

ED138 : NHDC Final response to Inspector's Actions arising out of the Hearing Sessions

Matter 2 – Sustainable development : the settlement hierarchy		
Action	Date on which Action Completed	Examination Doc Reference No.
NHDC to reconsider the wording of Policy SP2 in general, and specifically: • to include more information i.e. % figures and unit numbers • to reconsider inclusion of the term 'adjoining' • to provide flexibility for neighbourhood planning	23.11.2017 Not included in this Examination Document - superceded by MM010	ED37
NHDC to provide documents relating to Mr M. Powell's freedom of information request to be added to the Examination Library as ED22	23.11.2017 Enclosed as Appendix M2-1	ED39A and ED39B
NHDC to provide plan showing current Green Belt and proposed Green Belt boundaries	23.11.17 Enclosed as Appendix M2-2	ED44A Current ED44B Proposed

Appendix M2 – 1

ED22: FOI request to NHDC by Mr Marcus Powell

ED39A: NHDC response to FOI request by Mr Marcus Powell

ED39B: Planning Appeal decision re Rose Farm, Whitwell (APP/X1925/W/17/3172798)

ED 22

ED 22

Rose Farm. Codicote Road, Whitwell, SG4 8AB.

30/3/2017

Freedom of Information Request:

Rose Farm was registered with NHDC as a site for potential development in 2014 and a request was made for it to be included in a revised settlement boundary of Whitwell. (Emails from planning officers Chris Carter 15.10.15 and David Hill 16.9.15 confirm these requests).

Instead it has been decided to place Rose Farm in a new Green Belt boundary, the only property in Whitwell to be designated Green Belt.

Please can you explain the reasons for these decisions and provide any internal documents, correspondence and reports which relate to them.

Namely;

1. Why was Rose Farm not considered as a potential site for sustainable development in future.
2. Why was it not included in a revised Whitwell settlement boundary.
3. Why was Rose Farm placed inside a new Green Belt boundary.

Thank you

Yours sincerely,

Marcus Powell.

NORTH HERTFORDSHIRE DISTRICT COUNCIL

Town Lodge, Gernon Road, Letchworth Garden City, Hertfordshire SG6 3HN
Telephone (01462) 474000
Text Phone: (01462) 474800
DX 31317, Letchworth



FINANCE, POLICY & GOVERNANCE DIRECTORATE
Strategic Director: Norma Atlay

Marcus Powell
Rose Farm
Codicote Road
Whitwell
SG4 8AB.
rose_farm@btinternet.c

Our Ref:	FOI021517
Your Ref:	
Contact Officer:	Jacqui Hamilton
Direct Line:	01462 474375
Email:	FOI2@north-herts.gov.uk
Date:	12 June 2017

Dear Mr Powell

Freedom of Information Act/ Environmental Information Regulations
Information Request

In regard to your request for a review of the Refusal Notice we sent to you for the above request for information. Your request has been considered by the Information & Asset Team Leader.

The basis of a review is to consider whether the request has been handled in accordance with the legislative requirements. The decision is that the review has upheld the approach/ information already provided, subject to the confirmation below. Please see the attached for a full response.

In the first instance, an information request has to be for information the Council holds. The Council is not obliged to create information under the Freedom of Information Act or Environmental Information Regulations. Therefore if you ask for information that is not available in documented format, then the Council is not obliged to provide it under this legislation.

In this instance you asked various questions as to why specific land was or was not included. We hold general information regarding the Strategic Housing Land Availability assessment, and green belt review. We do not hold the specific information requested in the questions in internal council documents, reports from officers and any related emails and correspondence to explain why these decisions were made. All information was provided to you via the links in our response dated 19 April 2017.

Under our Review & Appeal policy your case was referred to another council officer for review, and the decision of the reviewing officer supports that of the original response in that the available information was supplied to yourself via links to documents on the council's website.

Your options

Since your Review has now been concluded, you have the option of appealing to the Information Commissioner at the address below.

David Scholes
Chief Executive

www.north-herts.gov.uk



It is important that you include the above FOI reference number on all correspondence related to this request.

Alternatively contact the Information Commissioner at:

Information Commissioners Office

Wycliffe House

Water Lane

Wilmslow

Cheshire

SK9 5AF

Telephone: 0303 123 1113 (or 01625 545745 if you would prefer not to call an '03' number, or +44 1625 545745 if calling from overseas)

www.ico.org.uk

Yours sincerely

JA Hamill

Jacqui Hamilton

Information & Asset Team Leader

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FOI2@north-herts.gov.uk

www.north-herts.gov.uk

RESPONSE

However, as you are now aware the NHDC published documents you referenced do not provide the information I requested and answer none of the questions raised.

My request is for internal council documents, reports from officers, and any related emails and correspondence to explain why these decisions were made.

Response: We do not hold the information. The council is not obliged to create answers or information under the Freedom of Information Act or the Environmental Information Regulations.

As none of this information was provided I ask for further information to provide the reasons for the published decisions.

1. Why was Rose Farm not considered suitable as a site for potential development.
2. Why was it not included in the village settlement boundary. It formed part of the original settlement of Whitwell and is inside the marked village boundary. (This request was made entirely separately from question 1).
3. And why was Rose Farm singled out to be placed in the Green Belt.

Response: We do not hold the information. The council is not obliged to create answers or information under the Freedom of Information Act or the Environmental Information Regulations. All information was provided to you in our original response.

Rose Farm is the only property in Whitwell to be included in a new Green Belt boundary. This fulfils none of the stated aims of Green Belt Policy.

NHDC policy says the new Green Belt boundaries were subject to inspection by officers. I request to see their report and any related correspondence to discover the specific reasons why Rose Farm has been singled out in this way.

Response: A link to the North Hertfordshire Green Belt Review, July 2016 was provided to you with our original response to your Request on the 19th April. The council does not hold any other information. The council is not obliged to create answers or information under the Freedom of Information Act or the Environmental Information Regulations.

I request the relevant documents any additional internal reports or correspondence relating to all these decisions.

Response: Links to the relevant information have already been supplied to you under your Request. The council does not hold any additional information.

I have discussed matters with the Information Commissioners Office and enclose a separate Subject Access Request. Under the Data Protection Act, in case any of the information requested and held by NHDC is personal.

Response: This Subject Access Request is being processed separately.

FOI017417 – 29/3/17

Local Plan - Rose Farm as Green Belt

Rose Farm was registered with NHDC as a site for potential development in 2014 and a request was made for it to be included in a revised settlement boundary of Whitwell. (Emails from planning officers Chris Carter 15.10.15 and David Hill 16.9.15 confirm these requests). Instead it has been decided to place Rose Farm in a new Green Belt boundary, the only property in Whitwell to be designated Green Belt.

Please can you explain the reasons for these decisions and provide any internal documents, correspondence and reports which relate to them.

Namely;

1. Why was Rose Farm not considered as a potential site for sustainable development in future.
[This is set out in the Strategic Housing Land Availability Assessment, 2016 Update https://www.north-herts.gov.uk/planning/planning-policy/local-plan/local-plan-supporting-evidence/housing-studies](https://www.north-herts.gov.uk/planning/planning-policy/local-plan/local-plan-supporting-evidence/housing-studies)
2. Why was it not included in a revised Whitwell settlement boundary.
[The reasons for not allocating the site in the Local Plan are set out in the Strategic Housing Land Availability Assessment 2016 Update, page 46 is relevant. Sites which have not been included as allocations in the Proposed Submission Local Plan have not been included in village boundaries.](#)
[The link in \(1.\) above is the relevant document.](#)
3. Why was Rose Farm placed inside a new Green Belt boundary.
[This is set out in the North Hertfordshire Green Belt Review, July 2016, the relevant pages in the study are 152 – 156 inclusive. https://www.north-herts.gov.uk/planning/planning-policy/emerging-local-plan/local-plan-supporting-evidence/countryside-and-green](#)

Appeal Decision

Site visit made on 4 July 2017

by Graham Wyatt BA (Hons) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 2 August 2017

Appeal Ref: APP/X1925/W/17/3172798

Rose Farm, Codicote Road, Whitwell, Herts SG4 8AB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Marcus Powell against the decision of North Hertfordshire District Council.
 - The application Ref 16/03115/1, dated 6 December 2016, was refused by notice dated 27 March 2017.
 - The development proposed is a 2 bedroom house for a disabled person.
-

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the development on:
 - The character and appearance of the area.
 - The setting of the nearby listed building.

Reasons

Character and Appearance

3. The site lies outside of the settlement boundary of Whitwell and forms part of the countryside. The appellant has applied to the Council to extend the settlement boundary to include the site. However, the Council have not altered the settlement boundary at Whitwell.
4. As a consequence, Policy 7 of the North Hertfordshire District Local Plan (the Local Plan) does not bear. Policy 6 sets out where, in rural areas beyond the green belt, development may be acceptable. The policy identifies criteria for acceptable development, none of which apply here. The primary purpose of the Policy is to protect the character of the countryside outside of defined settlement boundaries from unplanned development.
5. The site forms an open field to the northwest of Rose Farm. An existing access would be utilised and the proposed dwelling would be sited behind an existing 3 bay detached garage building. The appeal site is open with fields continuing further north giving the site a distinct rural and spacious character. The erection of a dwelling would urbanise the site and would erode the spacious qualities of the countryside. Moreover, the domestic paraphernalia associated with the occupation of the dwelling would add to this urbanising effect, which would adversely affect the character and appearance of the area.

6. I acknowledge that on the opposite side of Codicote Road is a row of dwellings which extend towards the centre of the village in a linear manner. This side of the road has quite a different character and is clearly distinct from the appeal site in that, with the presence of dwellings and other domestic buildings, it does not possess its open and spacious character.
7. Policy 29 of the Local Plan permits small scale housing to meet a proven need as an exception to Policy 6 and lists where a development may be acceptable. One such exception is where the occupation of a dwelling would be by a disabled person. The Policy also makes it clear that the need must not be able to be met elsewhere, must be secured to meet those needs for the long term and must be visually sympathetic. The dwelling would be occupied by the appellant's son who is profoundly deaf. The appellant's planning application was supported by Action on Hearing Loss, his consultant surgeon and others, including an Office for Disability Issues document¹.
8. The appellant has approached the Council's Housing Needs Officer to establish whether a suitable property for his son is available. The Council confirm that one with facilities such as flashing lights linked to doorbells and fire alarms is not currently available. However, the Council do suggest that the appellant contact the County Council as a grant may be available to fund the cost of future adaptations.
9. From the evidence provided, the appellant has not considered any private housing, whether for sale or rent, that may be available and could be adapted to meet his son's needs. Moreover, there is no evidence that the appellant has taken up the Council's suggestion to contact the County Council or whether a housing needs assessment has been undertaken, which was also suggested by the Council. Consequently, I can only give the appellant's evidence little weight that the needs of his son cannot be met elsewhere.
10. Furthermore, Policy 29 of the local plan also seeks to ensure that development proposals are visually sympathetic to the existing character of the settlement to which it would relate and does not detract from that character or the landscape around it. I have found that the proposed dwelling would have a detrimental impact on the character and appearance of the area.
11. I do not agree that the site is sufficiently shielded by landscaping and fencing so that the development would not be visible from public views. Moreover, there is no guarantee that existing or even proposed planting would remain permanently to screen views of the dwelling.
12. On the first main issue I therefore conclude that the proposed development would have a detrimental impact on the character and appearance of the area. The development would therefore be contrary to Policies 6, 29 and 57 of the local plan which seek, amongst other things, to protect the countryside from development that would harm its character and appearance.

Listed building

13. The proposed dwelling would be sited adjacent to Rose Cottage which is a Grade II listed building. The glossary at Annex 2 of the National Planning Policy Framework (the Framework) tells us that the significance of a heritage asset derives not only from its physical presence but also from its setting. Paragraph 131 of the Framework emphasises the need to take account of the desirability of sustaining and enhancing the significance of heritage assets. The listed building is a

¹ Office for Disability Issues. Independent Living: A cross-government strategy about independent living for disabled people, February 2008

designated heritage asset and paragraph 132 of the Framework states that great weight should be given to the asset's conservation.

14. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that in making decisions on planning applications and appeals which affects a listed building, special attention is paid to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.
15. The appellant has provided a drawing to demonstrate the amount of development that has taken place at Rose Farm from 1989 to 2004. This includes several extensions and alterations to the listed building and a detached garage building. Nonetheless, Rose Cottage is clearly read as a detached farmstead, associated with a small group of buildings and set within open countryside. The more recent additions are reflective of the agricultural vernacular and relatively sympathetic to the setting.
16. The appellant states that the proposed dwelling would follow the design of a rural barn, which was considered an acceptable extension to the listed building in 2001 by English Heritage and the Council's Conservation Officer. In addition, the appellant maintains that the site already contains buildings and that there are other buildings in the vicinity of Rose Farm that were not deemed to harm its setting. However, no other analysis of the significance of the heritage asset, as required by paragraph 128 of the Framework, has been put forward by the appellant.
17. The proposed building is overtly residential in appearance as a result of the dormer windows, roof light, porch and chimney. Furthermore, the development would urbanise an area of the site that is currently open and devoid of development. Although sited outside of the central core of the listed building it would still have an impact on its setting by eroding the openness and rural setting that surrounds Rose Farm, which is a key contributor to the significance of the listed building. I am mindful that the Framework places considerable importance and weight which must be given to the desirability of preserving the setting of heritage assets, and any harm should require clear and convincing justification. English Heritage's acceptance of an extension to the listed building in 2001 is quite different to the detached dwelling before me and does not justify harming its setting.
18. I have identified that the setting of Rose Farm would be harmed directly as a result of the proposed development, by eroding the rural setting that surrounds the designated heritage asset. However, I find this harm to be less than substantial, and as result I must weigh it against the public benefits of the proposal, as required by paragraph 134 of the Framework. The appellant has not advanced any public benefits as a result of the development. Consequently, no evidence has been put forward that would outweigh the great weight that the Framework requires to be given to the conservation of heritage assets.
19. On the second main issue, I conclude that the proposed development would harm the setting of the listed building. The development is therefore in conflict with paragraphs 126 – 141 of the Framework and section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 which requires, amongst other things, that great weight and special attention is paid to the desirability of preserving the listed building or its setting.

Planning Balance

20. The Council cannot demonstrate a 5 year supply of housing land. Paragraph 49 of the Framework tells us that in such circumstances relevant policies for the supply

of housing should not be considered up-to-date. Paragraph 14 of the Framework makes it clear that for decision-taking this means granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies within the Framework taken as a whole. However, specific policies are referred to under Footnote 9 to this paragraph, which include those relating to heritage assets.

21. I recognise that the proposal would contribute to the overall provision of dwellings in the district, and would therefore have a small beneficial effect in terms of the social and economic strands of sustainability. However, I have found that the proposed development would have a harmful impact on the setting of a designated heritage asset and that the planning balance set out in the Framework does not support the proposal; accordingly the presumption in favour of sustainable development does not apply. As such, the proposal would not amount to sustainable development in the terms of the Framework.
22. The appellant makes reference to a previous decision² that dismissed an appeal for 6 dwellings on the site. However, this decision was made before the Supreme Court judgment³ which clarified that if there is a shortfall in housing land supply, it does not matter if this is because of the policies which specifically deal with housing provision. It is the shortfall itself that is the trigger for bullet point 4 to paragraph 14 of the Framework and all relevant policies in the circumstances of the individual case must be considered. Notwithstanding that the previous Inspector reported that, with reference to paragraph 215 of the Framework, the settlement boundaries within the district are out-of-date, I concur with his assessment that the site is within the countryside.

Other Matters

23. The appellant also makes reference to a recent application⁴ submitted to the Council for 40 new dwellings and further comments that it has been recommended for approval by Officers. I have no details of this application and whether it actually benefits from planning permission. However, a development of 40 homes would make a significant contribution towards the Council's housing shortfall, in contrast to the single dwelling proposed.
24. In considering this appeal I have also had due regard to the Public Sector Equality Duty contained in the Equality Act 2010, in particular the need to eliminate discrimination, advance equality of opportunity and foster good relations between those with protected characteristics and others. Following careful consideration of these particular matters I am satisfied that the impact of dismissing this appeal is proportionate and justified.

Conclusion

25. For the reasons given above, and having regard to the development plan when read as a whole, I conclude that the appeal should be dismissed.

Graham Wyatt

INSPECTOR

² APP/X1925/W/16/3145309

³ Suffolk Coastal District Council v Hopkins Homes Ltd and SSCLG; Richborough Estates Partnership LLP and SSCLG v Cheshire East Borough Council [2017] UKSC 37

⁴ Application 16/03155/1

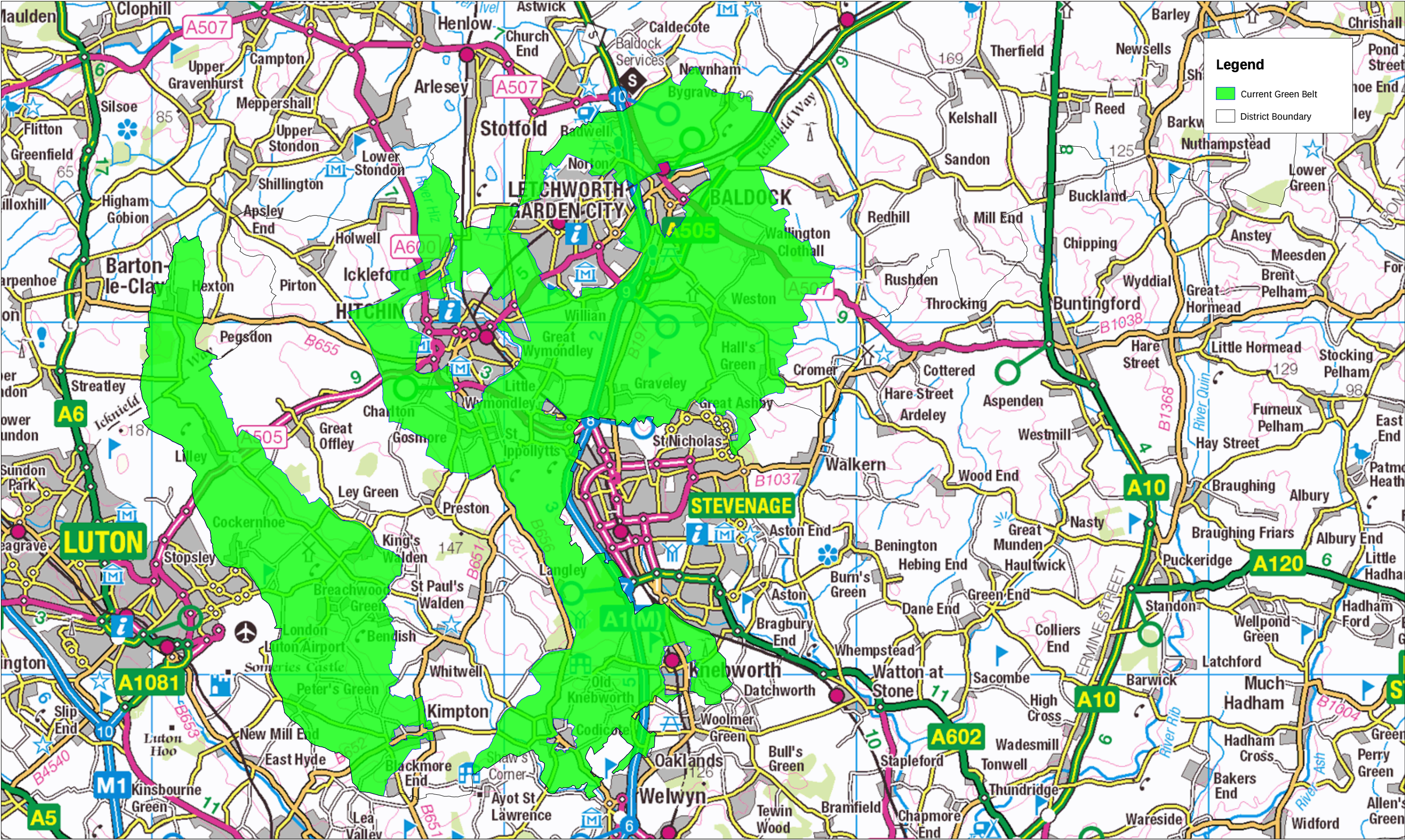
Appendix M2 – 2

ED44A: Maps detailing current NHDC Green Belt boundaries

ED44B: Maps detailing proposed NHDC Green Belt boundaries

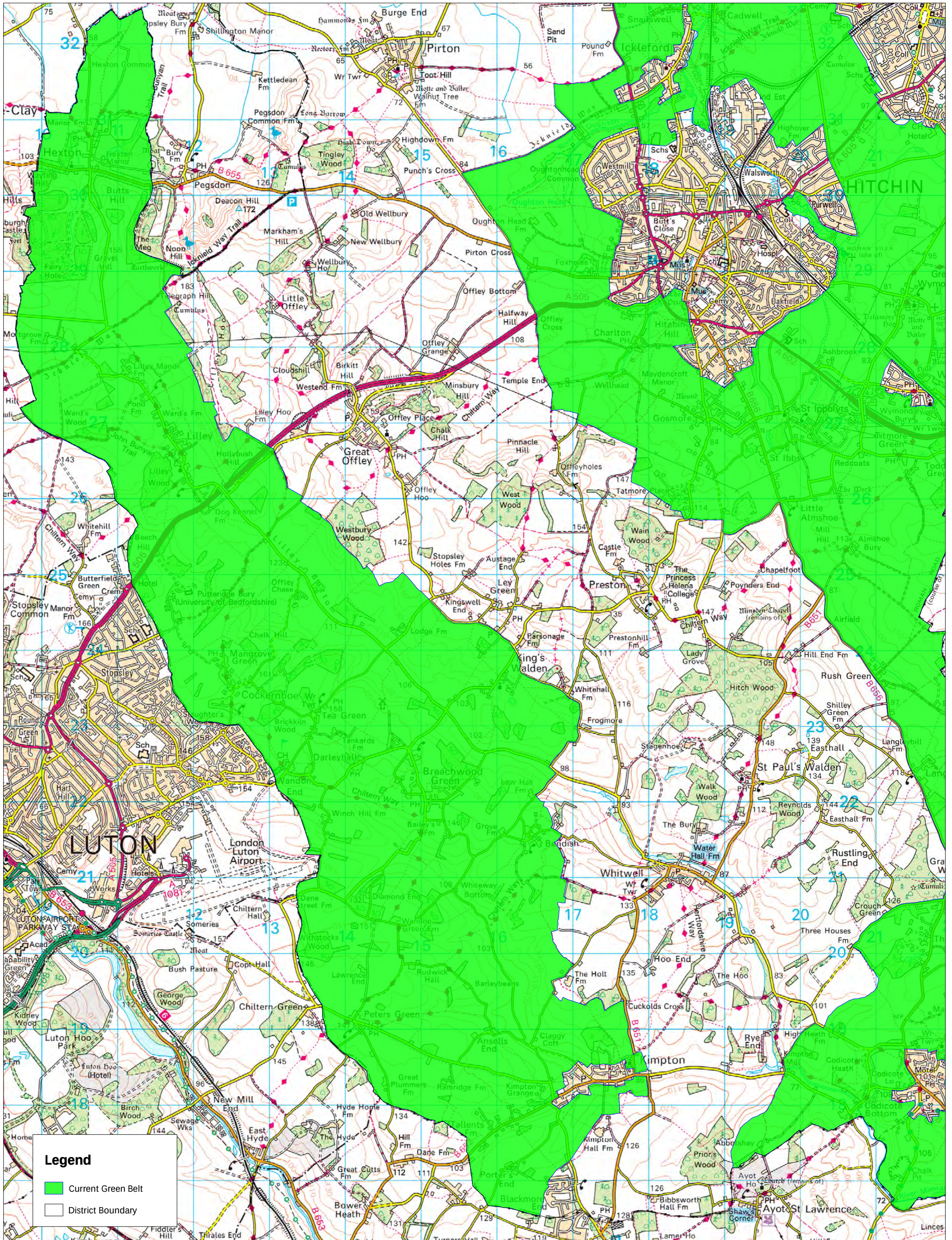


Current Green Belt



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Current Green Belt

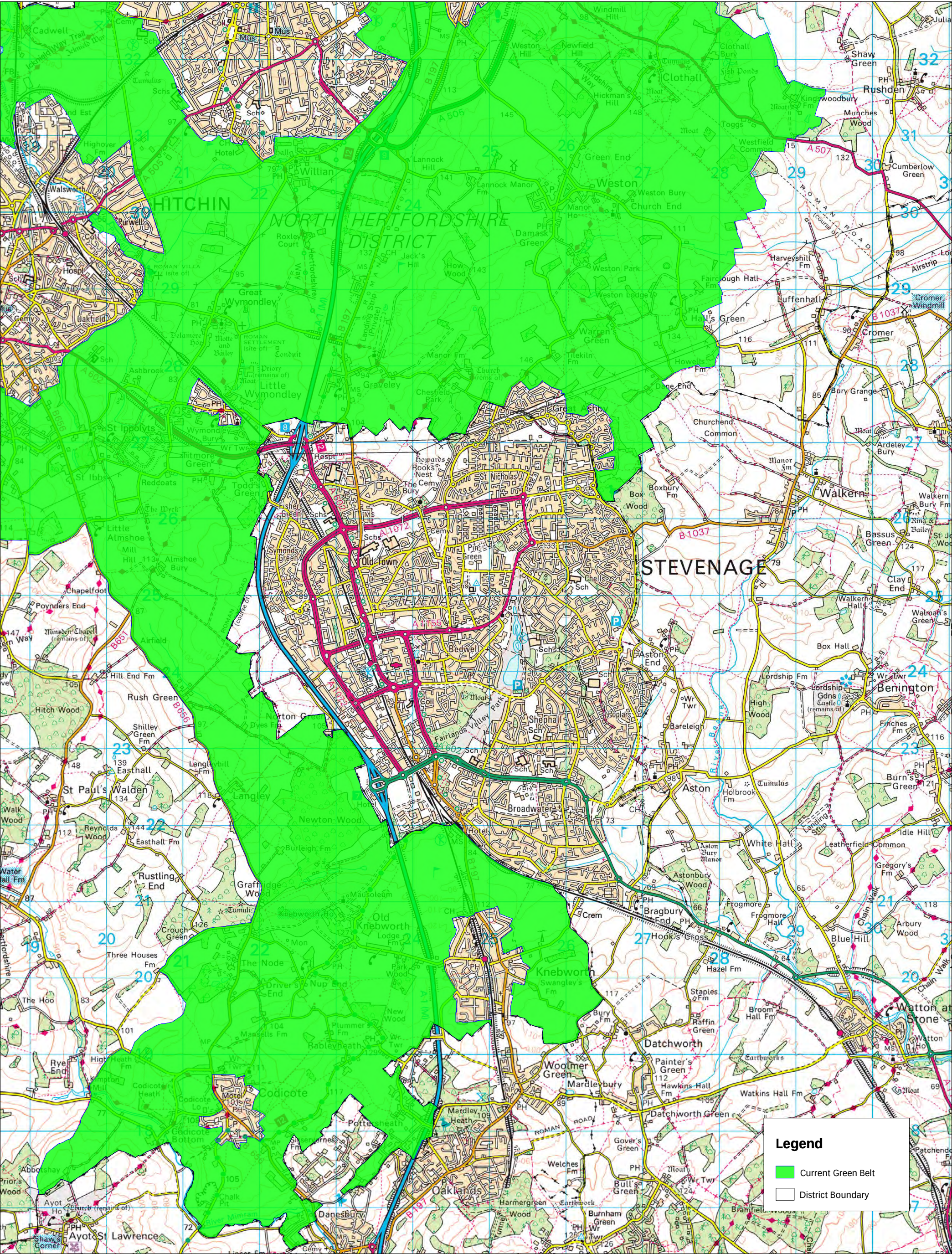


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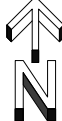




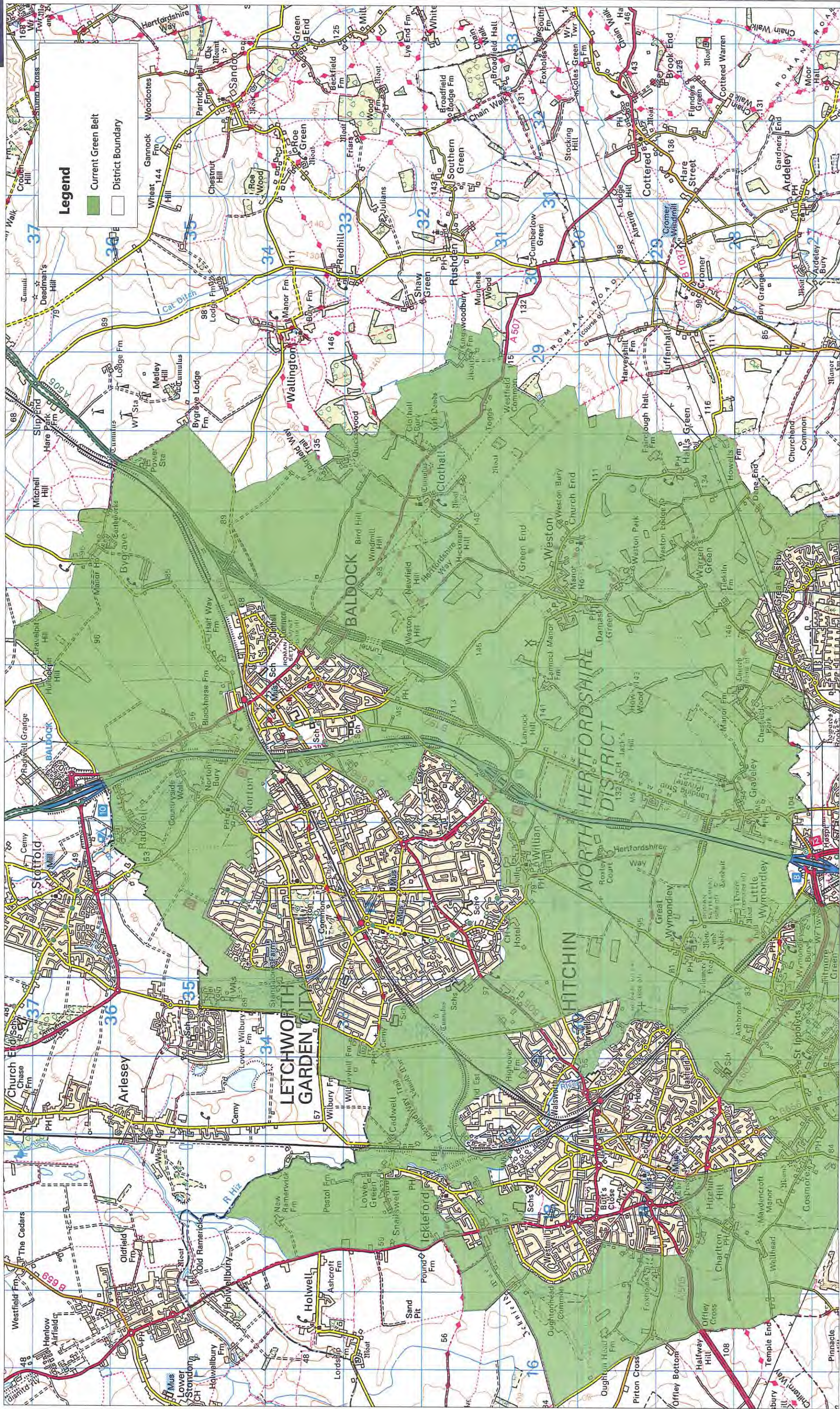
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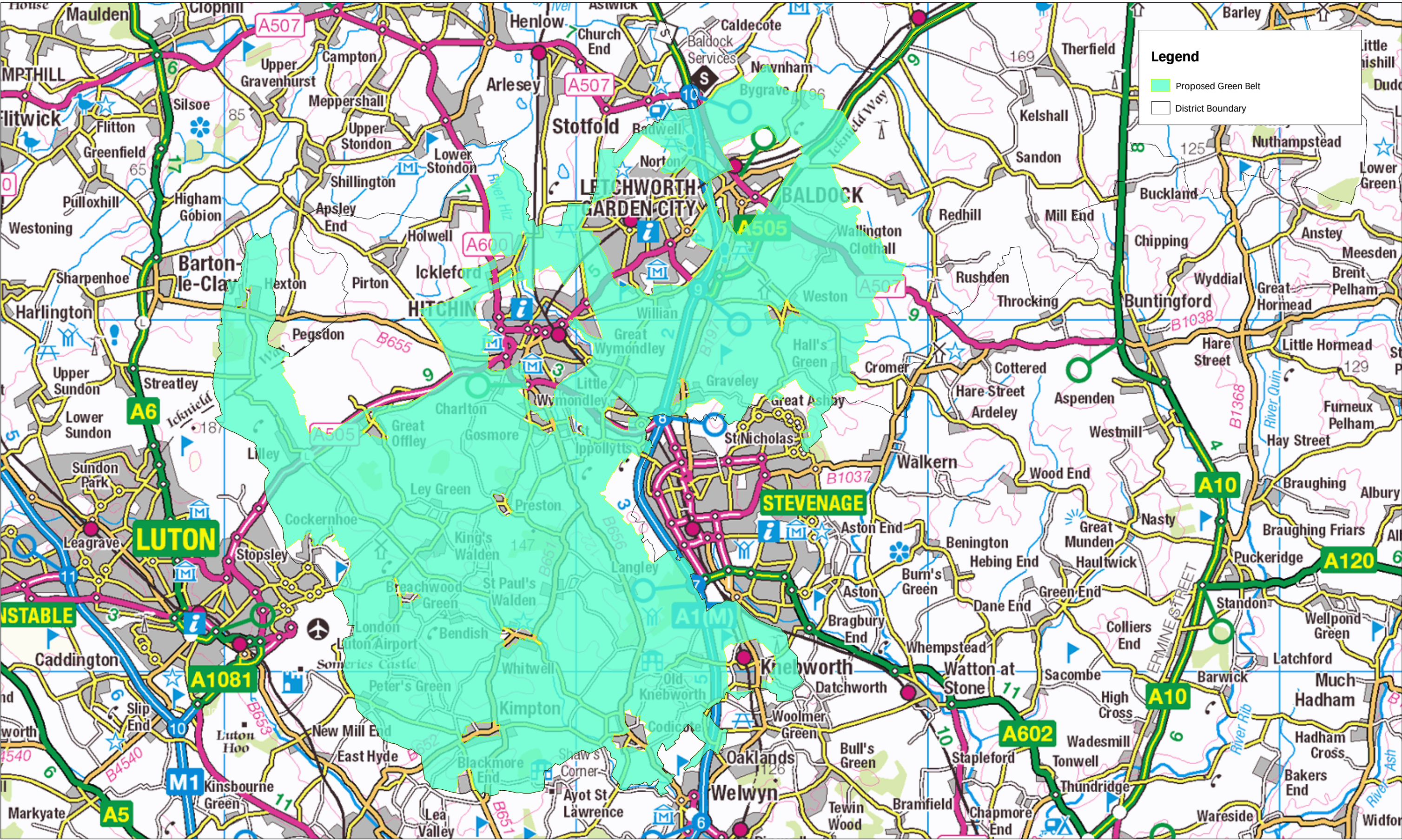


Current Green Belt

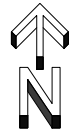




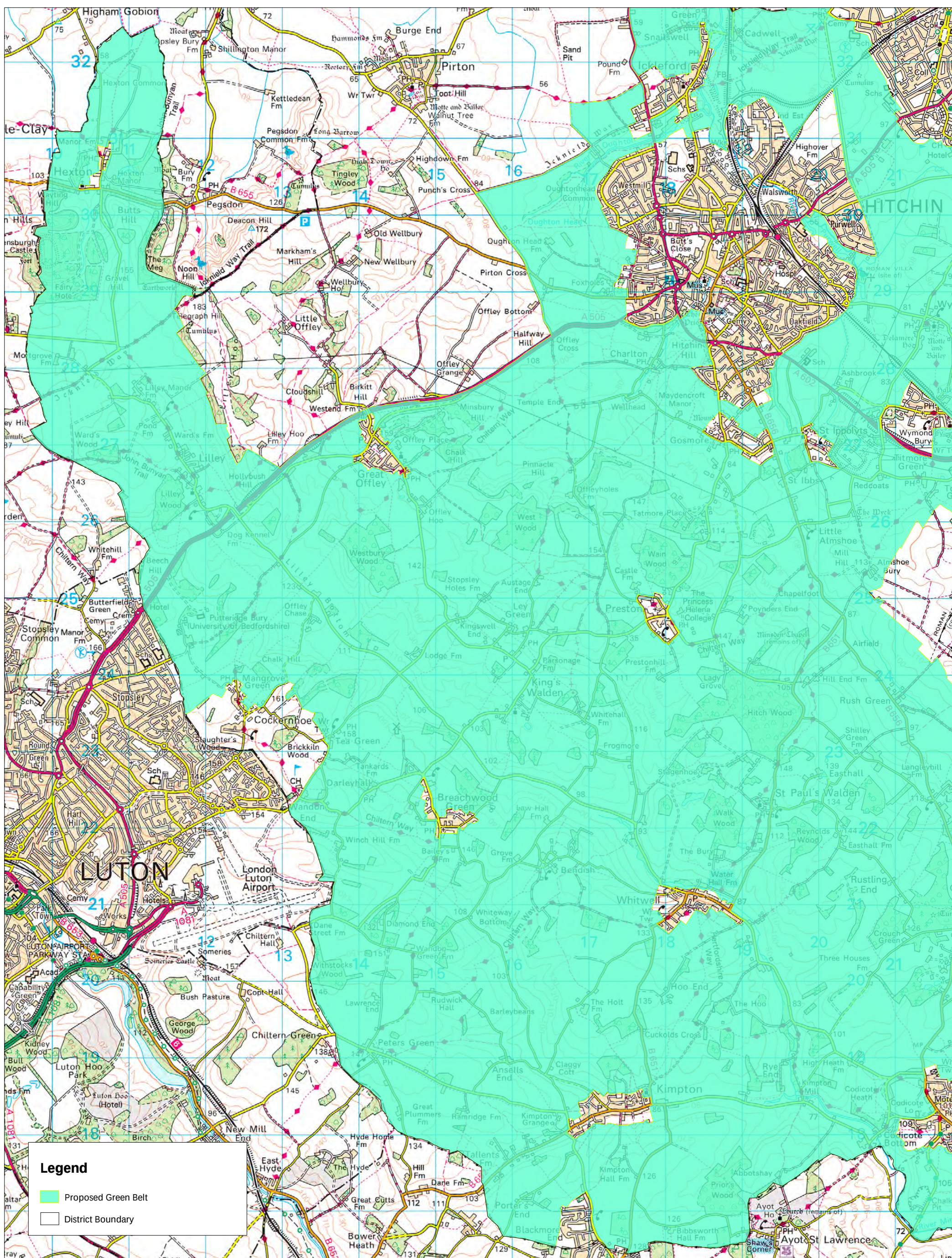
Proposed Green Belt



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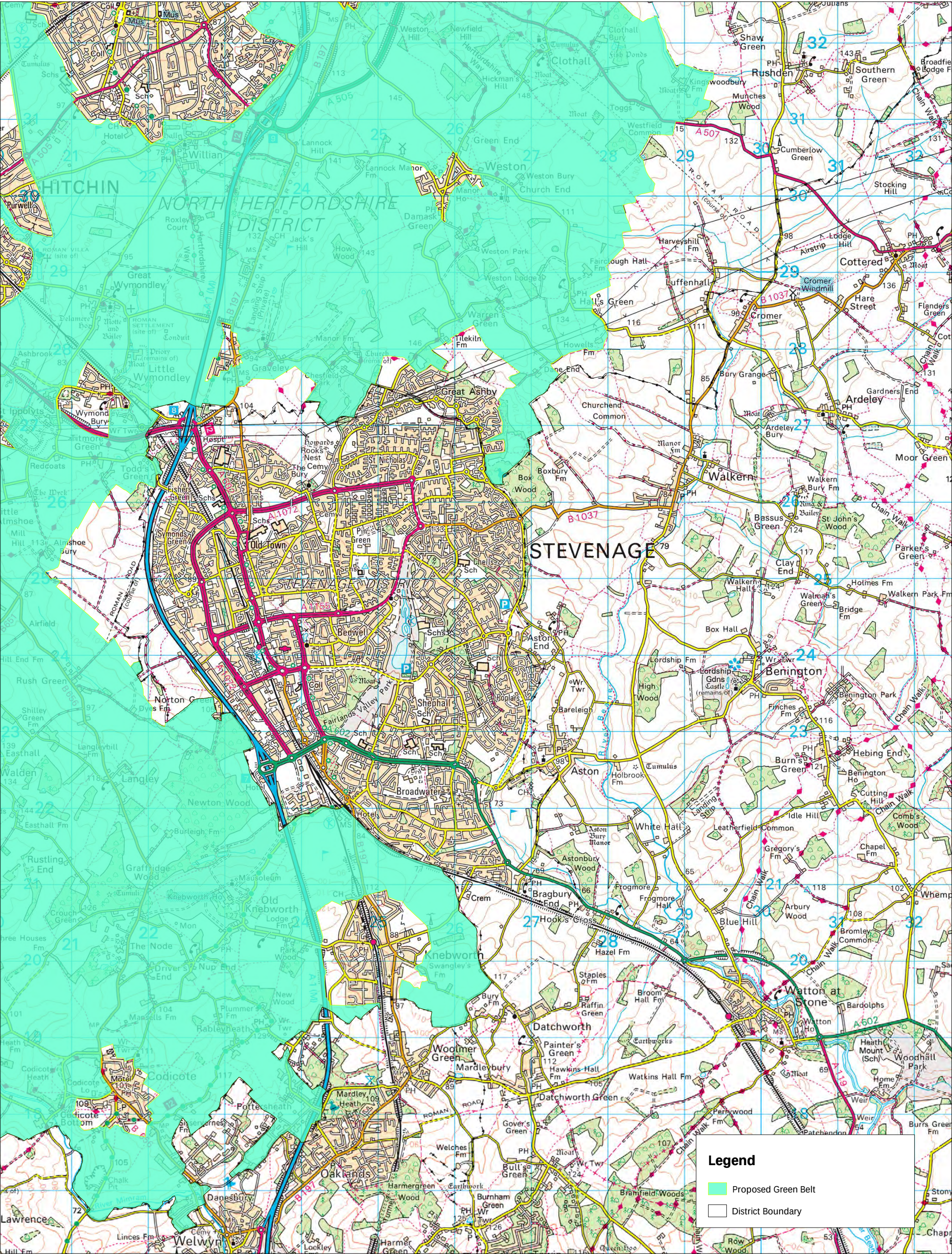


Proposed Green Belt

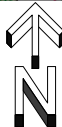




Proposed Green Belt



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Proposed Green Belt

