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Wirral Local Plan - Main Modifications
Wirral Council
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Issued via email to:

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To Whom It May Concern,

Re: Modification: PM36 - Deletion of LGS-SA6.3 Greenfield Estate at Grange Road, West Kirkby and replacement with 'Primarily Residential Area'

- 1.1 On behalf of Birkenhead School ('the School'), Lambert Smith Hampton ('LSH') respond to the modifications proposed to make the submitted Wirral Local Plan 2021 – 2037 sound and legally compliant.
- 1.2 The deletion of LGS-SA6.3 ('Grange Road') is significant in the context of the Council's attempts to designate sites as Local Green Space ('LGS'). In light of the modification, the Inspectors examining the plan need to scrutinise the soundness of the Council's LGS evidence base. The context surrounding the deletion of the LGS designation demonstrates the LGS designations have not been positively prepared, are not justified, are not effective, nor are they consistent with national policy for the reasons set out below.
- 1.3 The School, in previous Local Plan representations (Comment ID LPSD-653, 1178-1181 and 1183-1186 / Agent ID: 1248487 & M7.05 Birkenhead School 1248487) in respect of Noctorum Field (LGS Ref: LGS-SA3.3) have demonstrated that the evidence base that seeks to allocate sites as LGS is fundamentally flawed when assessed against paragraphs 105, 106 and 107 of the National Planning Policy Framework ('the Framework'). The School retains its significant and sustained objection to the proposed LGS designation of Noctorum Field.
- 1.4 The appeal decision (Appeal Ref: APP/W4325/W/23/3318758) that warrants the deletion of the LGS designation from the Grange Road site validates evidence put forward by the School and validates the significance of the concerns regarding the adequacy of the Council's 'evidence base' (GI5 - Local Green Space Designation: Review of Sites ('LGSD') (October 2021) prepared by LUC). The LUC assessment fails to apply the methodology that relates to the Framework's criteria for designating land as LGS –

instead it relies upon a simple 'yes' or 'no' response against the criteria of Paragraph 102 (now Paragraph 106) of the Framework. To date, no accompanying explanation, analysis, or other supporting evidence demonstrating how the methodology has been applied or how sites meet the criteria has been published by the Council.

- 1.5 The LUC evidence is simplistic, subjective and provides no objective assessment to justify the conclusion that sites meet the criteria of the Framework for designation as LGS. Accordingly, LGS designations have not been properly justified.
- 1.6 The LUC assessment 'assessed' both the Grange Road and Noctorum Field sites to meet six (6) of the eight (8) criteria which justified designation as LGS. Both were identified as not satisfying the criteria of either historical significance or recreational value.
- 1.7 The proposed designation of both Grange Road and Noctorum Field were made following the sites being put forward as LGS designations by local residents in response to emerging development proposal on the sites. The designation of Noctorum Field was put forward by the Council without consultation with the School as landowner (and to date there has still been no direct consultation). Despite being identified as 'demonstrably special' to local residents, it is not clear that the sites hold any particular significance.
- 1.8 Contrary to the Council's claim that Noctorum Field is demonstrably special, the Council in an appeal (Appeal Ref: APP/W4325/W/22/3291997) relating to Noctorum Field also confirmed that it is an acceptable site 'in-principle' for residential development. The determining Inspector in that instance also found that:

'I find the site could deliver housing development which preserves the existing character of development in the locality. It would align with the requirements of Policies HS4 and HS6 of the UDP through the preservation of the existing boundary treatments and meet the Framework's requirement to make efficient use of the land taking into account the area's character and setting'. [Paragraph 36, Appeal Ref: APP/W4325/W/22/3291997].

- 1.9 Within the Grange Road appeal decision, the Planning Inspector provided specific commentary in relation to the consistency of the approach [taken by the Council] to LGS designation with the Framework. The determining Inspector considered several of the criteria of the Framework in reaching a decision, this included beauty, tranquillity, and richness of wildlife. The Inspector concluded that:

'Overall, my view is that the case for designating the appeal site as LGS is at best an on-balance judgement. ... Even though there is considerable support for the designation from residents, which indicates that it is demonstrably special to the local community, it is

not clear to me that the site holds any particular significance. [Paragraph 40, Appeal Ref: APP/W4325/W/23/3318758].

1.10 The Inspector noted that:

'The consistency of proposed policy WS10.6(R) with the Framework, and the designation of LGS, will be dealt with during the local plan examination. In this respect, the Inspector's Matters Issues and Questions (MIQ) were issued on 7 August 2023. This invites further hearing statements to be submitted and identifies that there are still questions to be answered as to whether the proposed LGS are all demonstrably special, amongst other things. As such, the Council's assertion that the LGS designations are sound and unlikely to change cannot be said with any great certainty at this stage. Moreover, whether the policy retains the same wording or not, my confidence in its current form is considerably reduced by the Council's concession that amendments may yet still be required to achieve the consistency with green belt policy that is required by paragraph 103 of the Framework' [Paragraph 34, Appeal Decision APP/W4325/W/23/3318758].

1.11 The Inspectors examining the emerging Local Plan ('eLP') now need to comment specifically on the soundness of the LGS evidence and determine whether or not the proposed LGS sites are all demonstrably special, amongst other things to meet the Framework's tests.

1.12 The School's Regulation 19 representation (ref: Comment ID LPSD-653, 1178-1181 and 1183-1186 / Agent ID: 1248487) provided a comprehensive response to the LGSD's "assessment" of Noctorum Field against the criteria of the Framework. This analysis demonstrated that the Site does not hold any particular significance and does not meet the LGS criteria set out in the Framework.

1.13 In a recent appeal relating to Noctorum Field (Appeal Ref: APP/W4325/W/23/3329105), the Council withdrew its reason for refusal relating to the designation of the site as LGS designation in the eLP. The withdrawal of the reason for refusal was taken by the Council as a result of the Planning Inspector's decision on the Grange Road appeal. The Council acknowledged that the Grange Road appeal was heard at a public inquiry and was similar to the current appeal insofar as it related to land subject to a draft LGS designation.

1.14 Whilst the decision on the two Noctorum Field appeal decisions is different to that of Grange Road, the decisions unequivocally confirm that the principal value of Noctorum Field is as a playing field, and it is that value that should be protected.

- 1.15 In dismissing the most recent appeal (Appeal Ref: APP/W4325/W/23/3329105) the Inspector found that:

'the playing field to be lost by the proposed development would not be replaced by equivalent or better provision in terms of quantity and quality and the proposal is contrary to UDP Policy RE6 which seeks to retain the site as a playing field and paragraph 103 of the Framework' [Paragraph 40, Appeal Ref: APP/W4325/W/23/3329105].

- 1.16 Likewise, in the preceding appeal (Appeal Ref: APP/W4325/W/22/3291997), the determining Inspector in dismissing the appeal found that:

'the proposal would result in the loss of an existing playing field. As a facility capable of meeting current or future unmet demand and which is afforded significant protection, this is a matter to which I attach substantial weight' [Paragraph 53, Appeal Ref: APP/W4325/W/22/3291997].

- 1.17 The appeal decision(s) relating to Noctorum Field demonstrate that the existing policy protection of both the adopted Development Plan (Unitary Development Plan ('UDP') 'saved' Policy RE6 (Sports Grounds for Protection from Development)), and Paragraph 103 the Framework provide sufficient and significant planning policy protection.

- 1.18 An LGS designation would provide Noctorum Field with policy protection consistent with that of the green belt. The LGS designation would result in the site being subject to an exception designation not suitable for most green spaces. The evidence before both the Council and the Planning Inspectors examining the eLP demonstrates that that is entirely unwarranted and inappropriate. No added benefit would be gained through designation.

- 1.19 The continuation of the site's playing field designation pursuant to Policy WS10 of the eLP and National Planning Policy is entirely appropriate – Noctorum Field should be identified as a 'School Playing Field' within SA3 – Suburban Birkenhead (i.e. SR-SA3.29) of Appendix 11 Sports and Recreation (sites designated for the protection of urban sport and recreation). On the basis of evidence before the Inspectors this designation would be positively prepared, justified, effective and consistent with national policy.

- 1.20 Paragraph 35 of the Framework identifies that Plans are 'sound' if they are positively prepared, justified, effective and consistent with national policy. Paragraph 36 of the Framework confirms that the tests of soundness apply to non-strategic policies in a proportionate way, considering the extent to which they are consistent with relevant strategic policies for the area. In the context of the Framework, the School have evidenced that the approach to assessing draft LGS designations is unsound. The

method of assessment adopted by the Council is not sufficient to satisfy the threshold proportionate to the high bar associated with LGS designations.

- 1.21 The deletion of the LGS designation from the Grange Road site emphasises that the Inspectors examining the Plan need to scrutinise the unjustified and unsound nature of the Council's LGS evidence. A comprehensive evidence base is to be published and made publicly available for consultation. Publication of this necessary evidence base is fundamentally required to enable the School and other landowners an opportunity to review and respond to the Council's justification for the designation of land as LGS. As part of this the Council are required to engage with the School as per the recommendations of LUC's 'next-steps' and the requirement of NPPG – they have not done so to date.
- 1.22 Notwithstanding that the appropriate course of action is for the LGS designation of Noctorum Field to be deleted. The sites current allocation as a 'Sports Grounds for Protection from Development' should be retained within the eLP through a revision to Policy WS10 and inclusion of the site as a School Playing Field pursuant within SA3 – Suburban Birkenhead (i.e. SR-SA3.29) of Appendix 11 Sports and Recreation. The Policy Maps of the eLP should be updated to reflect this necessary change. Evidence is before both the Council and the Planning Inspectors examining the eLP that this level of policy protection is entirely appropriate to protect the identified principal value of the site.
- 1.23 Accordingly for the reasons set out in this document the School retains it significant objection to designation of Noctorum Field as Local Green Space.