many dwellings have already been delivered in Luton during this Plan period (2011-2031) so far?

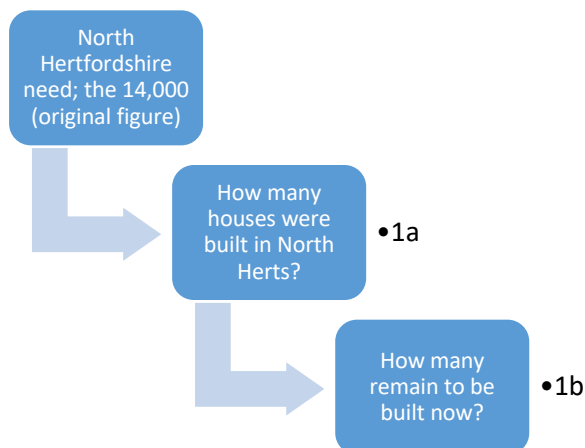
- a) How many dwellings have Luton already built in this plan period?
- b) How many would that leave to be built using the old 1,950 OAN scenario?
- c) How many would that leave to be built using the latest OAN 1,400 scenario?
- d) How many would that leave to be built in any other more accurate OAN scenario?

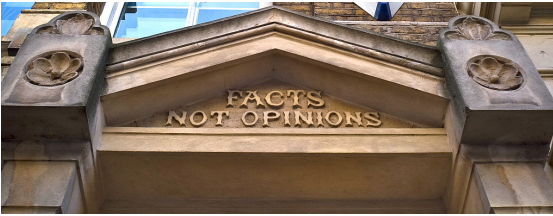
If at the end of performing these diagnostics, if it is demonstrated by evidence that there is more available land than either the Luton HELAA, SHLAA or SHMA originally declared, then the Luton unmet figures will need to be up-dated to reflect that.

If at the end the land sites available in Luton prove more abundant within its own curtilage, then those must be preferred above sites making significant contribution to the Green Belt and belonging to its neighbours.

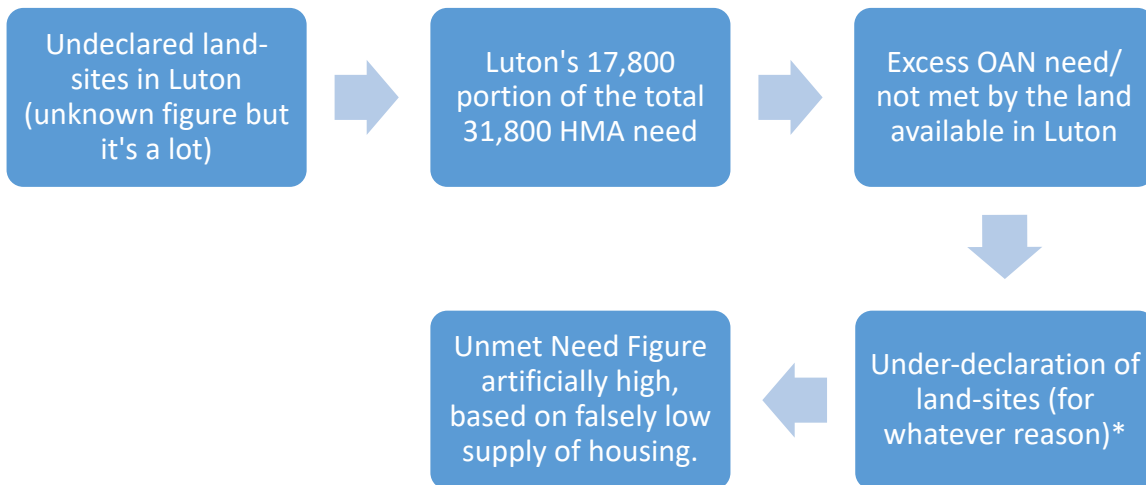
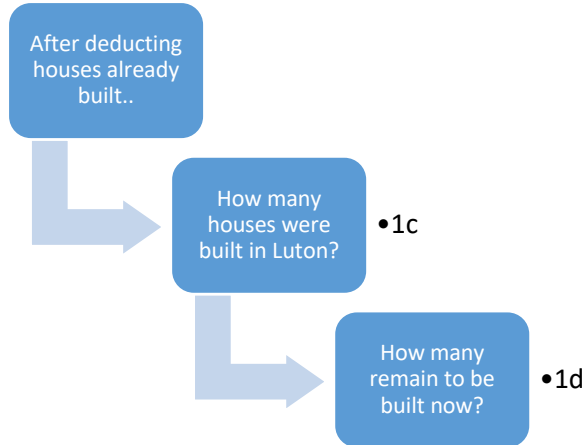
Additionally any dwellings already built from 2011 onwards, must be DEDUCTED from the total plan period OAN figures for both Luton and NHDC.

This is a diagram of these key interrelated components:





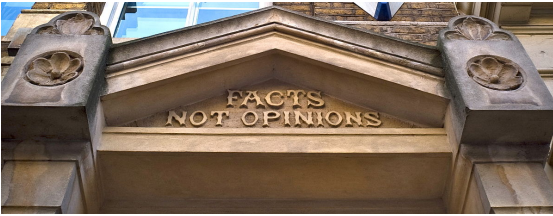
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**\*We have put forward our belief that the New Homes Bonus to be a prime motivator.**

**This toxic process must be addressed and corrected urgently. It is key to resolving the Matter 22 issues and questions.**

As with Graveley, East of Luton and west of North Hertfordshire are threatened with NHDC's Local Plan proposals to build houses on our Green Belt. However, in our case, most of these houses are meant to help Luton's so-called unmet housing need through to 2031. Luton's approved Local Plan shows that it needs 17,800 homes. It will build a **minimum of 8,500 itself**, with the balance of 9,300 proposed from Central Bedfordshire (7,350) and our area of North Herts (1,950). However this is all wrong.



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Our paper for Matter 21 dismantles this reasoning.

The chicanery of the North Herts planners and councillors (who are meant to control the land registers and numbers), is revealed just by looking at the registers and factual data.

They had to change their incorrect designation of the Green Belt in this area from 'modest' to 'significant'. This was after we exposed their mistake. This is the highest designation of Green Belt protection.

Then, we showed in previous Local Plan evidence that there was no real unmet need from Luton. So the planners changed the goalposts by suggesting that the houses were for the needs of the wider Luton Housing Market Area which includes large swathes of Central Bedfordshire. That too was shot down in flames.

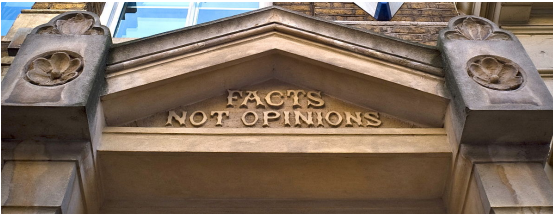
Thirdly, at the last evidence gathering into the Local Plan in March we sent in new written objections and were ready with oral evidence showing convincingly that the unmet need from Luton is non-existent.

So we are being asked to explore many different things:

- 1) The North Hertfordshire need; the 14,000 (original figure) versus 13,000 (latest figure).
- 2) The Luton unmet need; the 1,950 (original figure) versus 1,400 (latest figure).
- 3) But why not how North Hertfordshire calculated its OAN figures in the first place?!
- 4) What was their declared OAN when the original 1,950 was set, and was that correct?
- 5) What is the declared Luton OAN now that this alternative 1,400 figure is being set, and does it rely on new research or a repeat of the old?
- 6) Was the original Luton OAN ever accurate?
- 7) Is the new Luton OAN accurate even now?
- 8) How should the Luton's OAN be really calculated - in order to be the most accurate and up-to-date?

Even if there is a residual unmet need in Luton, the Inspector who approved the Luton Local Plan made it very plain that any such unmet need should first and foremost be provided for by Central Bedfordshire Council to the North and west of Luton and not from within North Herts.

At no time in the hundreds of pages of hardly understandable 'evidence' from NHDC is there any reference by the planners to Luton's own house building achievements. This is mysterious as the Luton document recently and suddenly appeared in the Evidence Documents on the NHDC Local Plan pages.



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Using a November 2019 document, freely available on Luton's website, David Dorman, Barry Brown and Carolyn Cottier demonstrated that the town will build closer to 16,000 homes – almost all of it on brownfield sites in the town.

The North Herts Council anticipates the delivery of 14,650 dwellings over the plan period. It does not propose to delete from the Local Plan any of the housing sites included within it, and argues that the difference between anticipated delivery above the requirement represents an appropriate 'buffer' (of around 13% of the overall housing requirement). Why hasn't it made any connection between its "buffer" and the 16,000 homes already in the Luton Planning Portal!?

Surely, NHDC should be doing due diligence as to what Luton's actual house building rates are? Especially as these 1,950 houses are planned for Green Belt land under what is known as 'exceptional circumstances'. If the need doesn't exist then there are no exceptional circumstances.

#### **WHY EARLY REVIEW IS A NON-STARTER:**

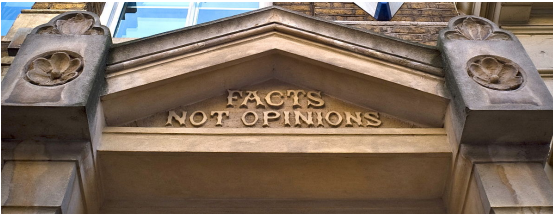
The suggested reduction is coupled with a commitment previously put forward by the Council to an early review of the Local Plan.

The 13% "buffer" cannot be said to relate to "severe and acute" housing need (after Calverton). Therefore "exceptional circumstances" haven't been established. The inspector, by his question, seems to be steering towards this conclusion. However, his note to 22.1d then discourages us from extended the same argument to other parts of the OAN. But it seems to be an irresistible logic in extending it to the ORS 'uplifts' which are equally notional - largely estate agents' fantasy - conjectural and nothing to do with any immediate or acute need. It is also worth noting that NHDC justifies the "buffer" by saying this is nothing permanent and will be subject to an early review. The trouble with such a review is that it will come after the White Paper ("planning for the future") has passed into law, meaning there will be no public scrutiny of it. The results of such a review would be a mere executive waive of the pen.

**Planning Practice Guidance** Paragraph: 062, Reference ID: 61-062-20190315,  
Revision date: 15 03 2019

States that under [regulation 10A of The Town and Country Planning \(Local Planning\) \(England\) Regulations 2012 \(as amended\)](#) local planning authorities must review local plans, and Statements of Community Involvement at least once every 5 years from their adoption date to ensure that policies remain relevant and effectively address the needs of the local community.





Representees: Carolyn Cottier, Linda Cottier, Barry Cottier, Zade Cottier-Wood Date: 13<sup>th</sup> September 2020  
Statement: Examination North Hertfordshire District Council Local Plan (2011-2031). Response: ED194  
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Considering that this current Local Plan has taken so many years to come close to fruition, we want it to at least serve us for longer than the time it took to examine it!

To pass a sub-standard Local Plan on merely “the wing and a promise of early review” is neither a good use of time and resources, nor does it meet the standards of fair practise.

There is also a problem in that the Local Authority can essentially “pull a fast one” by choosing to retain a policy for another five years and avoiding independent oversight. Would the community groups take such a risk on this Council? It is very unlikely. So no, this is a risk we wouldn't take.

“Yet, when the decision is taken unilaterally by the council to retain a policy for another five years there is no such independent oversight. The approach taken by Reigate & Banstead Borough Council may perpetuate the current imbalance where some LPAs respond to changing circumstances with new and amended policies, whilst some continue to rely on policies that were first drafted many years, if not decades, ago. There is of course no further need to review the Plan after this current course of action for another five years.”

Source: <https://www.turley.co.uk/comment/local-plan-reviews-failure-plan>

### **That is a risk the communities would never take.**

The Plan's number of housing sites must of course reflect the genuine need and bear relationship to the actual housing requirement figure. If it does not then it is merely a fabrication.

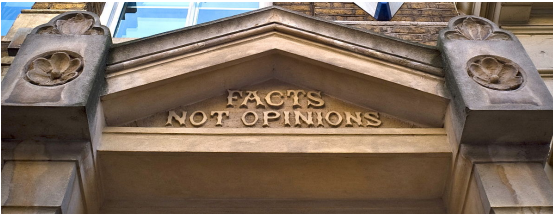
Fabricated figures are exactly what the NPPF is seeking to avoid when it requires all data must be relevant, accurate and up-to-date.

Yet 13,000 dwellings does not meet that definition either.

Releasing land from the Green Belt can't lawfully occur on the basis of a fabrication.

### **CONCLUSION:**

**Planning Practice Guidance** Paragraph: 062, Reference ID: 61-062-20190315,  
Revision date: 15 03 2019



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States that under [regulation 10A of The Town and Country Planning \(Local Planning\) \(England\) Regulations 2012 \(as amended\)](#) local planning authorities must review local plans, and Statements of Community Involvement at least once every 5 years from their adoption date to ensure that policies remain relevant and effectively address the needs of the local community.

Considering that this current Local Plan has taken so many years to come closer to fruition, one would expect it to be fit for the purpose for at least a full five year period after all of that expense and effort.

To pass a Local Plan through that is sub-standard on merely a wing and a promise of early review is neither a good use of time, resources or meeting the standards of fair practise.

**Conclusion 1: The 13,000 dwellings for North Herts housing requirement should be reduced further.**

**Conclusion 2: The unmet need for Luton of 1,950 should not be reduced to 1,400 but removed altogether.**

c) Is a 'buffer' or around 13% an appropriate approach? If not, why not?

c) Is the identification and selection of additional land for housing the most appropriate way forward? If so, why? (Previous wording from MIQs January 2020)

d) If there is a 'buffer' of around 13%, do the exceptional circumstances required for the 'release' of land from the Green Belt for housing development exist?

d) Are there any other possible options that would be more appropriate? If so, what are they and why would they be more appropriate than the path suggested by the Council? (Previous wording in Inspector's MIQs now superseded).

**Note:** this question relates solely and explicitly to the effect of introducing a 'buffer' of housing land supply on the existence or otherwise of exceptional circumstances – responses must address this point only, as the wider question of exceptional circumstances has already been explored at length through the examination.



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Relating solely and explicitly to the effect of introducing a “buffer” of housing land supply on the premise of the existence of exceptional circumstance, is that an immediate resuscitation of the new settlement options which were previously in the Plan at its early stages.

Options do exist that could be far more appropriate for such a “buffer” than the strategic option sites which NHDC has fixated upon at the exclusion of the better options.

In any case without justification NHDC has instead placed at the centre of its Local Plan land-sites which have far greater contribution to the Green Belt and which has been rated as making “highly significant” contributions - as in the case of East of Luton, than other land being overlooked. This has been addressed in other Matters however but what does become directly relevant to this new question – is what land/ sites/ settlements best match the introduction and description of a “buffer”?

Relating solely and explicitly to the effect of introducing this “buffer” of housing land supply on the premise of the existence of exceptional circumstance, means other sites re-emerge as “buffer” options.

There is a legal trail that shows NHDC is fully aware of large alternative “buffer-option” sites.

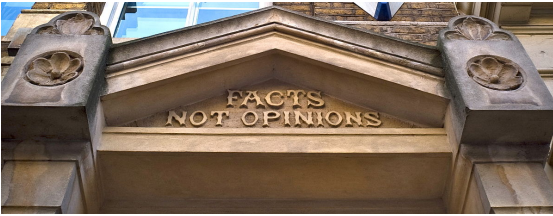
So now a new “buffer-site” audit-trail would need to be put into the Plan explaining why these options were previously abandoned but now can be re-introduced. This is not a problem because they were never clearly or official ruled out anyway; rather investigation into new settlement options were instigated and then just ceased, without explanation.

So there is nothing written in the Plan or evidence base to prevent The Council from simply continuing and picking up from where they left off; as a way of addressing this need to have some sort of “buffer-level-site” introduced to match the “buffer-level-need” that has been introduced.

The information we have drawn to the Inspector’s attention regarding new settlement buffer sites has been presented to him and discussed in other hearings.

In **ED166 - Inspector letter to the Council 9 July 2019.pdf (para 14)**

**The Inspector wrote his concerns thus,** “In the light of the representations, I have reviewed again some of the evidence underpinning the selection of sites for allocation. I am not clear from this, or from the previous hearing sessions, precisely how the exercise of reviewing the Green Belt has affected the site selection process.”



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Of particular relevance to the possibility of a “buffer”, is that the Inspector has said he was “struggling to understand how, or indeed whether, the contribution—whether it be moderate, significant, or whatever—made to the Green Belt by any individual parcel of land has influenced its selection or rejection. Put simply, I cannot see how the conclusions of the Green Belt review exercise have informed the selection of sites.”

So the Inspector confirms that there remains no set exercise that excluded certain other sites. There is no audit trail explaining why many Green Belt sites have been arbitrarily selected above many others that have been rejected. In the case of introducing a buffer of 13%, it becomes therefore immediately possible to bring back online old sites that were pursued initially but then forgotten about, due to their status of being only in the “buffer” zone of possibility and perhaps less immediately easy to deliver. This matches perfectly the idea and definition of a “buffer” and its less conclusive and more uncertain status.

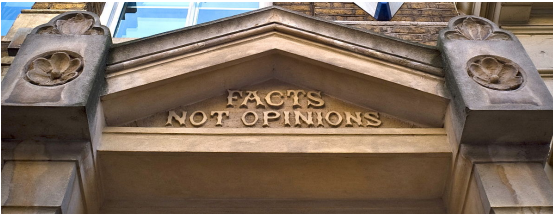
**ED166 Inspector letter to the Council 9 July 2019.pdf (para 14) says,** “The Sustainability Appraisal (2016) [LP4] does not appear to draw on the outputs of the Green Belt Review to any meaningful extent or make any distinction between land that contributes moderately to the Green Belt and land that contributes significantly. This may be a problem in itself. Similarly, in the Green Belt Update, there is little in the way of justification for the conclusion that while some land is now considered to make a significant contribution to the Green Belt, it should nonetheless remain allocated for development (or, in one case, for ‘safeguarding’).”

A buffer is an uncertain margin left “just in case”, and thus does not constitute exceptional circumstances. We can argue a “what if just in case scenario” for almost any phenomena on the planet, and it is merely a conceptual perspective, and preference rather than any material fact.

If there is a ‘buffer’ of around 13%, then this is really an admission from the Council that the exceptional circumstances required for the ‘release’ of land from the Green Belt for housing development indeed do NOT exist.

Better matched to this 13% uncertain “just in case” buffer scenario there would be many other possible options that would be far more appropriate.

In order to answer the next logical question, as to what they are and why would they be more appropriate than the path suggested by the Council – we shall look towards the NPPF in conjunction with some earlier work undertaken by the Council itself for this Plan, but which was left unfinished and unexplained.



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**NPPF para 52.** States that the supply of new homes can sometimes be best achieved through planning for larger scale development, such as new settlements or extensions to existing villages and towns that follow the principles of Garden Cities.

**NPPF para 52.** Also says that working with the support of their communities, local planning authorities should consider whether such opportunities provide the best way of achieving sustainable development. In doing so, they should consider whether it is appropriate to establish Green Belt around or adjoining any such new development.

**A site identified for a large and new settlement for at least a thousand new homes was promoted by the Council back in February 2013 and can be seen in the NHDC consultation document numbered OLP3 within the Examination Library. This site and others like it, would be a more suitable match to a “13% buffer figure” notion.**

Admittedly no explanation has been given by North Herts as to why preferential approaches according to the NPPF 2012 (paragraph 52), were started but then left un-concluded; however in this case that appears to be an advantage, because these sites can now be easily re-introduced as they were never officially discounted by way of any Plan process in the first place.

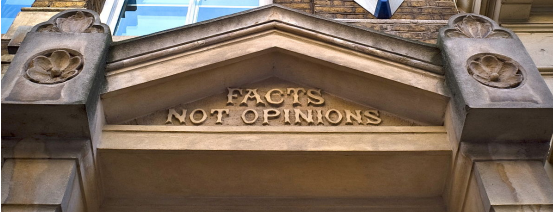
As part of the February 2013, North Hertfordshire Growth Levels and Locations Consultation, views were sought on various strategic locations and housing targets; in an issues and options type consultation. On page 26 of OLP3 it refers to Rush Green which is described as free standing settlement of a thousand homes - like a new garden settlement.

The land is upon Green Belt but unlike the East of Luton sites, has been previously developed and is not making a “significant contribution” to the Green Belt in the same way that sites such as East of Luton has been stated as doing.

A resolution was passed by Full Council on the 12th February 2015 which required NHDC officers to explore the potential for a new settlement / Garden City in the area to address long term housing needs for the future. So in line with the NPPF para 52, NHDC continued to explore the possibilities for Rush Green (a 1000 plus dwelling new settlement site) plus others, through the pursuance of its commissioning of a new settlement and New Garden City study.

Wider Government was involved as in 2015 the Herts LEP hosted a presentation by David Lock in the Spirella Building in Letchworth. David Lock was responsible for developing Milton





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Keynes, which he proudly stated was being built within 5 years of drawing up the first plans. Today his team are responsible for delivering the new Garden City at Ebbsfleet and Alconbury Weald, and also the regeneration plans for Stevenage Town Centre. He echoed the thoughts of Ebenezer Howard in relation to building Osborn.

This was publicised widely in the Press at the time. Here are two examples:

**For full articles see the Appendixes at the end:**

**APPENDIX 1: Press article about MPs backing a new garden city as alternative option published in Mercury Hitchin Comet, 29 January 2015.**

Source: <http://www.thecomet.net/news/mps-back-new-garden-city-as-alternative-to-council-s-north-herts-housing-blueprint-1-3936165>

## **MPs back new garden city as alternative to council's North Herts housing blueprint**

**PUBLISHED:** 15:58 29 January 2015 | **UPDATED:** 16:00 29 January 2015

[by James Scott](#)

**APPENDIX 2: Press article announcing that North Hertfordshire District Council is preparing a scoping paper for a new garden city. The Hertfordshire Mercury, 24 September 2015.**

Source: <http://www.hertfordshiremercury.co.uk/new-garden-city-option-considered-north-herts/story-27847087-detail/story.html>

[New garden city option considered in North Herts](#)

By [Hertfordshire Mercury](#) | Posted: September 24, 2015

Additionally David Levett was an active member of the cross-council infrastructure planning partnership responsible for sharing information about Local Plans. *Councillor David Levett - Portfolio Holder for Planning and Enterprise* engaged in public interaction upon the online



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Baldock Community forum posting about this and highlighting his commitment to a New Garden City on 3 February 2015:

David Levett: “I sit as a member on the Hertfordshire Infrastructure Planning Partnership (HIPP) which is a body that is made up of officers and Members from all the Hertfordshire local authorities, Herts County Council and the Local Enterprise Partnership (LEP). HIPP gathers and shares information on how our Local Plans are developing and uses this to develop strategic plans in association with the relevant responsible bodies what infrastructure will be needed in the wider area and for which the LEP can apply for government funding.”

*NHDC Portfolio Holder for Planning and Enterprise* went on to say; “In the meantime, as I have mentioned at several of the public meetings and have been actively promoting, maybe some of the larger sites could via the masterplan for that development adopt a “garden village” approach. I think I may even have mentioned it at the Baldock meeting on 9th January. The idea must have some good points as others have picked up on it and promoted the idea.”

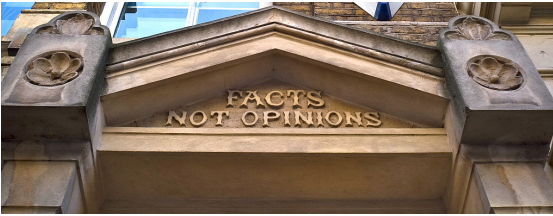
“Coming back to the New Garden City idea, the size of any brand new development as currently being championed to be viable and sustainable and provide sufficient payback to fund the required infrastructure would need to be provide homes for a population of around 30,000 people over approx. 15- 20years – which happens to be the almost same number Ebenezer Howard put forward in his concept for a Garden City (32,000 population on 6,000 acres (2428 hectares).” - *Councillor David Levett - Portfolio Holder for Planning and Enterprise*

Source: <https://www.saveruralbaldock.co.uk/?p=752>

“North Hertfordshire New Settlement Study Final Report April 2016 by ATLAS” resulted from that commissioning resolution passed by Full Council nearly a year earlier.

**Page i in the Executive Summary of the ATLAS Report confirms:**

“1. The Advisory Team for Large Applications (ATLAS) has been supporting North Hertfordshire District Council (NHDC) in relation to considering the issues related with planning for a ‘new settlement’ in the District. This followed a resolution passed by Full Council on the 12th February 2015 which required NHDC officers to explore the potential for



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a new settlement / Garden City in the area to address long term housing needs for the future.”

The full published final new settlement/ Garden City report from ATLAS can be found here:

<https://www.north-herts.gov.uk/sites/northherts-cms/files/HOU6%20North%20Hertfordshire%20New%20Settlement%20Study.pdf>

Or:

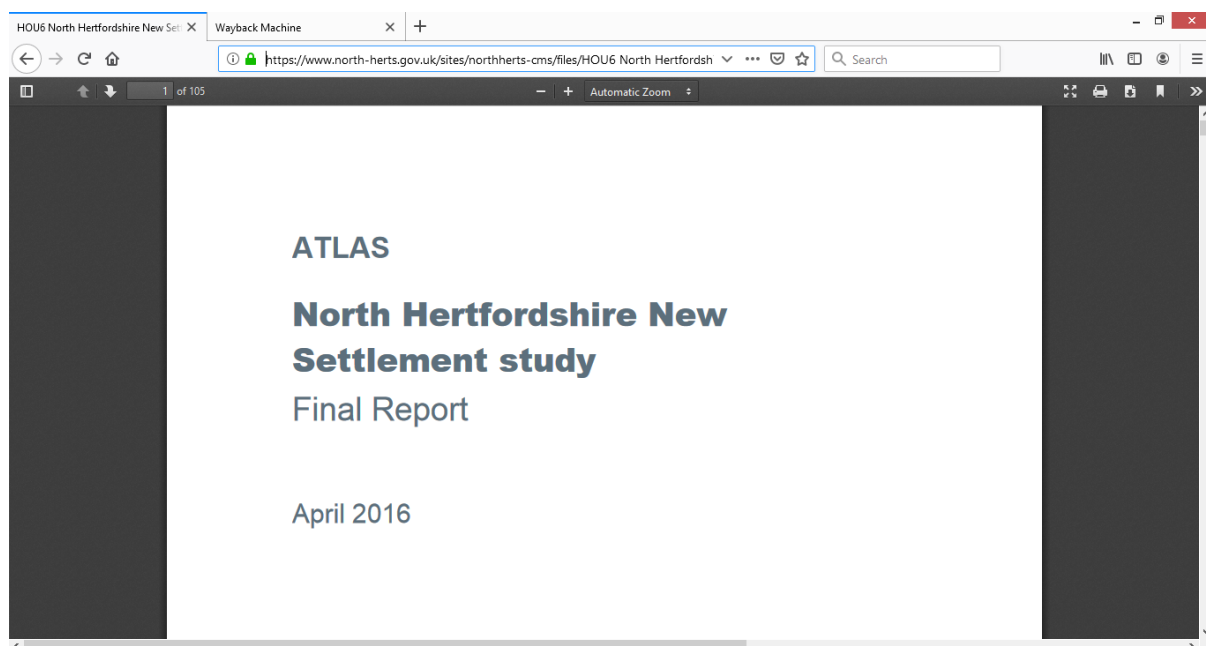
<https://www.north-herts.gov.uk/files/hou6-north-hertfordshire-new-settlement-study.pdf>

 [HOU6 North Hertfordshire New Settlement Study.pdf](https://www.north-herts.gov.uk/sites/northherts-cms/files/HOU6%20North%20Hertfordshire%20New%20Settlement%20Study.pdf)

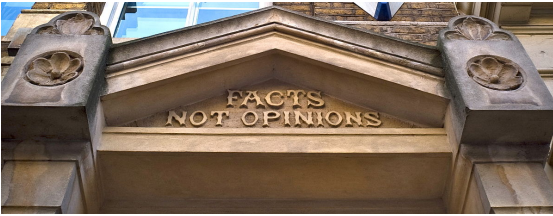
<https://www.north-herts.gov.uk/sites/northherts-cms/files/HOU6%20North%20Hertfordshire%20New%20Settlement%20Study.pdf>

Archived also here:

<https://web.archive.org/web/20190621190416/https://www.north-herts.gov.uk/sites/northherts-cms/files/HOU6%20North%20Hertfordshire%20New%20Settlement%20Study.pdf>



In its chapter entitled **“Why are we considering a new settlement?”** the ATLAS Report 2015 (page i) discussed the problem of local opposition and 8,400 local objections to Green Belt releases as being one main reason why a potential new settlement was being looked at.



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“2.11 The LPPO consultation received approximately 8,400 representations. NHDC identified that a number of these comprised local objections to the proposed focus on SUEs and the scale of Green Belt release around settlements. Others referenced the potential role of a new settlement.” ATLAS Report (page 3)

“8. The Local Plan Preferred Options (LPPO) for North Hertfordshire proposed several Sustainable Urban Extensions (SUEs) and Green Belt releases on the edge of existing settlements to accommodate the District’s housing needs. This has been the subject of some local opposition alongside suggestions to consider the possible role of a new settlement. NHDC has therefore resolved to consider various means of accommodating the District’s housing needs, including the potential for a new settlement.” ATLAS Report (page i)

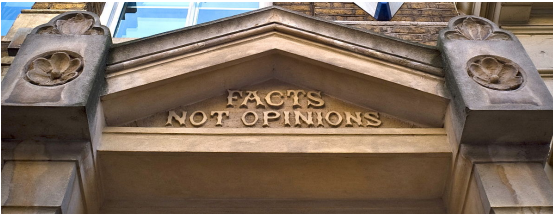
“15. The report has, in accordance with the project brief, considered that a new settlement would include at least 5,000 new dwellings and accommodate a level of employment plus associated social infrastructure. This falls within the range stipulated within the Government’s 2016 prospectus as representing a ‘*garden village*’ of 1,500 to 10,000 dwellings.” ATLAS Report (page ii)

But how would the Council go about actualising this idea? What were the legal vehicles complimentary both to the Local Plan’s housing targets and the NPPF requirements in paragraph 52?

The ATLAS Report addressed this matter too. It said that the Local Plan would be the main vehicle – “it will be necessary to demonstrate that the allocation of the new settlement in the Local Plan” as being “sound”, in accordance with NPPF (paragraph 182) tests.

“6.9 In pursuing such an approach, it will be necessary to demonstrate that the allocation of the new settlement in the Local Plan –as well as any associated policies –is “sound”, in accordance with the tests established by the NPPF (paragraph 182). In particular, it must be:

- Positively prepared, i.e. it must seek to meet development needs and infrastructure requirements, including unmet needs from neighbouring authorities;
- Justified, i.e. it must be the most appropriate strategy when considered against the reasonable alternatives;
- Effective, i.e. it must be deliverable; and
- Consistent with national policy, i.e. it should enable the delivery of sustainable development in accordance with the policies of the NPPF.” ATLAS Report



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Tested against these then, an all-pervading disappointing absence presents itself, in that the Local Plan is immediately hollow of such requirements. But again this is in the light of possibility of a buffer, re-visitable.

The Plan is inconsistent with national policy NPPF (paragraph 52), and there has been no demonstration, justification or comparison of 1) this new settlement/ New City, 2) the factually existent legal vehicle created for it; The New Garden City Company Limited registration code: 10029731 or 3) any of the potential strategic sites for a new settlement such as the Rush Green site. However this can be resolved by reintroducing it all under the heading of a new “buffer” option.

Although the Sustainability Appraisal (2016) makes no mention of this, the settlement was created as a legal vehicle, studies commissioned, press releases published and sites potentially earmarked.

Even though all of these exist as facts and should therefore have been justifiably compared as other reasonable alternatives being considered, the Council chose instead to focus on others only, but this process however can now be given the renewed possibility of being completed.

During 2015-2016 when the Full Council began working on its research into a new settlement, the Local Plan was being prepared also, and when the ATLAS Report was nearly complete, the Local Authority went ahead and created the legal corporate development vehicle for development of real estate and called it the New Garden City Company Limited.

A point to be aware of is that Local Authorities were granted oversight authority status by Government for such new town development corporations.

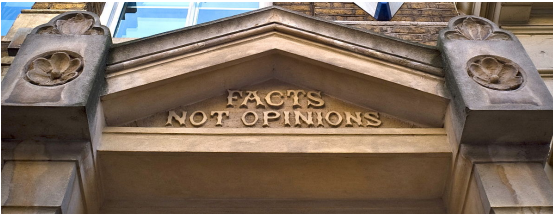
Local Authorities had already been using corporate vehicles for the delivery of new garden cities for some time, such as with Ebbsfleet. The ATLAS report advised NHDC of these as follows:

#### **“Urban Development Corporations**

6.26 The Government has shown interest in the use of Urban Development Corporations to deliver large-scale development sites in recent years. In particular, the Government used secondary legislation in 2015 to establish an Urban Development Corporation to deliver the new Garden City at Ebbsfleet<sup>19</sup>.

<sup>19</sup>The Ebbsfleet Development Corporation (Planning Functions) Order 2015 (Statutory Instrument 2015, no. 748)





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6.27 Mindful that the delivery of Ebbsfleet up until that point had been slow, the Urban Development Corporation was introduced to “...provide the direction, focus, expertise and resources to deliver an ambitious new development...”<sup>20</sup>.

<sup>20</sup>Ebbsfleet Development Corporation: Consultation, Department of Communities and Local Government (August 2014)

It has the power to, inter alia:

- Acquire, hold, manage, reclaim and dispose of land and property;
- Carry out building or other operations;
- Seek to ensure the provision of utilities (water, sewerage, gas, electricity, etc); and
- Carry on any business or undertaking for the purpose of delivering the development.

The ATLAS Report (pages 65-6)

The signatory of the Local Plan and all of its Library of Evidence and Documents, Councillor David Levett - Portfolio Holder for Planning and Enterprise at the Local Authority, set up a development corporation appropriate for acquiring, holding, managing, reclaiming, and disposing of the land and property for this new settlement/ Garden City.

This development corporation was described by its SIC code; as essentially having the purpose of handling real estate assets. It was incorporated under the Companies Act 2006 and appropriately named the New Garden City Company Limited.

Burges and Salmon further describe the corporate vehicle required to deliver a new settlement in the following three paragraphs extracted from their article “Garden cities: development corporation to be locally led” (25 July 2018).

“The government has refreshed the post-war mechanism to deliver new towns in order to help deliver the growing number of garden cities, towns and villages proposed. The mechanism, which delivered the likes of Stevenage and Crawley and by which a corporation is responsible for developing a settlement, has been given a local flavour.”

“New towns are planned settlements built using the powers of the New Towns Act 1981 (or preceding legislation). An organisation known as a development corporation is set up in order to deliver the new town. Once the new town is established, the development corporation is dissolved and responsibilities and assets passed to the local authority (or local authorities) of the area in which the new town is built.”



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“The local authority (or local authorities, if the new town will straddle authorities’ boundaries) would be known as the oversight authority.”

Burges and Salmon “Garden cities: development corporation to be locally led” (25 July 2018)

Available at: <https://www.burges-salmon.com/news-and-insight/legal-updates/garden-cities-development-corporations-to-be-locally-led/>

**For full article see APPENDIX 3:**

**Burges and Salmon Article “Garden cities: development corporations to be locally led” 25 July 2018**

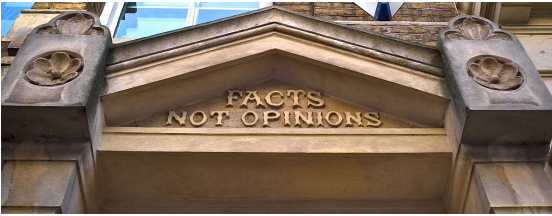
Other neighbouring authorities which the Garden City might straddle, were aware of the new settlement exploration program and possibility for funding at that time.

In Paragraph 2.74 of the Stevenage and North Hertfordshire SHMA Update 2015 (ORS) it makes clear reference to a resolution passed by Full Council on 12th February 2015, stating that NHDC Officers were tasked with exploring the potential for new settlement(s) to address the long term housing needs of North Hertfordshire.

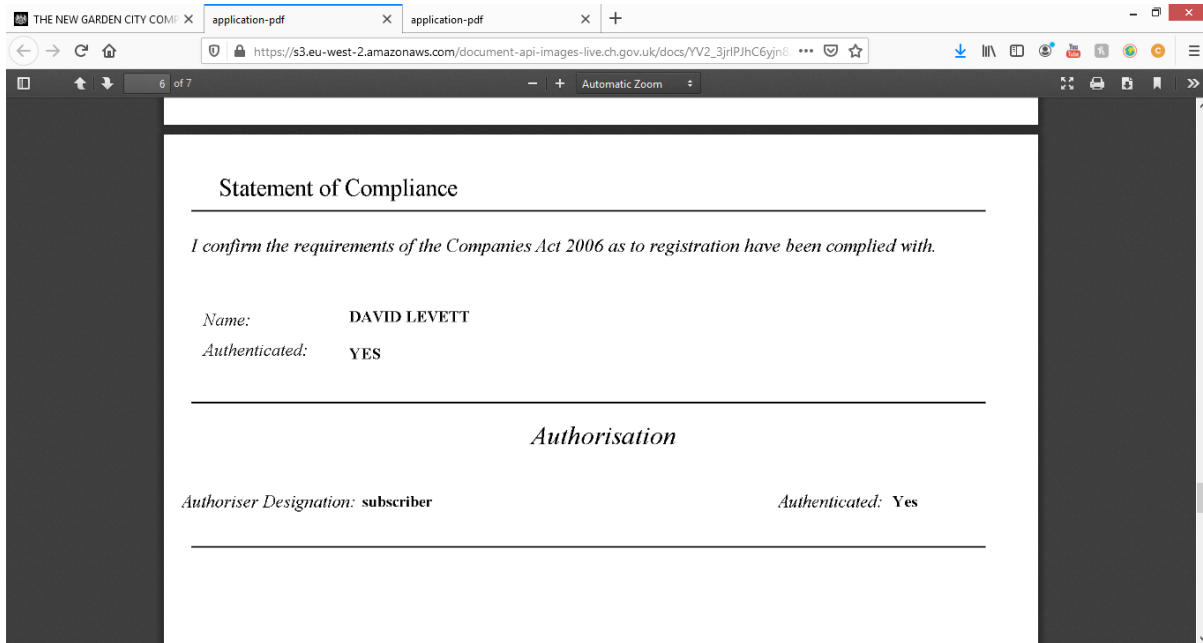
The resolved motion stated NHDC:

*“...instructs officers to continue to explore the long term housing needs of North Hertfordshire with other Local Authorities, the DCLG, and other relevant bodies, and the extent to which there may be reasonable options for new settlements for the future in North Hertfordshire together with the required infrastructure and funding.”* 6 Paragraph 2.74 of the Stevenage and North Hertfordshire SHMA Update 2015 (ORS)

The Council’s Chief Planner and Executive member David Levett having taken the formal step of legally incorporating the new development corporation “The New Garden City Company” for purposes of letting and operating freehold or leasehold real estate had declared the New Garden City as a legal entity.

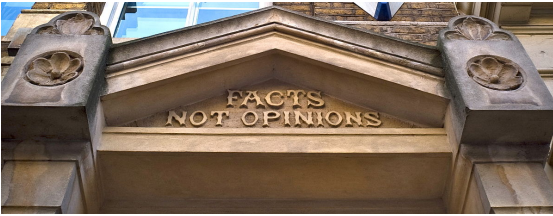


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Updated Schedule of Further Matters, Issues and Questions (14<sup>th</sup> August 2020)

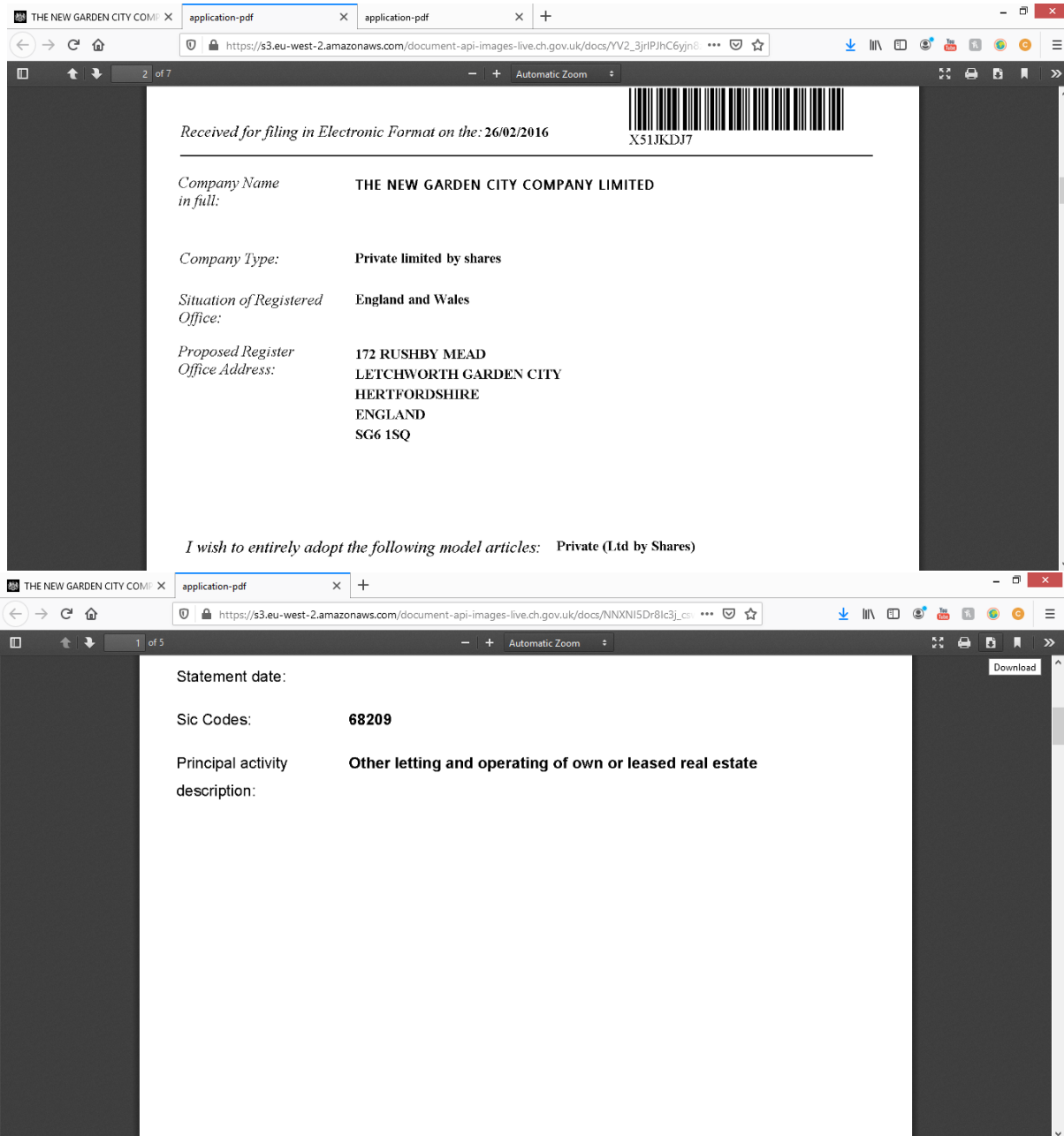


Its Incorporation Statement on 26 February 2016 can be viewed at  
<https://beta.companieshouse.gov.uk/company/10029731/more>

And a Confirmation statement with updates was made on 25 February 2017.



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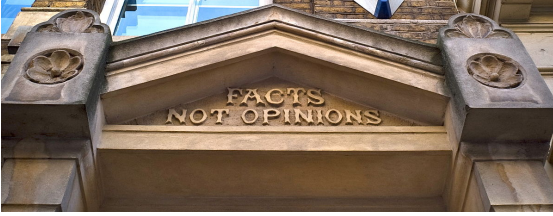


**The New Garden City Company Limited's purpose was registered as the letting and operating of own or leased real estate.**

Principal activity description: Other letting and operating of own or leased real estate.

Sic Codes: 68209

Identically the ATLAS report on the new settlement, specifically discusses on page 79 economic sustainability through the potential of pre-letting space to new settlements with



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cost-savings generated through retaining free-holdings and letting them as well as generation of income through letting of leaseholds too.

This aligns perfectly with the Council's incorporated New Garden City Company's only stated purpose.

### **“Economic Sustainability**

6.100 Whilst it is understood that the central rationale for the settlement is to provide for high levels of long-term housing need in the area as explored in section 5 there are significant benefits in ensuring the economic sustainability of the settlement. The attraction and retention of employers within the settlement will be integral to its future legacy and a number of flexibilities could be explored with Government, including:

- The potential to ‘pre-let’ space through Government relocations to new settlements. Connectivity to central London is strong in the area with cost-savings to be generated through the potential retention of free-holdings and or negotiation of strong lease terms;” ATLAS Report (page 79).

Do we find *any*, let alone adequate robust evidence of the above physical facts having received the scrutiny they deserved at any point within the Local Plan submission or in general terms to these proposed allocations reflecting the outcomes of the sustainability appraisal?

No, we do not; they are in fact all entirely absent.

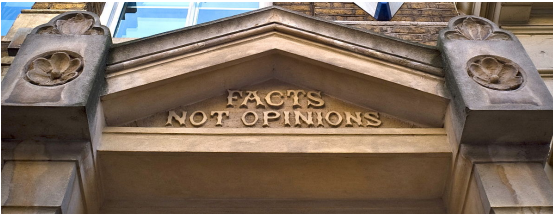
Yet the new settlement became the one materially existent legal entity, when all other Green Belt sites remained at merely conceptual stages, and were neither legal entities nor development corporations owned by the Council.

NHDC and Inspector simply have no justification for such a huge critical omission and oversight of this material fact.

The Inspector has been told about it and has had the chance to rectify it.

However let us pause for consideration here, as clearly this open-ended process cannot be left unresolved. Is there a way to turn this problem into a victory? The new settlement “buffer” option would be a way of offering some explanation as to why a new settlement was legally created, and then why it was not pursued immediately. However in the presence of a buffer demand (uncertain) and supply (future New Garden City settlement) have matching levels of certainty and time-frames.





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Therefore as Luton does not have an unmet need (see Cottier papers for Matters 21), so all that there remains is the 11,600 claimed as required by North Herts. Why not then apply the buffer of 13% to that?

13% of 11,600 is 1,508.

87% of 11,600 is 10,092.

A new settlement called the New Garden City Limited, or another urban development corporation like it, could be used to address the 1,508 buffer need in such a “just in case” eventuality. A smaller site such a Rush Green would be perfect for that “just in case” scenario described by Nigel Smith in his recent response explaining why a buffer is required.

The Rush Green site was brought up in the Hearing discussion by Barrister Andrew Parkinson on Matter 23<sup>rd</sup> November 2017 Part 4.

The transcript of this discussion is in full below and can be found at 2:28 minutes to 08:45 minutes on the original recording at:

Local Plan Examination Hearing - 29 Nov 2017 - Part 4

By [North Hertfordshire District Council](#)

Source: <https://www.youtube.com/watch?v=WicmCmARSik>

Yet despite this we find all of this important research still entirely absent from the Local Plan and its evidence base. No justification is given as to why the Green Belt declassification of sites making highly significant contribution to Green Belt are preferred over a new settlement or why The New Garden City Company Limited was suddenly abandoned without explanation.

How can exceptional circumstances justifying removal of Green Belt land be balanced correctly against attempts to later hide an existing legal entity incorporated for this alternative?

To become legally sound thorough evidence must be provided as part of the due process and considered in totality. The Library of Documents should identify all alternatives which have been considered and work through them.

The fact it was materially created yet is entirely missing from the Plan, SHMA, SHLAA, Sustainability Appraisal and in fact everything; which illustrates although the Council, whilst well aware of the legal existence of this new settlement, simply tried to omit it and not to



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openly declare it so it could not be seen at Examination stage as an interesting alternative that had been initiated.

Back in 2015 the time-frame expected to plan the new settlement was expected to be several years, which means its plans could have been well underway by now.

**“6. The planning of a new settlement will represent a complex and lengthy process which is likely to take several years.” -ATLAS Report 2015 (Page i)**

We certainly owe the best solution to the next generation and the long-serving residents of North Herts and East of Luton, and it is not like it would be creating a whole new Planning paradigm when we have glowing examples of success in such close proximity. The opportunity to protect our Green Belt and build Osborn Garden City or a New Town in this current round of Local Plans must not be missed.

At the very worst a new settlement should certainly be stated as the preferred option for any of the extra 13 percent or higher uplifts and buffers at this stage, since like them, it can be clarified further in any forthcoming Plan reviews.

Why then have the Council striven so hard to hide The New Garden City Company Limited and its associated sites?

The ATLAS Report states some possible conflicts between New Homes Bonus incentives and the new settlement, but a financial preference does not represent any lawful reason why exclusions of alternatives have been made and exceptional circumstances are being claimed.

**“6.11 ... The implications of such a decision for the District, at least over the short-term, include that it could:**

**•Undermine NHDC’s income from New Homes Bonus, mindful that the Government has proposed that from 2017/18 LPAs who “...have not submitted a Local Plan...should not receive New Homes Bonus allocations for the years for which that remains the case...”<sup>17</sup>.**

**<sup>17</sup>New Homes Bonus: Sharpening the Incentive, Department for Communities and Local Government (December 2015)**

ATLAS Report 2015 (page 62)

**EVIDENCE ITEM 1: THE TRANSCRIPT ABOUT NEW SETTLEMENT ALTERNATIVE SITE**



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The issue of the new settlement and an alternative strategic site was brought up in the Hearing discussion by Barrister Andrew Parkinson on Matter 23<sup>rd</sup> November 2017 Part 4.

The transcript of this discussion excerpt starts at 2:28 minutes and ends at 08:43 minutes on the original recording at:

Transcript begin:

02:28 - Inspector Simon Berkeley (ISB): Erm 9.3, is there anything that anyone wants to tell me about the essay and the site selection process that they haven't done already? Nothing else...? Mr Parkinson....

02:39 – Barrister Andrew Parkinson (BAP): So there was the erm issue about the new settlement, whether it has been identified at any particular point, I don't know if that's....

02:49 – ISB: Ah!

02:50 – BAP: Now's an appropriate time to...

02:52 – ISB: Did we get to the bottom of that...?

02:58 – Carolyn Cottier (CC): Yeah...shall I tell you about it...? Or just that lady...is it Louise...? Does Louise want to say about it...?

03:09 – ISB: As long as someone tells me, I don't really mind.

03:12 – CC: Louise...?

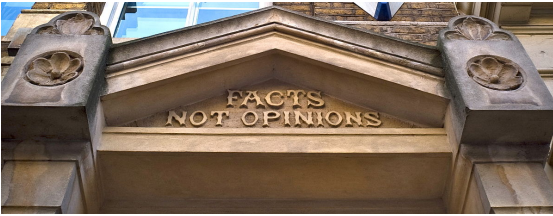
[Silence from Council Member Lousie Symes]

03:16 – CC: I'll do it, right so yeah there is a Garden City that's been registered in Letchworth and it appears that David Levett has registered it and it was registered to his personal address and it's not...it's erm.... I don't know...there's not really much to say about it, it's just to his personal address but it's not the actual site where they would put the houses."

03:38 – QC Susan Ormsby (QCSO): So, so as I understand it, I think there's a bit of crossed wires here, I think there is a company that has been registered called "The Garden City Limited Company".

[STATEMENT FACTUALLY INCORRECT, so is corrected by CC]

04:10 – CC: *NEW GARDEN* – **THE NEW GARDEN CITY**....that's all.



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04:13 – QCSO: But there is no site for erm, a new garden city – because the position in so far as the evidence base is concerned is that any location for a development is only at the conceptual stage. So there is no site.

04:32 – CC: It is at the conceptual stage.

04:35 – QCSO: Yes that’s what we said before the adjournment that erm a proposal for a new garden settlement is at the conceptual stage and therefore erm there is no site within the North Hertfordshire that has as of yet been identified for that.

04:56 – ISB: Are you indicating Mr Parkinson...?

04:59 - BAP: Yeah...not on this point about the company being registered, but just what was said about the site being at a conceptual stage. Erm, we went back and looked at the February 2013 North Hertfordshire Growth Levels and Locations Consultation document.

05:21 – ISB: The “what” sorry..?

05:22 – BAP: It’s entitled Growth Levels and Locations – I think it was the first one of the first consultation documents which set out...not sure it’s in the Examination Library...”

05:33 – Council (NHDC): It is....

05:33 – ISB: Oh it is...

05:33 – BAP: Oh okay brilliant.

05:34 – ISB: They’ll give you a number in a minute...

05:35 – BAP: Thank you. Erm basically what it did was seek views on various strategic locations, erm housing targets etcetera...almost like an issues and options type consultation.

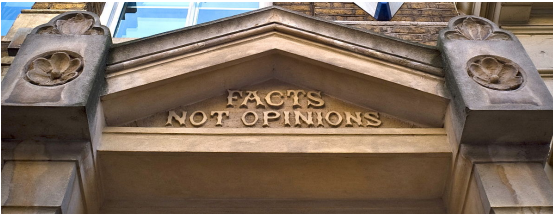
05:51- BAP: Erm....when Mr Smith kindly finds that number.

05:54 – Nigel Smith (NS): I will... OL P3

05:57 – BAP: LP3...So can I tell you what I am going to say about it...?

06:00 – NS: OLP3

06:05 – BAP: Thank you



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06:06 – QCSO: OL...

06:09 – NHDC: Lima papa 3

06:10 – ISB: Go ahead.

06:11 – BAP: Thank you. Maybe if I tell you what I'm going to say and then you look at it or not.

06:16 – ISB: Yeah...

06:18 – BAP: That erm on page 26 in that it refers to development at Rush Green erm which is described as a new free standing settlement of a thousand homes, so perhaps not a garden city but a garden small town...

Which is in the Green Belt but on previously developed land and was at that point being actively promoted by according to consultation document Rush Green Motors, Rush Green Aviation and Rush Green Farms.

Erm the reason I raise this is erm this question of whether there was a site identified for a large and new settlement – Erm the consultation document suggests that there was.

I've been unable to sort of trace that through the sausage machine process to see at what point if got kicked out.

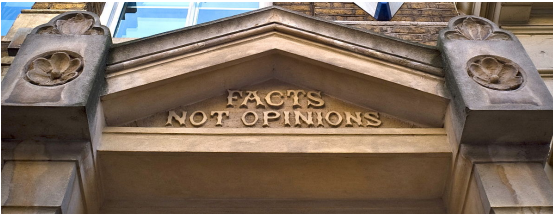
But I thought it would be helpful for your note to know that there was a site at least for a thousand new homes being promoted in February 2013.

07:33 ISB: Erm I rather suspect I've... I've heard enough on all of that, I'm not sure that probing is going to get me any further erm...at all.

Anything else on 9.3...? Thank you...

9.4 then...on general terms to the proposed allocations reflect the outcomes of the sustainability appraisal... - "Outcome made" not quite the right word there but in any event you get the point and testing of reasonable alternatives through the site selection methodology, is there a clear audit trail in this respect? Well I think that we've probably just been through the audit trail, I certainly don't want to go back through it again, erm but is anyone here saying anything about the proposed allocations and whether they're a reflection of the outcomes of the essay or not. And the testing of the alternatives the Council has undertaken? ..... Have we done that to death...?





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Erm well that's joyous news...Erm 9.5 then....what methodology has been applied to the identification of the settlement boundaries around the towns and Category A villages... [coughs]...is the methodology appropriate and adequately robust...?

**End transcript excerpt at 08:45 minutes.**

**FACTS we can derive from this hearing conversation:**

There was a New Garden City corporation that had been registered in Letchworth by the Council Member who was heading the Planning Department and who had signed off the Examination Library and the Local Plan for Submission - David Levett.

QC Susan Ormsby admitted she knew there was a company that had been registered. However she stated the name of the company incorrectly leaving out the word "new" of what it had been registered as, plus additionally swapping the two words Limited and Company over into the reverse order – calling it wrongly "The Garden City Limited Company" when the correct name was "The New Garden City Company Limited".

Why she left the "new" out of "The New Garden City Company Limited" and reversed the word order of company and limited is unclear; perhaps it was intentionally, or perhaps this company was not something with which she was particularly familiar, or perhaps there was some other reason she misquoted the precise name. She is a lawyer so precision should be her speciality.

QC Susan Ormsby however also wrongly stated that there was no site for a new garden city.

She incorrectly claimed that there was not any location for a development in the evidence base and the idea was at the conceptual stage only. She was wrong on both premises.

Firstly the Barrister Andrew Parkinson immediately presented facts to the contrary and debunked claimed absence of a freestanding new settlement site, when he presented the existence of a large and new freestanding settlement - 1000 plus dwellings being promoted in February 2013 via the North Hertfordshire Growth Levels and Locations Consultation. We know one such site was called Rush Green –found on page 26 of the consultation library document OLP3.

QC Ormsby's second premise was wrong too; that the New Garden City was merely at the conceptual stage, because by then the New Garden City Company Limited was already more than that; it was a materially existent legal entity and not "only at the conceptual stage".



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In fact it was THE ONLY proposed settlement out of them all that was NOT at the conceptual stage.

All of the other strategic sites *were* at the conceptual stages only. The New Garden City Company Limited however was THE SOLE ONE which had actually moved beyond mere concept and made it into formation of a proper legal settlement development vehicle. It had been formed into a development corporation specifically for real estate– the first step of actualization.

So here are the clear material facts that disprove the Ormsby defence.

Barrister Andrew Parkinson told the Inspector there was there was a site identified for a large and new settlement but that he had been unable to trace it through the due process and see at what point and why it was removed. So that too was lacking.

Parkinson thought it would be helpful for the Inspector's note to know that there was a site at least for a thousand new homes being promoted in February 2013 – however the Inspector wanted to end the conversation promptly and so this has been left unanswered ever since; unexplained, witlessly unaudited, unjustified, un-investigated which renders the Plan unsound.

It is very disappointing that the Inspector invited comments about “general terms to the proposed allocations reflect(ing) the outcomes of the sustainability appraisal... and testing of reasonable alternatives through the site selection methodology,” and asking, “is there a clear audit trail in this respect?”

And when told about two things that indeed brought to light the absence of that very audit trail he was meant to be finding and testing; he promptly wanted to side-step the matter altogether and said, “I certainly don't want to go back through it again, erm but is anyone here saying anything about the proposed allocations and whether they're a reflection of the outcomes of the essay or not. And the testing of the alternatives the Council has undertaken?”

...To which of course the clear and obvious answer was “YES!” – On both of those very significant counts we had just described to him!

And yet so eager was he to end the discussion that he said, “**Have we done that to death...?**”

**.....To which my solemn reply is – no, we have only just started; a new buffer requires a new conversation!**



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...“Erm well that’s joyous news...Erm 9.5 then....what methodology has been applied to the identification of the settlement boundaries around the towns and Category A villages... [coughs]...is the methodology appropriate and adequately robust...?” ISB

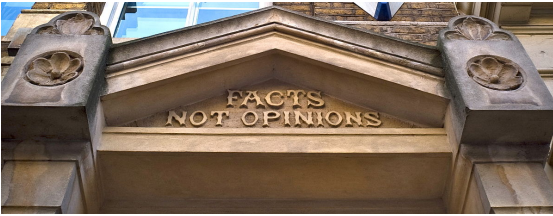
**APPENDIX 1: Press article about MPs backing a new garden city as alternative option published in Mercury Hitchin Comet, 29 January 2015.**

Source: <http://www.thecomet.net/news/mps-back-new-garden-city-as-alternative-to-council-s-north-herts-housing-blueprint-1-3936165>

## **MPs back new garden city as alternative to council’s North Herts housing blueprint**

**PUBLISHED:** 15:58 29 January 2015 | **UPDATED:** 16:00 29 January 2015

[by James Scott](#)



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Date: 13<sup>th</sup> September 2020  
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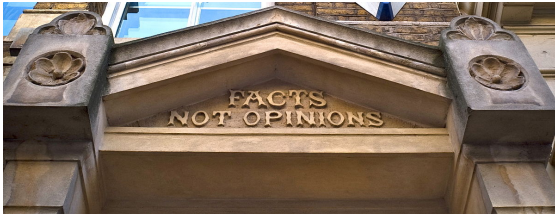
North East Herts MP Sir Oliver Heald.

## **MPs have backed building a new garden city as an alternative to North Herts District Council's Draft Local Plan.**



Stevenage MP Stephen McPartland.





**Representees: Carolyn Cottier, Linda Cottier, Barry Cottier, Zade Cottier-Wood** Date: 13<sup>th</sup> September 2020  
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The council's draft blueprint sets out plans to build 14,000 homes across the district by 2031, including 3,414 dwellings to be built in and around Baldock and 1,000 houses on Green Belt land north of the Grange in Letchworth.

Stephen McPartland, Sir Oliver Heald and Peter Lilley, whose constituencies all include part of the North Herts district, have called on the authority to 'redouble its efforts' and find a suitable site for a garden city.

Sir Oliver (North East Herts) said: "A better approach would be to have a plan for the first 10 years from 2011-2021 during which brownfield, non-contentious and mainly non-Green Belt sites are developed.

"For the second 10 years, the council should redouble its efforts to protect the Green Belt by identifying and securing a suitable site for a new garden city, which is not in the Green Belt.



*Hitchin MP Peter Lilley*

"I know that the council has consulted with neighbouring authorities over a potential new settlement, but nothing was achieved within the timescale."

The Preferred Options Plan includes 1,000 homes in the Graveley parish, to the North of Stevenage.

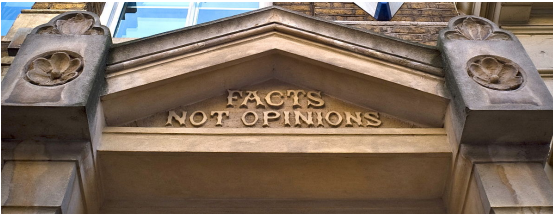
Mr McPartland (Stevenage) said: "Why has the council not considered creating a new garden city? It has its headquarters in Letchworth, which was the first in the world.

"The draft Local Plan takes no account of the need for highways, social and affordable housing, education, health and potential social and leisure infrastructure that will be required by this amount of housing in each community.

"A new garden city should be considered to meet future housing needs, instead of adding increasing numbers of homes on the edge of communities already fully utilising the infrastructure and public services available."

There are nine sites set aside for Hitchin, including 484 homes allocated to be built at Highover Farm.





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Mr Lilley (Hitchin & Harpenden) said: “I am in favour of finding a site for a new garden city – a point which I have previously raised with secretary of state for communities and local government Eric Pickles.

“It needs to be in an area that is not Green Belt land.

“Building a garden city will not solve all our problems but it is something that we need to look at in more detail.”

The Preferred Options Plan is currently open for consultation and runs until next Friday, February 6.

Councillor David Levett, who is responsible for planning and enterprise at the district council, said: “A new settlement is not deliverable in this plan period and is on the back burner.”

The housing allocation for Baldock has drawn widespread criticism in the town, with Save Rural Baldock campaigners set to march in the town on Saturday.

A Baldock Society spokesman said: “More should be done to identify other land that may be suitable for development, by working in a more proactive way with landowners and neighbouring councils.

“This applies particularly to land outside the Green Belt, including the scope for a new settlement around Ashwell and Morden railway station.

“The council has not properly explained why a number of suitable sites are not being taken forward in preference to the overdevelopment of Baldock.

“This includes land to the west of Stevenage, at Hitchin and at Knebworth.”

## **APPENDIX 2: Press article announcing that North Hertfordshire District Council is preparing a scoping paper for a new garden city. The Hertfordshire Mercury, 24 September 2015.**

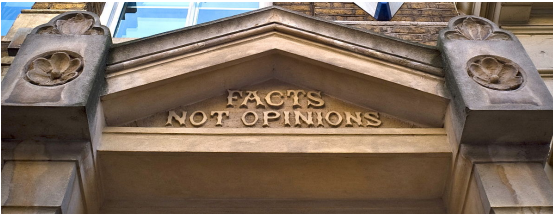
Source: <http://www.hertfordshiremercury.co.uk/new-garden-city-option-considered-north-herts/story-27847087-detail/story.html>

### New garden city option considered in North Herts

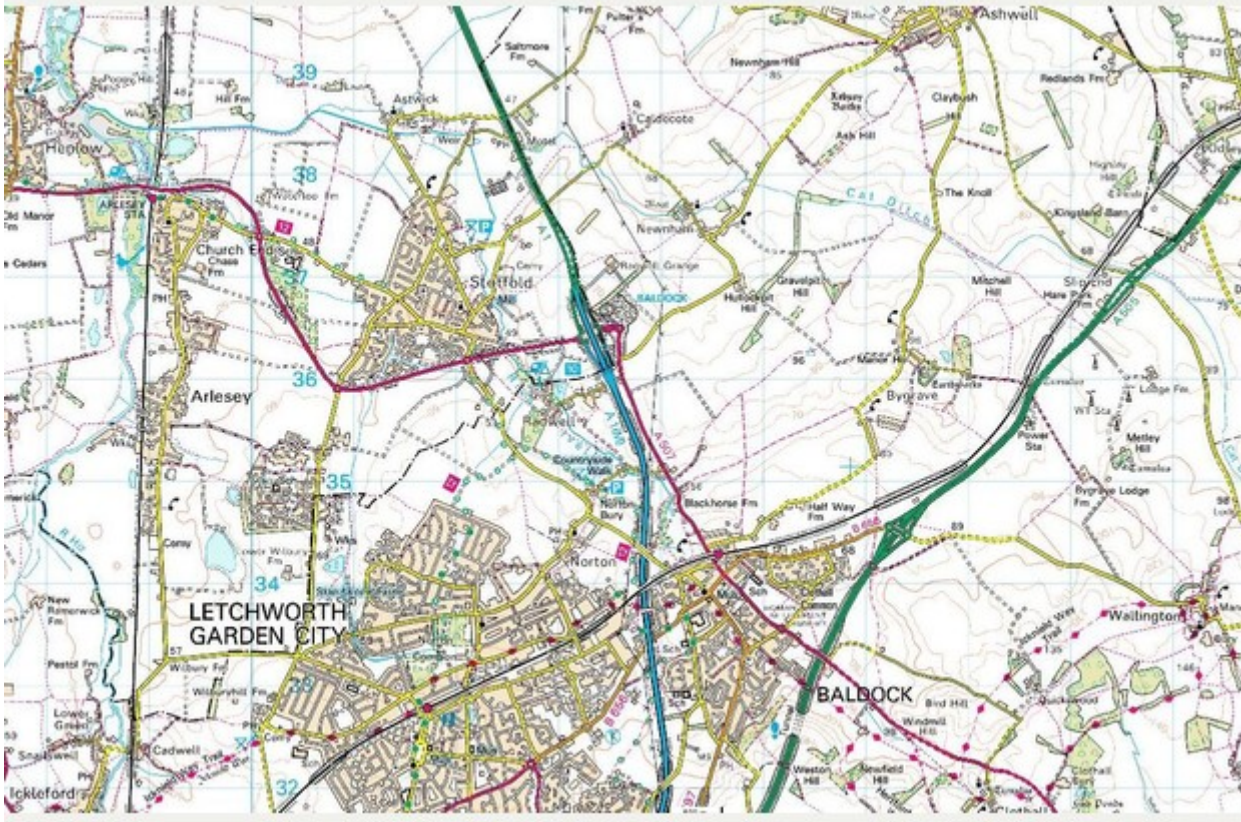
By [Hertfordshire Mercury](#) | Posted: September 24, 2015

1 COMMENTS 0 SHARES

image: <http://www.hertfordshiremercury.co.uk/images/localworld/ugc-images/276464/Article/images/27847087/11002113-large.jpg>



Representees: Carolyn Cottier, Linda Cottier, Barry Cottier, Zade Cottier-Wood Date: 13<sup>th</sup> September 2020  
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Garden city option explored in North Herts

#### [Comments \(1\)](#)

Work is under way to see if a new **garden** city is the answer to North Hertfordshire's housing needs.

District council planning officers are preparing a scoping **paper** to explore the possibility of a new settlement.

The report, which is expected to be completed by the end of the year, will look into what scale of development is required to make the option viable.

Questions of size, funding and timescale will be considered.

#### **APPENDIX 3:**

**Burges and Salmon Article "Garden cities: development corporations to be locally led" 25 July 2018**

<https://www.burges-salmon.com/news-and-insight/legal-updates/garden-cities-development-corporations-to-be-locally-led/>



Representees: Carolyn Cottier, Linda Cottier, Barry Cottier, Zade Cottier-Wood Date: 13<sup>th</sup> September 2020  
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Garden cities: development corporations to be locally led

## **Local authorities have been granted oversight authority status for new town development corporations. Regulations are due to be approved by parliament. Here are the headlines.**

25 July 2018

### **What is it all about?**

The government has refreshed the post-war mechanism to deliver new towns in order to help deliver the growing number of [garden cities, towns and villages](#) proposed. The mechanism, which delivered the likes of Stevenage and Crawley and by which a corporation is responsible for developing a settlement, has been given a local flavour.

New towns are planned settlements built using the powers of the New Towns Act 1981 (or preceding legislation). An organisation known as a development corporation is set up in order to deliver the new town. Once the new town is established, the development corporation is dissolved and responsibilities and assets passed to the local authority (or local authorities) of the area in which the new town is built.

To date, central government has overseen new town development but the new regulations would, in essence, enable local government to oversee a new town development corporation. The local authority (or local authorities, if the new town will straddle authorities' boundaries) would be known as the oversight authority.

The government consulted on the proposed regulations over the Christmas period. Having taken into account the responses to the consultation, draft regulations were introduced to parliament in early June and came into force on 24 July 2018. The government published a [summary](#) of the consultation responses and its response alongside the draft regulations. It has also published [guidance](#) aimed at supporting readers' understanding of the regulations and setting its expectations for applications.

### **How is the process to establish a locally led new town started?**

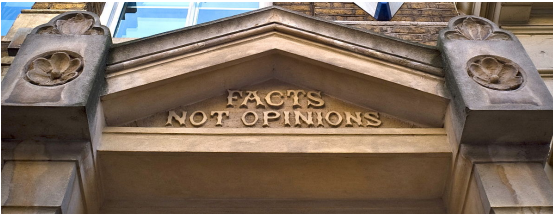
The local authority (or authorities) will need to apply to the Secretary of State requesting an order is made to:

- designate an area to be a new town
- appoint the local authority (or authorities) as the oversight authority
- establish the new town development corporation.

Ultimately the order will need to be approved by parliament. The government envisages that locally-led development corporations will only happen if:

- all the local authorities covering the area of the new town support a locally-led development corporation





**Representees: Carolyn Cottier, Linda Cottier, Barry Cottier, Zade Cottier-Wood** Date: 13<sup>th</sup> September 2020  
**Statement: Examination North Hertfordshire District Council Local Plan (2011-2031). Response: ED194 Updated Schedule of Further Matters, Issues and Questions (14<sup>th</sup> August 2020)**

- those local authorities have a strong evidence base demonstrating that the site is suitable for development at the scale proposed
- appropriate consultation has been undertaken locally.

The local authority's application will need to reflect that.

The government anticipates that allocation of a site in an adopted local plan is likely to create a presumption that the requisite evidence and consultation criteria have been met.

In its guidance, the government also sets out that the applicant will need to demonstrate:

- deliverability of the new town (including financial modelling covering the whole lifecycle)
- that the locally led new town mechanism is the best route to deliver the settlement, as opposed to another private or public-sector led delivery model
- governance proposals, which should include a balance between independence and oversight of the development corporation and a mechanism to review the corporation to ensure it remains fit for purpose throughout its lifetime
- high quality place making, long-term plans for how community assets will be funded once the development corporation has been dissolved and details about governance arrangements that will support community participation.

The applicant will also need to consider whether a strategic environmental assessment and habitats assessment are needed. Again, the government expects that where the proposal is part of the local plan, this material may already have been prepared.

## **Appendix 4:**

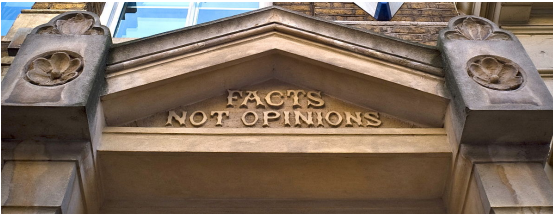
### **APPENDIX OF PLANNING PRACTISE GUIDANCE:**

Reference: PPG, Paragraph: 057 Reference ID: 61-057-20190315 Revision date: 15 03 2019

### **What if modifications are required to make a submitted local plan sound?**

If asked to do so by the local planning authority, under [section 20\(7C\) of the 2004 Planning and Compulsory Purchase Act as amended](#) the Inspector must recommend 'main modifications' (changes that materially affect the policies) to make a submitted local plan sound and legally compliant, except that a failure of the duty to cooperate cannot be rectified by a main modification. The local planning authority can also put forward 'additional modifications' of its own to deal with more minor matters.

Where the changes recommended by the Inspector would be so extensive as to require a virtual re-writing of the local plan, the Inspector is likely to suggest that the local planning authority withdraws the plan. Exceptionally, under [section 21\(9\)\(a\) of the Planning and Compulsory Purchase Act 2004](#), the Secretary of State has the power to direct a local planning authority to withdraw its submitted plan.



**Representees: Carolyn Cottier, Linda Cottier, Barry Cottier, Zade Cottier-Wood** Date: 13<sup>th</sup> September 2020  
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The Inspector will require the local planning authority to consult on all proposed main modifications. Depending on the scope of the modifications, further Sustainability Appraisal and Habitats Regulations Assessment may also be required. The Inspector's report on the plan will only be issued once the local planning authority has consulted on the main modifications and the Inspector has had the opportunity to consider the representations on these.

Whether to advertise any 'additional modifications' is at the discretion of the local planning authority, but they may wish to do so at the same time as consulting on the main modifications.

Paragraph: 057 Reference ID: 61-057-20190315

Revision date: 15 03 2019

### **What documents does the requirement to review apply to?**

The requirement to review applies to all development plan documents, including local plans (which would include those containing strategic or non-strategic policies) and in addition, to Statements of Community Involvement. While not a statutory requirement, the National Planning Policy Framework expects the same approach to be taken with spatial development strategies.

Paragraph: 063 Reference ID: 61-063-20190315

Revision date: 15 03 2019

Most plans are likely to require updating in whole or in part at least every 5 years. Reviews should be proportionate to the issues in hand. Plans may be found sound conditional upon a plan update in whole or in part within 5 years of the date of adoption. Where a review was undertaken prior to publication of the Framework (27 July 2018) but within the last 5 years, then that plan will continue to constitute the up-to-date plan policies unless there have been significant changes as outlined below.

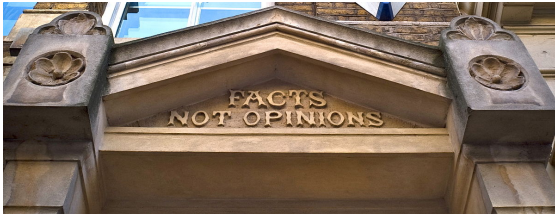
There will be occasions where there are significant changes in circumstances which may mean it is necessary to review the relevant strategic policies earlier than the statutory minimum of 5 years, for example, where new cross-boundary matters arise. Local housing need will be considered to have changed significantly where a plan has been adopted prior to the standard method being implemented, on the basis of a number that is significantly below the number generated using the standard method, or has been subject to a cap where the plan has been adopted using the standard method. This is to ensure that all housing need is planned for as quickly as reasonably possible.

Paragraph: 062 Reference ID: 61-062-20190315

Revision date: 15 03 2019

### **Are policies considered out-of-date if they are not updated after 5 years?**





Representees: Carolyn Cottier, Linda Cottier, Barry Cottier, Zade Cottier-Wood Date: 13<sup>th</sup> September 2020  
Statement: Examination North Hertfordshire District Council Local Plan (2011-2031). Response: ED194  
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The National Planning Policy Framework is clear that strategic policies should be prepared over a minimum 15 year period and a local planning authority should be planning for the [full plan period](#). Policies age at different rates according to local circumstances and a plan does not become out-of-date automatically after 5 years. The review process is a method to ensure that a plan and the policies within remains effective. Applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. Due weight should be given to relevant policies in existing plans according to their consistency with the National Planning Policy Framework. It will be up to the decision-maker to decide the weight to give to the policies.

Paragraph: 064 Reference ID: 61-064-20190315

Revision date: 15 03 2019

### **What can authorities consider when determining whether a plan or policies within a plan should be updated?**

The authority can consider information such as (but not exclusively):

- conformity with national planning policy;
- changes to local circumstances; such as a change in Local Housing Need;
- their Housing Delivery Test performance;
- whether the authority can demonstrate a 5 year supply of deliverable sites for housing;
- whether issues have arisen that may impact on the deliverability of key site allocations;
- their appeals performance;
- success of policies against indicators in the Development Plan as set out in their Authority Monitoring Report;
- the impact of changes to higher tier plans;
- plan-making activity by other authorities, such as whether they have identified that they are unable to meet all their housing need;
- significant economic changes that may impact on viability.; and
- whether any new social, environmental or economic priorities may have arisen.

Paragraph: 065 Reference ID: 61-065-20190723

Revision date: 23 07 2019