

**CITY OF YORK  
LOCAL PLAN EXAMINATION IN PUBLIC**

**STATEMENT OF CASE**

**PREPARED ON BEHALF OF VARIOUS CLIENTS  
RESPONDENT REFERENCES  
612, 613, 614**



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## **1.0 INTRODUCTION**

- 1.1 Directions Planning Consultancy Ltd has been instructed to act on behalf of a number of clients concerning their land and property interests in regards to the City of York Local Plan. As such, we have made representations at the various Local Plan consultation stages since the start of the current process in 2012.
- 1.2 Our representations to the Regulation 19 consultation in February 2018 provides us with the opportunity to take part in the Examination into the Local Plan, and the initial stage of responding to the Inspector's Schedule of Matters, Issues and Questions for the Examination (EX/INS/11).
- 1.3 This Statement now responds directly to various Matters to which our previous comments relate in advance of the Hearings. Not all of the Matters and questions have been addressed to which our representations previously addressed. Instead, we have attempted to provide concise responses to only those questions where we wish to bring particular points of note to the attention of the Inspectors to supplement our previous representations to the Regulation 19 consultation and subsequent Proposed Modifications consultation.

## **MATTER TWO**

### **THE OBJECTIVELY ASSESSED HOUSING NEED**

**2.2 Policy SS1 and Paragraph 3.3 of the Plan say that the objectively assessed housing need ('the OAHN') is 867 dwellings per annum (dpa) in the Plan Area for the plan period to (2017 to 2033) (16 years). However, since the submission of the Plan for examination, the Council has put forward further evidence to indicate that the OAHN is now considered to be 790 dpa in the Plan Area for 2017 to 2033.**

**a) We understand that this calculation initially was derived from the conclusions of Technical Work carried out by GL Hearn in the Strategic Housing Market Assessment Update (2017) [SD050] which updated the demographic baseline for York based on the July 2016 household projections. However, the revised OAHN is now based on further work undertaken by GL Hearn presented within the City of York – Housing Needs Update (January 2019) [EX/CYC/9]. Is this correct? Is this a robust evidential basis?**

In correspondence to City of York Council dated July 2018 (EX/INS/1), we understand the Inspectors raised the matter of the OAN, and how the Council had ignored their consultant's advice to adopt a target of 953 dpa, and instead opted to dismiss the 10% uplift in favour of a figure of 867 dpa. Within the letter, the Inspectors queried whether the Council might wish to listen to GL Hearn or explain what circumstances existed for the OAN to have been suppressed.

Instead of providing a direct response, the Council chose instead to throw a curve ball by suggesting the goal posts should be moved with the introduction of the idea that the updated ONS figures released in September 2018 should instead inform the basis of the OAN. Since then, GL Hearn have been commissioned by the Council to prepare a Housing Needs Update (2019), which has been

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prepared on the basis of recently published revised household projections based on the 2017 Mid-Year Population Estimates.

We are concerned with the Council's intention to introduce the 2019 Housing Needs Update into proceedings after Submission of the Plan because of its reliance on 2017 Mid-Year Population Estimates. Not least because basing the OAN on the 2017 Estimate moves the basis of the OAN further from being compliant with the standard method advocated by the Government.

Our main concern with the 2017 Estimates is how ONS note this particular set of Estimates, that informed the 2019 Housing Needs Update, incorporates a number of limitations. Firstly, due to Customer Information Service data being unavailable, the Estimates refer to a three year average in relation to the distribution of internal in-migrants at local authority level rather than the actual annual based information. Secondly, a new method has been used in respect of internal migration, which has not had the benefit of being tested for reliability given it is a wholly new method. Finally, long term migration was revised upwards due to a sampling issue with the data of non-EU students. The limitations demonstrate how errors do occur when calculating Estimates, and so it raises the question whether such Estimates should be relied upon, especially when they are not the preferred basis for calculating the ONS according to the DCLG's standards method.

It also needs to be noted how the 2017 Mid-Year Population Estimate is to be the last published before the 2021 Census is undertaken. As such, it is likely to be highly unreliable due to the fact that the Estimate is based on forecasts taken from data recorded back in 2010; some nine years ago. As such, any attempt to forecast ahead from data collected some nine years ago means the Estimates become increasingly sensitive to errors, and are more than likely to be inaccurate. For this reason, the Government advocates the use of 2014 based household projections as part of the standard method, because of the stability this data set is considered to provide.

GL Hearn's latest advice fundamentally alters the OAN figure to 790 dpa. This is significantly lower than any previous OAN figure proposed by City of York Council, since the commencement of the Local Plan review in 2013. This figure is therefore entirely out of kilter with all previous OAN figures for York. Additionally, it is also considered to be inconsistent with the Government's overall objective to realise the significant increase in housing required to address need and their own calculations because the figure is so much less than previous calculations.

For the Plan to be found sound, we believe the basis of the OAN should not be informed by the 2017 Estimates. Instead, the Council should answer the original question posed by the Inspectors and either accept the 867 dpa target with the 10% uplift or provide an explanation as to why it is appropriate to suppress the target with disregard for economic growth and the need to address affordability.

**b) Does the 13,152 total housing figure identified at the year '2032/33' in the SHLAA Figure 6: Detailed Housing Trajectory Updated (790dpa OAHN) [EX/CYC/16] include meeting housing need arising in parts of adjoining districts (e.g. Hambleton, Harrogate, East Riding, Ryedale and Selby) which fall within the York Housing Market Area, as set out in the City of York Strategic Housing Market Assessment 2016 [SD051]?**

From reading the Council's evidence, it appears they are arguing how they are delivering the residual housing need of the Selby/York HMA. As Selby DC have made a commitment to meet their own need then the reality of addressing the residual need of the HMA means CYC simply need to address their own housing need. As such, the Council is not proposing to meet housing need arising from parts of adjoining districts.

## THE HOUSING STRATEGY: THE HOUSING REQUIREMENT

**2.5 Policy SS1 aims to ensure that “a minimum annual provision of 867 new dwellings [are delivered] over the plan period to 2032/33 and post plan period to 2037/38”.**

**a) Is this 867 figure an annual average, or is it a commitment to providing at least that number during every year of the plan period and post plan period? Is it intended to be a net figure?**

We understand the Council intends to deliver a minimum of 867 dwellings per annum, because Policy SS1 refers to “deliver a minimum annual provision of 867 new dwellings...” We cannot see how the wording might be considered to mean anything else? The question raises an interesting point, however, because throughout the Plan the Council has not mentioned whether annual development targets are net or gross. This includes in relation to Policy H10, for example, where there is no mention as to whether the affordable housing policy applies to the gross number of proposed dwellings or net number of new dwellings.

Our understanding of the evidence base is that it has been prepared on the net amount of new development required to meet need, or net gain. For the Plan to be sound we would suggest reference to targets and thresholds should be explicit in regards to net or gross.

**b) For the avoidance of any doubt, what period of time is the plan period?**

Having read the Plan and supporting evidence, we have found the following references to time periods to which policies will apply:

- Under “About the Plan” paragraph (i), it is stated how “*This Local Plan covers the period from 2017 to 2032/33, with the exception of the Green Belt boundaries which will ensure up to 2037/38.*”
- Policy SS1 refers to “*deliver a minimum annual provision of 790 new dwellings over the plan period to 2032/33 and post plan period to 2037/38.*”
- Paragraph 5.9 refers to “*...To fulfil these requirements and to provide additional certainty we have chosen to allocate land for the full plan period, including the greenbelt period, to 2037/38 to meet the minimum housing requirement as set out in Policy SS1...*”
- Examination document EX/CYC/10, which is an email from Rachel Macefield to Carole Crookes states “*The plan period for York must extend beyond 15 years given the requirement under the planning framework to set a greenbelt boundary that will endure beyond the normal 15 year plan period.*”

On the basis of the excerpts above, the Plan clearly sets out how the Plan period runs to 2037/38 for the allocation of land and Green Belt boundaries, but all other policies are only effective until 2032/33.

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We are of the opinion that this approach is unsound for the reasons set out under our response to the next question. For the Plan to be found sound, the Plan period for both allocations and the application of policies needs to align, so the end date is the same.

**c) Is the “plan period” the period of time for which the Plan and its policies will be in force as part of the development plan? Related to this, is it legitimate, or possible, for a development plan to include policies which purport to dictate or direct development beyond the “plan period”, as Policy SS1 appears to?**

Town and Country Planning (Local Planning) (England) Regulations 2012 sets out under Part 3, Regulation 5(1)(a)(i) how local development documents are any documents that contains statements regarding specified matters, including “(i) *the development and use of land which the local planning authority wish to encourage during any specified period.*”

Paragraph: 064 Reference ID: 61-064-20190315 of the National Planning Policy Guidance 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.

Within the NPPF (2012) there are various references to the preparation of strategic policies within Local Plans, and the time frame to which policies should apply. References include within paragraph 157 where it is states “*Crucially, Local Plans should...be drawn up over an appropriate time scale, preferably a 15-year time horizon, take account of longer term requirements, and be kept up to date;*” and in paragraph 47 “*identify a supply of specific, developable sites or broad locations for growth, for years 6-10 and, where possible, for years 11-15.*” The 2019 version of the NPPF is more explicit that the Plan period should endure for at least 15 years, as under paragraph 22 it is stated “*Strategic policies should look ahead over a minimum 15 year period from adoption, to anticipate and respond to long-term requirements and opportunities, such as those arising from major improvements in infrastructure.*”

Note how the tense of the word ‘period’ in each instance is singular and not plural. On this basis, there is no legitimate reason for the Local Plan to include two different time periods. Especially, as the NPPF sets out under paragraph 139 the means by which the permanence of the green belt is to be preserved by the designation of safeguarded land. The provisions of the NPPF specifically allow land to be safeguarded between the urban area and the green belt to meet longer-term development needs stretching well beyond any defined plan period. Consequently, the NPPF clearly sets out the safeguarding of land as the correct means by which to ensure green belt boundaries will endure beyond the normal 15 year plan period.

As safeguarded land is expected to cover a period of greater than 15 years, then the Plan needs to be amended to follow the correct approach, and specifically allocate land for development up to 2031/32 and then safeguard land for a further period of time.

Given the Plan does not conform to the requirements of legislation, policy or guidance then it can only be considered to be unsound. To make the Plan sound requires substantial amendments to the policies within the Plan, the designation of land, and also ensuring sufficient land is safeguarded. However, the Council did identify safeguarded land at an earlier stage at the process, so reference could be made to the earlier work as part of efforts to remedy this fundamental issue with the Plan.

**e) Does setting a housing requirement that is higher than the OAHN undermine the Council's arguments in relation to the justification for releasing land from the Green Belt for housing purposes – that is to say, does it reduce the degree to which “exceptional circumstances” exist, in principle, for amending the Green Belt boundaries for housing delivery purposes?**

We wish the Inspectors to note how there is a question as to the extent to which 'exceptional circumstances' need to be demonstrated because of the current status of the green belt.

Currently, saved policy YH9 of the Regional Spatial Strategy for Yorkshire and the Humber (RSS) sets out policy matters relating to the green belt around York, whilst the Key Diagram illustrates the general extent of the green belt.

The RSS does not identify the inner green belt boundary around York, as the Key Diagram is not of sufficient scale to determine where the boundary has been drawn in relation to land features on the ground. Instead, it is the responsibility of City of York Council to identify the detailed inner boundary within a statutory development plan.

As such, there is no defined inner boundary that requires formally amending. Exceptional circumstances therefore do not need to be demonstrated in relation to defining the detailed inner boundary around York.

Instead, exceptional circumstances only need to be demonstrated in relation to boundaries around settlements, both existing and new, within the general extent of the green belt. This is because currently all settlements beyond the urban edge of York lie within the general extent, as identified by the RSS Key Diagram.

### MATTER 3

#### **GREEN BELT: PRINCIPLES, THE APPROACH TO DEFINING THE GREEN BELT BOUNDARIES, EXCEPTIONAL CIRCUMSTANCES AND THE APPROACH TO IDENTIFYING LAND TO BE ‘RELEASED’ FROM THE GREEN BELT FOR DEVELOPMENT**

##### **PRINCIPLES**

**3.1 Paragraph 10.1 of the Plan states that “the plan creates a Green Belt for York that will provide a lasting framework to shape the future development of the city”. For the purposes of Paragraph 82 of the National Planning Policy Framework, is the Local Plan proposing to establish any new Green Belt?**

Currently, the saved policies within the RSS determine the general extent of the Green Belt with the expectation that City of York Council would determine the inner boundary for the first time through the statutory development plan process.

The RSS Key Diagram purposefully draws a loose circle, denoted with a dotted line, around York with the intention of allowing City of York Council to decide how close the boundary should be drawn around the edge of the developed extent of the City. The idea being that the Key Diagram signals that the boundary does not need to be tightly drawn to the urban edge because RSS recognises how land might be required for development around the periphery of the urban edge. As such, it is not possible to put land into or take land out of the green belt in respect of the inner boundary.

The outer boundary mostly sits within neighbouring local authority areas, so it is not possible for City of York to extend the boundary further into any of the districts to include additional land.

Consequently, we do not believe it is possible for the Council to establish new green belt.

**a) If so, what are the exceptional circumstances for so doing, and where is the evidence required by the five bullet points set out at Paragraph 82 of the Framework?**

In light of our comments above, this question is considered to be superfluous to discussions.

**b) If not, does the Local Plan propose to remove any land from the established general extent of the Green Belt? If it does, is it necessary to demonstrate that exceptional circumstances exist to warrant that approach? Or is it the case that the Local Plan establishes the Green Belt boundaries for the first time, such that the exclusion of land from the Green Belt – such as at the ‘garden villages’, for example – is a matter of establishing Green Belt boundaries rather than altering them, in the terms of Paragraph 82 of the Framework?**

All land encircling the City and then set some six miles outwards is designated green belt and is part of the general extent of the green belt, as identified within RSS. The larger settlements within the district, such as Poppleton, Haxby, Strensall and Elvington, all fall within the general extent of the green belt, as do the proposed new settlements. However, the Local Plan Proposals Map shows how these settlements are to be excluded from the green belt, with detailed boundaries drawn around their edge. Consequently, the Council is proposing to remove these settlements from the general extent of the green belt. On this basis, paragraph 82 of the NPPF does not apply because it is concerned with establishing new green belt, rather than removing land from the green belt or defining

boundaries for the first time. Instead paragraph 83 applies, as it is concerned with establishing boundaries.

## **THE APPROACH TO DEFINING THE GREEN BELT BOUNDARIES**

**3.2 Paragraph 1.1.1 of the Council’s “Approach to defining York’s Green Belt” Topic Paper (TP1) [TP001] says “York’s Local Plan will formally define the boundary of the York Green Belt for the first time.” How has the Council approached the task of delineating the Green Belt boundaries shown on the Policies Map? In particular:**

**a) Is the approach taken in general conformity with those parts of the Regional Spatial Strategy for Yorkshire and Humber (‘the RSS’) that have not been revoked, namely Section C of Policy YH9, Sections C1 and C2 of Policy Y1, and the Key Diagram of the RSS insofar as it illustrates the RSS York Green Belt policies and the general extent of the Green Belt around the City of York?**

It may be of interest for the Inspectors to learn that I was a Civil Servant within Government Office for Yorkshire and the Humber with responsibilities for the Regional Spatial Strategy for a number of years. I was first employed to process responses to the Proposed Modifications, following Examination, before taking the document through to adoption. Working with Will Fieldhouse, we identified the implications of the revocation of RSS and notified DCLG who in turn made the decision to save sections of RSS. One of my final tasks before Regional Government was abolished, and my post was made redundant, was to prepare a Ministerial Briefing Note on the implications of the revocation of the RSS on York’s Green Belt.

The intention of the RSS was never to define the detailed inner boundary around York. Instead, the Key Diagram was simply intended to show how the inner boundary was expected to circle the City, which is purposefully denoted by a dotted green line. If RSS had intended to determine the inner boundary in any level of detail then a more specific map would have been prepared at an appropriate scale to make clear where the boundary needed to be drawn. This is not, however, the case, which is why it is not possible to read the Key Diagram in sufficient detail to understand whether land is, or is not, included within the general extent of the Green Belt around the urban edge of the City. As such, the Council’s decisions regarding the exact location of the inner boundary are theirs to make in accordance with C1 and C2 of Policy Y1 of the RSS through the current Local Plan process.

RSS Policy YH9C required City of York Council to identify the detailed inner boundary to the green belt with the intention that it should establish long term development limits that take account of the levels of growth set out in the RSS and that also endure beyond the Plan period.

We do not believe the inner boundary has been prepared with reference to the requirement to take account of long term development limits, or so that it might endure beyond the Plan period, due to the way it has been drawn tightly around the edge of the urban extent of York. Instead of being drawn tightly around the urban area, the boundary should have been determined on the basis as to whether land fulfils the purposes of green belt and also with a view to safeguarding land for long term development needs so the boundary might endure beyond the end of the Plan period. As such, we do not believe the inner boundary to be sound, because it is not compliant with strategic policy



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requirements within RSS and also paragraph 85 of the NPPF (2012) and paragraph 135 of NPPF (2019).

To be found sound, the boundary we believe the boundaries need to be assessed again on the basis of a more comprehensive and appropriate appraisal. We have raised a number of criticisms with regards to the methodology, or lack of, methodology for determining the detailed boundary in our original representations given the overly restrictive approach that has been adopted.

**3.3 Will the proposed Green Belt boundaries need to be altered at the end of the Plan period? To this end, are the boundaries clearly defined, using physical features that are readily recognisable and likely to be permanent? What approach has the Council taken in this regard?**

Given the Council has stated there are two plan periods, in so far as the allocations and the green belt boundaries are to endure for five years beyond the end of the policies, we wonder to which plan period is this question raised? Does the question refer to a review of the Plan in 2032/33 or 2037/78?

Irrespective of the end of any views on the end of the Plan period, we have set out in our response to question 2.5(b) above, various quotes whereby the Council has made clear how the green belt boundaries will need to be reviewed by 2037/38 to coincide with the completion of allocations of land for development. There is no doubt that the green belt boundaries will need to be reviewed given they are currently drawn to allow for development up to 2037/38 after which time it would be expected that more land will need to be identified for the proceeding 15 years with a view to establishing green belt boundaries for a further period of time in accordance with the NPPF (2019).

On this basis, the proposed green belt boundaries cannot be considered to be permanent given the Council has confirmed the boundaries are to be reviewed in 2037/38, which is less than 20 years from adoption of the Plan. Over the years, the view has become established that for green belt boundaries to be considered permanent in accordance with paragraph 79 of the NPPF (2012) then they should be capable of enduring for a period of at least 25 to 30 years. This is with a view to securing long term protection of the open countryside beyond any plan period.

To create a situation where the boundaries will need to be reviewed in less than 20 years' time, and at the end of a plan period, is therefore considered to be unsound because it is contrary to the national planning policy requirement to keep land permanently open in the long term. For the Plan to be found sound, the green belt needs to be appraised with a view to defining long term boundaries rather than boundaries that only take account of the development requirements for, one of the two, Plan periods currently being proposed.

In respect of boundaries, it appears the Council is proposing to establish a number of artificial boundaries in order to create permanent and recognisable boundaries, rather than work with existing physical features. By way of example, we wish to bring to the Inspector's attention as to how the Proposals Map shows proposed new open greenspace to the east of allocation ST8 and how there is then a slither of green belt to the west that does not serve a green belt purpose. Proposing new open space is an artificial way of creating a physical feature, although there is currently no assurance that the proposed open space will be delivered to secure the desired land feature. In relation to the slither of green belt, it can serve no practical purpose given how narrow it is, so it should be excluded from the green belt.

By way of another example, in relation to the land to the north of New Earswick and south of the bypass, the existing urban edge has been identified as the boundary rather than appreciating how the railway line and bypass form a more logical defensible boundary.

We are most concerned that the Council has not looked to the long term when defining green belt boundaries with a view to keeping land permanently open for a reasonable period of time, and certainly that extends beyond the end of the plan period.

**3.4 Should the Plan identify areas of ‘safeguarded land’ between the urban area and the Green Belt, in order to meet longer-term development needs stretching well beyond the plan period?**

The NPPF makes clear under paragraph 85 how land should be safeguarded in order to meet longer-term development needs stretching well beyond the plan period. On this basis, it is wholly reasonable to expect land that does not perform green belt function to have been excluded from the green belt and safeguarded given the lack of available land to meet development needs over the long term. The urban extent of York and its outlying settlements are densely developed, which means there is not a sufficient supply of land within the urban conurbation to meet development needs within this current Plan period. It is therefore reasonable to presume it will be necessary to rely upon the development of greenfield land on the urban edge into the long term. This requires the safeguarding of land to ensure green belt boundaries can endure beyond the plan period and take account of long term development needs. This approach is advocated in the RSS given the Key Diagram shows how the green belt boundary does not need to sit tight against the existing urban edge of the City.

The role of safeguarded land to meet long term development needs has previously been recognised by the Council, which is evident from the identification of land to be safeguarded during the preliminary stages of the Local Plan process. In addition, the Council has previously received Counsel Opinion that made perfectly clear how it is appropriate for the Council to safeguard land to be identified so green belt boundaries might endure beyond the end of the plan period. Please see Appendix One to this Statement, which includes a copy of the Counsel Opinion for convenience of reference. In particular, paragraph 16 makes clear how Counsel advised the Council that the Plan would be unsound if land were not safeguarded for a period of at least ten years beyond the end of the Plan.

Having ignored Counsel advice, the Council appears to be fudging the situation by attempting to promote two plan periods. However, this approach is simply unsound given legislation, policy and guidance does not facilitate anything other than one plan period in which all policies and proposals are to apply.

Any plan period is expected to endure for at least 15 years from adoption, but currently the end of the period to which the policies are expected to apply extends to only 14 years. For the Plan to be sound, the period of the Plan needs to be for at least 15 years, as required by the NPPF (2012).

**3.5 Overall, are the Green Belt boundaries in the plan appropriately defined and consistent with national policy in the National Planning Policy Framework, and is the Plan sound in this regard?**

Our concern with the identification of the boundaries is the lack of transparency in the process for determining the position of the proposed boundaries, and also how the process was retrospective to the decision made concerning the position of the boundary.

We understand the Inspectors initially raised concerns with regards to the process of determining boundaries in correspondence dated 24 July 2018 (document EX/INS/1), which subsequently led to

the Council preparing document Topic Paper 1: Approach to defining York's Green Belt Addendum (March 2019). Document TP1 does not however rectify original concerns because it is confined to describing the boundaries identified on the Proposals Map, and ignores the matter of safeguarding land.

Consequently, the boundaries in the Plan cannot be considered to be consistent with national policy, especially in respect of paragraph 85 and more fundamentally paragraph 79 that make clear how the essential characteristics of green belts is their permanence. Currently, the Plan is not considered to be sound due to the flaws in the Council's approach to determining boundaries to respond to long term defensible boundaries.

**3.8 Have the Green Belt boundaries - as proposed to be altered - been considered having regard to their intended permanence in the long term? Are they capable of enduring beyond the plan period?**

The simple answer to this question is 'no' on the basis that the boundaries identified on the Proposals Map are only intended to endure for a period of five years beyond the end of the policies set out in the plan. Additionally, the Council has made clear how the boundaries will need to be reviewed to coincide with all the allocations having been completed. Consequently, the appraisal only looks at whether boundaries are appropriate in relation to the current need to identify boundaries. This is rather than whether land beyond forms a green belt function or if there is a requirement to keep land beyond permanently open with a view to long term development needs.

**3.10 Overall, is the approach to identifying land to be 'released' from the Green Belt robust, and is the Plan sound in this regard?**

Since the Council decided to remove safeguarded land from the Plan we have consistently raised our concerns in regards to the soundness of the Plan. Preparation of TP1 has done nothing to influence our thoughts on how the Plan is currently unsound. For the Plan to be found sound, the boundaries need to be reviewed and land safeguarded in accordance with paragraph 85 of the NPPF in order to ensure the green belt boundaries are consistent with paragraph 79.

## **APPENDIX ONE**

THE COUNCIL OF THE CITY OF YORK

IN THE MATTER OF THE PREPARATION OF  
THE YORK LOCAL PLAN

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ADVICE

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1. I am asked to advise the Council as to the approach which should be adopted in relation to the determination of the Green Belt boundary in the preparation of the York Local Plan.
2. The background to this advice can be stated briefly. The principle of a Green Belt around the City of York has been long established. Its general extent was identified in the Regional Strategy for Yorkshire and Humber (RSS). The RSS included the following York Green Belt policies:

**POLICY YH9: Green belts**

C The detailed inner boundaries of the Green Belt around York should be defined in order to establish long term development limits that safeguard the special character and setting of the historic city.

**POLICY Y1: York sub area policy**

Plans, strategies, investment decisions and programmes for the York sub area should:  
C Environment

1. In the City of York LDF, define the detailed boundaries of the outstanding sections of the outer boundary of the York Green Belt about 6 miles from York city centre and the inner boundary in line with policy YH9C.
2. Protect and enhance the nationally significant historical and environmental character of York, including its historic setting, views of the Minster and important open areas.

The RSS Key Diagram illustrated the RSS York Green Belt policies and the general extent of the Green Belt around the City of York.

3. When the RSS was revoked in February 2013 the Green Belt policies and Key Diagram were expressly excluded from the revocation. They continue in force and, as the Ministerial statement on the revocation explains: “in York, the development plan will continue to include the regional strategy’s green belt policies”.
4. Although the general extent of the Green Belt has thus been identified, the detailed boundaries remain undefined. Attempts have been made to achieve definition of the boundaries in various studies and plans since at least the early 1980s, but none have reached a successful conclusion. It is now part of the function of the emerging Local Plan to set the detailed boundaries for the first time. In doing so it is important to ensure that the approach adopted by the Council accords with relevant national policy.
5. National policy in this respect is to be found in the National Planning Policy Framework (NPPF) published in March 2012.
6. Paragraph 79 of the NPPF emphasises the importance of Green Belts and provides that

“The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.”

Paragraph 80 sets out five purposes which the Green Belt serves:

- To check the unrestricted sprawl of large built-up areas;
- To prevent neighbouring towns merging into one another;
- To assist in safeguarding the countryside from encroachment;
- To preserve the setting and special character of historic towns; and
- To assist in urban regeneration, by encouraging the recycling of derelict and other urban land.

The importance of permanence is further emphasised in paragraph 83, which provides:

“Once established, Green Belt boundaries should only be altered in exceptional circumstances, through the preparation or review of the Local Plan. At that time, authorities should consider the Green Belt boundaries having regard to their intended permanence in the long term, so that they should be capable of enduring beyond the plan period.”

7. In the light of this policy advice I am asked to consider how long beyond the Plan period should a Green Belt endure once it is defined in a statutory plan. In my opinion there is no finite period for a Plan to endure. The land which is designated as Green Belt should be expected to remain open and undeveloped indefinitely.
8. In deciding which land should be designated and what the boundaries should be, the Council should consider the extent to which the land identified serves one or more of the five Green Belt purposes set out in paragraph 80. The 4<sup>th</sup> bullet point is likely to be of particular relevance to York, namely the preservation of the setting and special character of the historic City.
9. In accordance with paragraph 84 of the NPPF authorities are also required, when drawing up Green Belt boundaries to take account of the need to promote sustainable patterns of development. This requires consideration of the development needs of the area, which should be objectively assessed. As paragraph 85 makes clear this involves consideration of the development needs which are to be met during the Plan period, and also the longer term development needs, “stretching well beyond the Plan



period". Quite how far beyond is a matter of planning judgment, but in my opinion a 10 year horizon beyond the life of the Plan as mentioned in my Instructions would be appropriate.

10. Once the need for development, both within the Plan period and beyond, is ascertained, a further judgment is required as to the extent to which the objectively assessed needs should be met. In deciding this further question it is legitimate to consider the effect of meeting the needs in full in relation to the impact that would have on the Green Belt and whether it would still be capable of fulfilling its purpose. As Ouseley J held in *South Northamptonshire Council v Secretary of State for Communities and Local Government* [2014] EWHC 573 (Admin) at paragraph 31:

"The question is not whether the Green Belt constrains the assessment, but whether the Green Belt constrains meeting the needs assessed. Once the Local Plan is adopted, it is the constrained needs in the Plan which are to be met".

11. With regard to those needs which are to be met in the Plan period allocations should be made and the land required for development should be excluded from the Green Belt.
12. Looking beyond the Plan period there are three potential options in respect of land which is required to meet the longer term development needs of the area: it can be left unallocated; it can remain in the Green Belt; or it can be designated as safeguarded land in accordance with NPPF paragraph 85. Of these three potential options in my opinion the first two are entirely inappropriate. If the land is simply left unallocated it may be difficult to resist proposals for development which is not in accordance with the ascertained needs. If it is left within the Green Belt in the emerging Plan that would be contrary to the overriding requirement of permanence, because it known

that the land will be required to be released to meet future development needs, if not in this Plan's period then at least in the next.

13. The proper course, in my view, is to identify land as safeguarded land to meet the future requirement for development. As the notes in the Planning Encyclopaedia to the now superseded PPG 2 explain, safeguarded land is required in order to strike the balance between preservation of the Green Belt and the need for further expansion. Consequently if land is required to meet the longer term needs it should be excluded from the Green Belt and protected from pressure for development contrary to the longer term needs by including it as safeguarded land. However it is important that any such land will be genuinely available and capable of development when it is needed: *Prowting Projects Ltd v Wychavon DC & Secretary of State for the Environment, Transport and the Regions (CO/798/98)*. In the context of land included as safeguarded for employment use, paragraph 22 of the NPPF should be borne in mind, which cautions against long term protection of sites for employment use where there is no reasonable prospect of the site being used for that purpose; see also *DB Schenker Rail (UK) Ltd and another v Leeds City Council [2013] EWHC 2865 (Admin)*.

14. The “where necessary” test adumbrated in the third bullet point of NPPF paragraph 85 therefore applies where longer term needs for development have been identified. So those needs can in due course be met, land should be safeguarded for the purpose of that development and, by identifying such land, the Green Belt can be protected from encroachment thus ensuring its boundaries remain permanent.

**CITY OF YORK LOCAL PLAN  
EXAMINATION IN PUBLIC STATEMENT OF CASE  
PREPARED ON BEHALF OF RESPONDENT REFERENCES 612, 613, 614**

15. From the information provided with my Instructions it appears to me that the situation in York is within the circumstances contemplated by this test.
16. In my opinion if no safeguarded land is identified in the emerging Local Plan this would give rise to a serious risk of the Plan being found unsound. There would be a failure to identify how the longer term needs of the area could be met, and in particular a failure to indicate how those longer term needs could be met without encroaching into the Green Belt and eroding its boundaries.
17. The only argument which it seems to me the Council could deploy to avoid this danger is to be able to demonstrate that there is sufficient land outside the Green Belt boundary which will be suitable for meeting the need for further development, and which is likely to be available when those needs arise. The important point is to be able to demonstrate that the Green Belt boundary will not be affected. I assume many authorities have adopted Local Plans without including safeguarded land. It would have been appropriate for them to do so in accordance with their local circumstances. However I am unaware of a situation comparable to the circumstances in York.
18. I do not consider there is any additional general advice I can usefully add at this stage. However my Instructing Solicitor should not hesitate to get in touch if I can be of any further assistance.

**JOHN HOBSON QC**

**Landmark Chambers  
180 Fleet Street  
London EC4A 2HG**

**16<sup>th</sup> January 2015**