

CITY OF YORK LOCAL PLAN

EXAMINATION HEARINGS

OPENING REMARKS ON BEHALF OF THE COUNCIL

Introduction

1. A Local Plan for the City of York has, it is fair to say, been a while coming. York has not had its own local plan since the City of York Borough Development Plan of 1956. However we do not in these submissions explain what has been, until recently, a history of incomplete progress in plan-making.¹ We focus instead on the matters that are now before these examination hearings and comment briefly on them, after outlining their context, by way of introduction to the sessions which follow.

Context

2. The City of York local authority area covers around 105 square miles (or c. 27,200 ha). It is characterised by a compact urban area surrounded by what has been described as a clock face of small settlements. This compact form is a key feature of a city which is almost unique in England, with its easily recognisable medieval street pattern, 2000 years of unbroken urban development, one the highest concentrations of designated heritage assets in the country (including the grandest of northern Europe's Gothic cathedrals) and the only complete medieval city walls in England. Arterial routes and accompanying development strike outwards from the historic core. The city's rural hinterland and green space, including its Strays and river corridors and Ings, penetrate into the heart of the urban area, strongly influencing its built form and character. These open corridors are vital in defining the setting of the city and in maintaining its historic character and environmental quality.
3. Of the 27,200 ha of land in the Council area, around 4500 ha is built up, with the remainder being open countryside, the majority of which is Green Belt. Land outside the built up areas of York was identified in Green Belt proposals which remained in draft or "sketch plan" form from the 1950s,² until the Yorkshire and Humber Plan Regional Spatial Strategy to 2026, published in May 2008,³ contained a Key Diagram which set out the general extent of the Green Belt around the city and included requiring the detailed inner boundaries of the Green Belt to be defined, "in order to establish long term development limits that safeguard the special character and

¹ See a summary of the recent history in CD001 at p (ii) paragraph (vii).

² The history is explained in Annex 1 to TP1, including the adoption of the North Yorkshire County Structure Plan in 1980 which in policy E8(iv) set the principle of a York Green Belt whose outer edge is about 6 miles from York City Centre (SD031).

³ SD032.

setting of the historic city”.⁴ Policy also required that the City of York Local Development Framework define the detailed boundaries for the outstanding sections of the outer boundary of the Green Belt, about 6 miles from the city centre and the inner boundary.⁵

4. When the regional planning tier was abolished under the Localism Act 2011,⁶ the Regional Strategy for Yorkshire and Humber (Partial Revocation) Order 2013⁷ retained these policies, which also required that plans for the York area should “protect and enhance the nationally significant historical and environmental character of York, including its historic setting, views of the Minster and important open areas”.
5. These factors have rightly guided the strategy followed by this Plan.
6. York has a robust modern and mixed economy. It continues to attract inward investment to major development opportunities within the city. Its historic attractions are the cornerstone for a thriving visitor economy. It is a centre of excellence for higher and further education, including two universities, and its institutions are both major employers in their own right as well as supplying a skilled pool of labour to serve the science, technology and professional services industries in the city. Technical work on economic growth has been carried out by Oxford Economics (“OE”)⁸ which suggests that around 650 jobs per year would be created in the city in the plan period.
7. With this ambition for the city comes a key challenge of providing enough housing across the plan period to meet identified needs, balanced against the need to preserve the historic environment and green spaces that make the city unique, as well as the protection of the surrounding Green Belt.
8. The OAN figures will be the subject of debate in due course, but it is clear from the Proposed Modifications, based on the GL Hearn Housing Needs Update,⁹ that the Council relies upon more recent household projection figures (2016-based)(and mid-year estimates from 2017) which reduced its proposed OAN figure. These figures cannot realistically be ignored when applying the relevant practice guidance on assessing what the OAN for housing should be, given that the plan is advanced under the transitional provisions. The guidance advises that wherever possible, local needs assessments should be informed by the latest available information.¹⁰ That is what GL Hearn and the Council have done.

⁴ Policy YH9C.

⁵ Policy Y1C(1).

⁶ Section 109: see SD034.

⁷ CD21.

⁸ As outlined in the Employment Land Review (2016) [SD064]. See too the Update (2017) at SD063.

⁹ EXCYC9.

¹⁰ Reference ID: 2a-016-20150227.

9. This approach has not been changed by government when applying the transitional arrangements to plan-making. It difficult to see in fact how the Council would have escaped criticism if it had disregarded the more recent figures. The wider approach of government to the assessment of housing need has been and remains in a state of flux, but for plans being prepared under the transitional provisions the Council considers that it was entirely justified in amending its proposed OAN in response to a clear change in circumstances.
10. From this demographic starting point, and taking into account different approaches to household formation rates, GL Hearn concluded that there is an economic-led need for housing of up to 790 dpa. The Housing Needs Update assessed the housing need associated with the planned economic growth of 650 jpa. The OE forecast on which that figure was based was tested against forecasts from the Regional Econometrics Model (REM).¹¹ The REM model forecast a higher level of job growth, the fundamental difference being that it anticipated greater expansion of social care and health jobs to meet a growing population, whereas the OE model anticipated a more consistent size for “public service” jobs, with the majority of growth in healthcare offset by a decline in wider public sector jobs and no growth within the education sector. The Council will present an update to the OE work shortly which supports lower job growth over the remainder of the plan period, but this would not constitute a material change and underlines the robustness of the 650 jpa figure.
11. For reasons that will be better explained at the hearing, GL Hearn and the Council considered the OE figures to robust; and noted that for the sectors that affect land allocation through the Employment Land Review (primarily B1a and B2/B8 related sectors) the REM figures were slightly lower than the OE forecast. There would then be sufficient headroom in the original projections and land allocations to meet the identified growth in in the newer forecasts.
12. For housing need purposes a growth of 650 jobs per annum was therefore considered to remain realistic and this was translated into the 790 dpa figure, with an appropriate allowance for a part return to trend to transpose population figures into households.
13. Beyond this figure of 790 dpa, GL Hearn and the Council have considered market signals. An uplift of 15% on the demographic starting point (484 dpa) would allow for this, recognising that house prices are relatively high in York and that affordability has worsened over the last five years. But this would still fall some way short of the economics-led OAN of 790 dpa.
14. As for affordable housing, the SHMA had previously identified an affordable housing need of 573 dpa, however it is not considered feasible to provide for all of this need -

¹¹ See the Employment Land Review Update (2017)[SD063].

if such an uplift was applied in York then the OAN would be unrealistically high, having regard to the view that a figure of 790 dpa based on economic-led needs was already substantially higher than the figure based on demographic projections. Whilst some uplift to the demographic-based need figure may be considered to improve affordable housing, it was concluded that that did not need to be done in a mechanical way whereby the affordable housing need on its own drives the OAN. It was also necessary to bear in mind that affordable housing need includes some households who are in unsuitable accommodation and if their needs are met, their home is released for occupation by others, which would not result in a need for a net additional household.

15. The housing requirement also takes into account previously unmet need, described as an inherited shortfall from between 2012-2017¹², which brings the housing requirement to 822.
16. On the supply side, despite the reduction in the OAN, the Council decided to maintain the supply in the submission draft of the Plan,¹³ with the exception of the allocations at Queen Elizabeth Barracks that it now proposed for deletion on habitats grounds. As with the change to the OAN and housing requirement, that proposed change places the Council in the position of contending that the plan it submitted should be modified. However again there is good reason for the change in approach, which largely reflects the request of Natural England, as the statutory nature conservation body, for visitor studies to assess the potential effect of the allocations on the Strensall Common SAC. Those studies contradicted the expectations of the submitted HRA¹⁴ and showed much higher visitor numbers than had previously been assumed and they have prompted a change in position, supported by Natural England, whereby the Council is no longer satisfied that mitigation would remove reasonable doubts about development causing adverse effects on the SAC. This has been confirmed in an updated Habitats Regulations Assessment (and Sustainability Appraisal) subject to one further point below¹⁵. The contrary position of the DIO will no doubt be ventilated, but the Council is not convinced by its evidence, given the strict legal requirements of appropriate assessment¹⁶. All of the proposed houses would be within 400m of the

¹² See the letter to the Inspectors dated 13 November 2018 at EXCYC7.

¹³ Which related to a proposed housing requirement at the time of a minimum of 867 dpa: see policy SS1 and para. 3.3 of the submission draft Plan at CD001, as noted by the Inspectors in EXINS1.

¹⁴ CD012.

¹⁵ EXCYC14c. See too the Natural England comments on the survey work at [EXCYC14d] and the Defence Infrastructure Organisation letter of 21.2.19 at [EXCYC14f]. For the SA work see [EXCYC24a-c].

¹⁶ See e.g. *Grace and Sweetman v An Bord Pleanála* (C-164/17) [2019] P.T.S.R. 266 and *Holohan v An Bord Pleanála* (C-461/17) [2019] P.T.S.R. 1054 which reiterate the legal test e.g. in *Holohan* at [49]-[50] -

“49 ... the assessment carried out under Article 6(3) of that Directive may not have lacunae and must contain complete, precise and definitive findings and conclusions capable of dispelling all reasonable scientific doubt as to the effects of the proposed works on the protected area concerned.

50 ... If there are no such conclusions capable of dispelling all reasonable doubt as to the adequacy of the information available, the assessment cannot be considered to be ‘appropriate’, within the meaning of Article 6(3) of the Habitats Directive.”

SAC. In the case of mitigation measures even at the appropriate assessment stage there must be certainty and proposed future measures may present a problem:

“The appropriate assessment of the implications of a plan or project for the sites concerned is not to take into account the future benefits of such 'measures' if those benefits are uncertain, inter alia because the procedures needed to accomplish them have not yet been carried out or because the level of scientific knowledge does not allow them to be identified or quantified with certainty.”¹⁷

It may also be necessary to undertake appropriate assessments of the proposals for sites ST8, ST9 and 14 following *People Over Wind*¹⁸ but this is unlikely to be problematic.

17. This issue aside, the decision to maintain levels of housing supply allows for an appropriate level of flexibility in order to deal with unforeseen circumstances over the duration of the plan period and to enable a supply of sites that will create a Green Belt boundary to endure beyond the plan period¹⁹ (which, for the avoidance of doubt, is proposed as 2032/3). This approach is warranted given that the supply includes a number of large strategic sites and it is entirely sensible to anticipate a degree of slippage, as well as an element of needing to future proof the plan given the reality of the evolving governmental approach to assessing housing needs outside the transitional provisions. This is consistent with NPPF policy on Local Plan meeting objectively assessed needs, with sufficient flexibility to adapt to rapid change.²⁰ A similar strategy was adopted in Guildford, where the examining Inspector also found that such considerations were relevant to the exceptional circumstances required for Green Belt release. A legal challenge to that plan has recently been dismissed.²¹

18. We will return to these issues in the hearings²². The work carried out by the Council has contributed not only to the setting of detailed boundaries as anticipated by RSS

As the Court held in *Grace & Sweetman* regarding mitigation measures:

“51. It is only when it is sufficiently certain that a measure will make an effective contribution to avoiding harm, guaranteeing beyond all reasonable doubt that the project will not adversely affect the integrity of the area, that such a measure may be taken into consideration when the appropriate assessment is carried out ...

¹⁷ *Cooperative Mobilisation for the Environment and Vereniging Leefmilieu* (C-293/17, C294/17) [2019] Env. L.R. 27 at [130].

¹⁸ *People Over Wind v Coillte Teoranta* (Case C-323/17) [2018] P.T.S.R. 1668.

¹⁹ See NPPF 2012 [83].

²⁰ NPPF 2012 [14]. See too [153].

²¹ *Compton Parish Council v Guildford BC* [2019] EWHC 3242 (Admin); see [91]-[99] in particular. At [91] Sir Duncan Ouseley held that “In my judgment, once meeting the OAN is accepted as a strategic level factor contributing to “exceptional circumstances”, it follows that the provision of headroom against slippage and for flexibility to meet changes, “future-proofing” the Plan, as the Inspector put it, would also contribute to such circumstances”.

²² The Council relies in respect of Green Belt issues on assessment undertaken in the Green Belt Topic Paper and its Addendum [EXCYC18], along with associated work including the SHLAA (and Employment Land Review) and the Sustainability Appraisal. The Topic Paper as it now stands, including the Annexes which set out the proposed boundaries, is the culmination of work which can be traced back to the Approach to the Green Belt

policy and the NPPF, but to the justification of releasing land from the Green Belt. The Topic Paper Addendum summarises the exceptional circumstances which are relied upon by the Council to justify these releases, which will be explained further in the hearings. The Council has examined all reasonable options for meeting its identified needs for development and concludes that it would not be possible to them without releasing land from the Green Belt.

19. This process has taken into account a spatial strategy which seeks to achieve a sustainable pattern of development that recognises the historic character of the city and its setting, including the open land which brings the countryside into the city and the established smaller settlements in the surrounding area. Other important influences on this strategy include areas to be protected for their nature conservation value, green corridors and open space²³, the flat geography of the city which exposes significant areas to flooding, and the favouring of areas where access by sustainable transport exists or can be readily achieved through new development.
20. Whilst it is accepted that the release of sites will plainly affect the openness of the Green Belt, the selected sites are considered to be the most suitable and sustainable approach to meeting development needs, having regard to the spatial strategy and causing as little harm as possible to the green belt.
21. This wider strategy results in a focus on new development in the main urban area, whilst allowing for urban extensions to existing built up areas,²⁴ as well as three new strategic “garden village” sites²⁵ which reinforce the “clock face” of settlements around the historic city and maintain the essentially open land which runs towards it.²⁶ This is a sensitive and balanced strategy which meets the need for new development whilst recognising the constraints affecting the City, including its Green Belt and the historic character of the City that it is primarily designed to protect. This strategy has widespread support, from Historic England²⁷ amongst others.
22. Against this background, we turn briefly to consider the duty to co-operate, other matters of legal compliance and soundness.

Appraisal (2003) and followed latterly by Historic Character and Setting Technical Paper (2011) and Update (2013). These documents are themselves to be read with related work in the Heritage Impact Appraisal (2017), the Historic Environment Characterisation Project (2014) and the Heritage Topic Paper Update (2014) which consider the special character and significance of York and its setting.

²³ See the Green Corridors Technical Paper 2011 [SD088], Open Space and Green Infrastructure Main Report (2014) and Update (2017)[SD 085-6A-D] and Sites of Nature Conservation Importance Review (2017)[SD081].

²⁴ In particular ST9 - Land North of Haxby Road; and ST8 – Land North of Monks Cross.

²⁵ ST7 – Land East of Metcalfe Lane; ST15 – Land West of Elvington Lane; and ST14 – Land West of Wiggington Road.

²⁶ See the Key Diagram following p. iv in CD001.

²⁷ See the SoCG with HE.

Duty to co-operate

23. The Inspectors must decide whether it would be reasonable to conclude that the Authorities have complied with any duty imposed on it by section 33A of the Planning and Compulsory Purchase Act (“2004 Act”) in respect of the Plan’s preparation. In the language of the legislation, the Council was required to “engage constructively, actively and on an on-going basis” in the preparation of the Plan, with other authorities and a variety of prescribed bodies, in order to maximise the effectiveness of plan preparation with regard to “strategic matters” (namely the “sustainable development or use of land that has or would have a significant impact on at least two planning areas”).²⁸
24. Details of how the Council has met this duty are set out in the Statement to demonstrate compliance with the Duty to Co-operate (April 2018)²⁹ and the Council’s MIQ response on Matter 1.³⁰
25. The Statement explains how the City of York falls within two sub-regions, known as the Leeds City Region (which is a Local Enterprise Partnership (LEP) area) and the North Yorkshire and York sub-region (comprising the City of York, the County of North Yorkshire and the districts or boroughs within it). The Council is also a member of the York, North Yorkshire and East Riding LEP.³¹
26. The planning areas potentially affected by strategic matters were considered to comprise the local authority areas of Ryedale, Selby, Harrogate, Hambleton and the East Riding of Yorkshire. Wider strategic issues were also recognised at the LEP level. Prescribed bodies of particular relevance to the Plan included Historic England, Natural England and the Environment Agency.³²
27. The authorities and bodies used duty to co-operate matrices to identify strategic matters for subsequent discussion. These produced a list of strategic matters including the scale of housing and employment growth, retail growth, leisure, transport, waste and minerals, gypsies travellers and showpeople, social infrastructure, the natural and historic environment, Green Belt and air quality.³³
28. The Statement identifies how particular strategic issues were also identified from collaborative work on the previous draft Core Strategy, as well as comments on each

²⁸ See section 33A(4)(a) of the 20.

²⁹ CD020, with the Annexes at EXCYC7a. See too the Addendum at [EXCYC23]. See too the City of York Duty to Co-operate Statement (2014)[SD013] and the Demonstrating the Duty to Co-operate Interim Statement (2017)[SD025].

³⁰ EX HS M1 LR 0a.

³¹ See Section 4 and Figures 4.1-3 (and Figure 4.9 for governance arrangements) in CD020.

³² Section 3 of CD020. The formal groupings within the sub-regions, at which issues relating to the duty are raised, are the Leeds City Region Planning Portfolios Board, Heads of Planning Group and Strategic Planning (Duty to Co-operate) Group, along with the North Yorkshire and York Spatial Planning and Transport Board and Technical Officer Group: see CD020 para. 4.25.

³³ See EX HS M1 LR 0a

stager of plan preparation including the Preferred Options Stage from 2013.³⁴ This has taken the form of regular officer meetings, the making of representations, as appropriate to other authorities on their local plan documents, as well as consistent technical discussions at regional and sub-regional officer groups. The Council has been responsive to discussions and suggestions, which have been taken into account and have often influenced the content of the Plan. The outcomes of this work are set out in Section 4 of the Statement³⁵ and summarised in the Council's MIQ response in relation to Matter 1.

29. The Leeds City Region Planning Portfolios Board and the North Yorkshire and York Spatial Planning and Transport Board resolved in 2017 and 2018 to endorse the approach taken by the Council on the duty to co-operate.
30. Statements of Common Ground with neighbouring authorities, Historic England, Natural England, the Environment Agency and Highways England. These confirm what was said in the addendum to the Statement to Demonstrate Compliance with the Duty to Co-Operate³⁶ (as prepared in response to the consultation on Proposed Modifications). There remain no outstanding issues with other authorities or bodies regarding the discharge of the duty by the Council.
31. Overall it is clear that the Council has engaged constructively, actively and on an on-going basis in the preparation of the Plan and that the duty to co-operate has therefore been met.
32. Although our submissions do not go through the detail of every aspect of the work that has taken place, it is worth briefly addressing at this stage the approach that was taken to the Housing Market Area ("HMA") and meeting housing needs.³⁷
33. In recognition of practice guidance which specifies that authorities should assess their development needs working with other authorities,³⁸ the Council recognised its potential links with neighbouring authorities. Prior to the commissioning of the 2016 SHMA, discussions took place between York and neighbouring authorities to explore whether a joint SHMA commission should be pursued.
34. Whilst York, Ryedale, Hambleton and North York Moors National Park Authority agreed to commission a joint study, it became clear that both SDC and Harrogate District Council had both recently commissioned their own SHMA updates. SDC in particular had recently completed a SHMA (June 2015) to inform their anticipated Allocations DPD Plan; and that followed the adoption of their Core Strategy in 2013,

³⁴ Tables 4.3-5.

³⁵ See para.s 4.42-4.80 on pp. 95-104.

³⁶ EXCYC23.

³⁷ This question was raised by the Inspectors in their initial observations on the Plan: see EXINS1.

³⁸ Reference ID: 2a-007-20150320, Revision date 20 03 2015.

which had already set out a housing requirement equating to the provision of 450 dwellings per annum.

35. To ensure a consistent approach the remaining authorities (York, Ryedale, Hambleton and North York Moors National Park Authority) commissioned GL Hearn to produce a SHMA for their areas. The methodology and approach for this study were aligned with those already undertaken for Selby and Harrogate to ensure consistency in data sources and assumptions.
36. The SHMA (2016)³⁹ and SHMA Update (2017)⁴⁰ for York concluded that whilst there were links between the commissioning authorities, they did not converge in a single HMA. GL Hearn considered,⁴¹ having regard to overall evidence of linkages, that only Selby and York should be considered a distinct HMA. The travel to work analysis indicated very high levels of self-containment in York.
37. The Council and SDC therefore worked together, recognising the reality of the timing of the Selby Core Strategy and its SHMA work. By agreement with SDC, this has allowed the Council to identify the need to be addressed in the remaining part of the HMA. This demonstrates compliance with the duty and meets policy objectives by ensuring that the overall needs of the HMA have been met.

Other legal requirements

38. The Plan complies with the wider requirements of the 2004 Act (as amended) and 2012 Regulations. Further details are provided in the Local Plan Legal Compliance Checklist⁴². The Plan has been prepared in accordance with the Council's⁴³ Local Development Scheme. Consultation was carried out in accordance with the Statements of Community Involvement⁴⁴ and statutory requirements⁴⁵. Sustainability Appraisal has been carried out and is adequate⁴⁶. The Plan includes policies which are designed to contribute to the mitigation of, and adaption to, climate change⁴⁷. The Habitats Regulations Assessment carried out for the submission of the draft Plan⁴⁸ was revised at Proposed Modifications Stage⁴⁹ and informed the change of position on the

³⁹ SD051.

⁴⁰ SD050.

⁴¹ Paragraphs 2.100-2.103 of the 2016 SHMA [SD051].

⁴² CD022.

⁴³ CD015.

⁴⁴ See CD016.

⁴⁵ See Consultation Statement at CD013A.

⁴⁶ See CD008-10 and the Addendum (April 2018) at CD011. The Sustainability Appraisal Addendum for the Proposed Modifications can be found at EXCYC24a-c. Sustainability Appraisals for earlier stages of plan preparation are at SD007-8 (Preferred Options), SD011A-B (Publication Draft), SD017 (Further Sites Consultation Technical Note), SD020 (Preferred Sites Interim SA) and SA023 (Pre-Publication Draft).

⁴⁷ See section 19(1A) of the 2004 Act.

⁴⁸ See CD012; see too the assessments for previous stages of plan preparation at SD009 (Preferred Options), SD012 (Publication Draft) and SD025 (Pre-Publication Draft),

⁴⁹ EXCYC14c.

allocations at QEB. The Council is satisfied that the HRA is legally compliant. In particular, its judgments on whether the mitigation proposed to address recreational impacts on the SAC have been reached lawfully and are justified. The Council prefers the supporting view of Natural England, which should be given substantial weight, to the position taken by the MoD. The defining of Green Belt boundaries ensures that the Plan is in general conformity with the RSS⁵⁰.

Soundness

39. We have briefly touched on some of the issues that will be raised but we do not rehearse the detail here. The Council will rely on the evidence referred to and contained in its responses to the MIQs raised by the Inspectors. It considers that the plan has been positively prepared (it is plainly a positive strategy), justified (the Council has produced a substantial evidence base over several years), effective (in that it is deliverable over the plan period) and consistent with national policy.
40. The Council has suggested a number of modifications to make the plan sound and is of course open to suggestions and advice as to further modifications. However, such modifications must be to remedy any deficiencies in the policies, not merely to improve proposals which are, on proper analysis, sound.

Conclusion

41. The Council commends the Plan to this examination and welcomes the opportunity to test its policies with the participants in the hearings which follow.

DAVID ELVIN QC

SCOTT LYNES

10 December 2019

⁵⁰ See section 24(1) of the 2004 Act.