



**EXAMINATION OF THE CITY OF YORK LOCAL PLAN
2017-2033**

Review of HRA implications of H59

September 2022

CITY OF YORK COUNCIL LOCAL PLAN

Review of HRA implications H59, September 2022

1. York City Council (CYC) proposed deletion of Policy SS19 and allocations ST35 and H59 from the 2018 submission draft Plan. This was deemed necessary on the basis CYC, as the competent authority, cannot be certain that the development will not adversely effect the integrity of Strensall Common Special Area of Conservation (SAC). The HRA (2020) EX/CYC/45 and associated appendices in EX/CYC/45a, justify these deletions. In addition, a new Policy - GI2A - is also proposed for inclusion in the Plan. This identifies an 'exclusion zone' at a 400m linear distance from the Strensall Common SAC boundary. In this zone, permission will not be granted for development that results in a net increase in residential units, on the basis that the HRA (2020) EX/CYC/45 and associated appendices in EX/CYC/45a, cannot rule out adverse effects.
2. The deletion of ST35 and H59 and inclusion of Policy GI2A is supported by Natural England. The Defence Infrastructure Organisation (DIO), promoting these sites for residential development following disposal, object to both the deletion the site allocations and inclusion of Policy GI2A.
3. The extent 400m exclusion zone around Strensall Common SAC is shown on Figure 1 below along with (deleted) site allocations ST35 and H59. The Ministry of Defence land ownership is also shown.

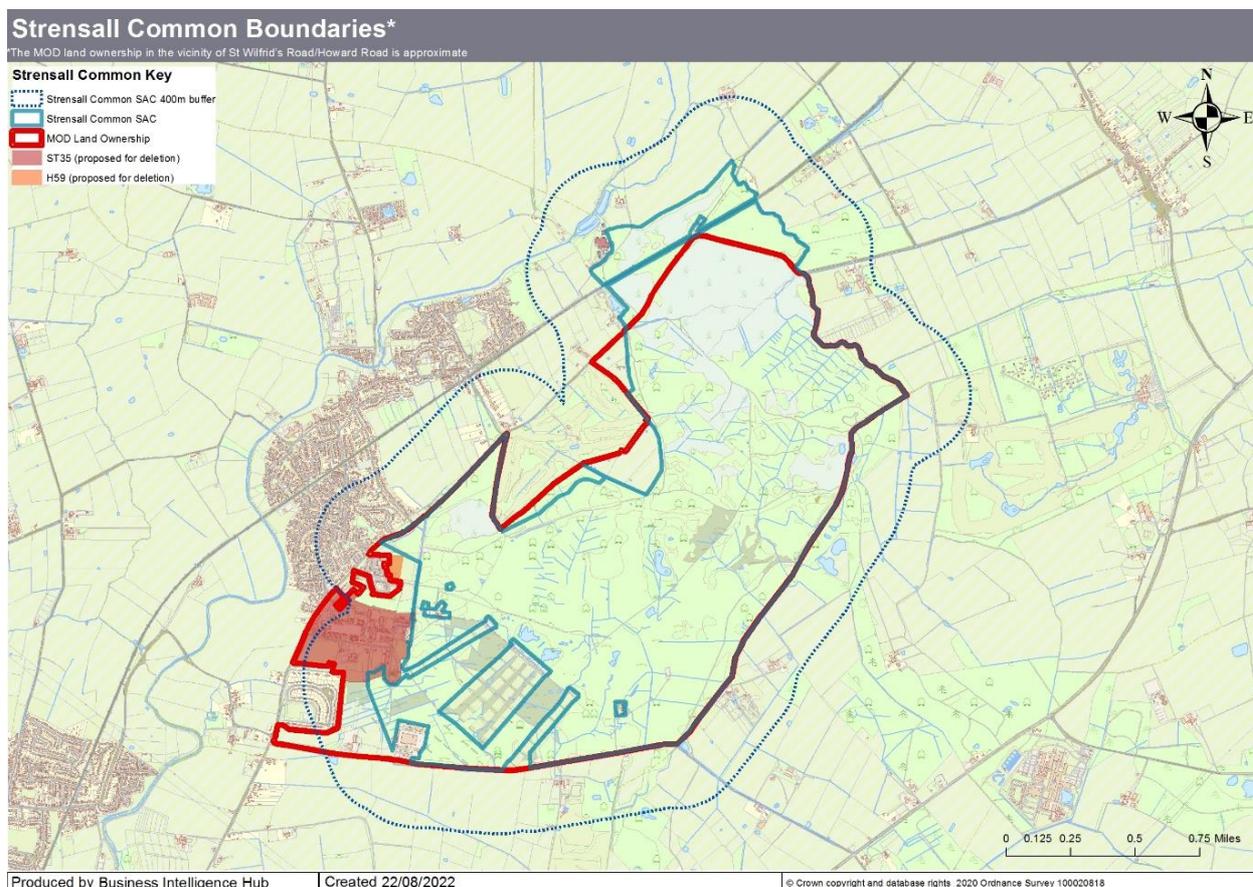


Figure 1: Strensall Common SAC and buffer

4. During Phase 3 hearings, the Inspectors requested CYC consider the impact the removal of ST35 would have on the Council's Habitats Regulations Assessment (HRA) (EX/CYC/45) of the Local Plan and what the impact of keeping H59 would be. Appendix 1 sets out the findings of this review. It concludes that adverse effects of site allocation H59 on the integrity of Strensall Common SAC cannot be ruled out. It identifies that should H59 residential units be relocated beyond 400m and with adequate mitigation, adverse effects *could* be ruled out. It also recognises that Policy GI2A allows for the replacement residential development for any existing homes within the 400m exclusion zone defined (just no net increase).
5. Dealing first with replacing existing residential development, Policy GI2A stipulates there should be no net increase in residential units within the 400m exclusions zone. This still allow for replacement development. A modification is proposed to provide clarity on the extent of residential accommodation in this zone on the DIO sites. Placeholder' text is included in CYC's Phase 4 Matter 5 Statement at Appendix 1 and the Defence Infrastructure Organisation on 6 September 2022 confirmed the following:

"The Queen Elizabeth Barracks on site, within the 400m zone, accommodates 167 bedrooms as part of 167 single living accommodation and 555 bedspaces as part of the transit accommodation within this exclusion. The transit accommodation had a daily occupation in the 11-year period from 2009 to 2019 of, on average of 280 people/bedspaces; the Defence Infrastructure Organisation plans to vacate the site."

6. The single living accommodation and transit bedspaces are not comparable to conventional residential homes in C3 use class envisaged as part of H59 (or their likely impacts). It is also noted that no Service Family Accommodation, which is more comparable, is identified by Defence Infrastructure Organisation with the Queen Elizabeth Barracks site within the 400m exclusion zone.
7. Turning to the potential for relocating the 45 units of H59, it is noted part of ST35 is beyond the 400m exclusion zone. This is illustrated on Figure 1. Applying the same density assumptions to ST35 to just this part of the site would suggest an indicative capacity of up to 80 homes. This new residential development could potentially be delivered as part of an employment-led mixed use scheme across the ST35 where it could be demonstrated the development would not harm the integrity of the SAC.
8. This 80 residential unit figure is indicative only and there is at this stage no certainty on use type, layout of any development for the whole of ST35. Development at this site would also require a Habitats Regulation Assessment in line with Policy GI2A and this would in turn inform layout and design matters. It would therefore be inappropriate to simply relocate the H59 units to just part of ST35; doing so could prejudice development of the whole site. Detailed masterplanning will be required and proposals will need to be dealt with through

development management process – including scrutiny of the project level habitats assessment.

9. CYC would like to work creatively and effectively with DIO and NE to find solutions that meet Plan requirements and in particular GI2A – potentially extending to a Planning Brief for the site. As outlined in the CYC Phase 3, Matter 5 hearing statement, CYC is committed to using its broader place making role to broker relationships with developers of appropriate non-residential. DIO are aware of such efforts and intent.

Appendix 1

Review of the of the removal of ST35 and retention of H59 on the HRA, August 2022

1.0 Introduction

1.1 This note responds to the Inspectors' request that the Council considers the impact the removal of ST35 would have on the Council's Habitats Regulations Assessment (HRA) (EX/CYC/45) of the Local Plan and what the impact of keeping H59 would be. Accordingly, this note reviews the outcomes of the Council's HRA of the Local Plan in the context of the DIOs submissions of July 2021 (EX/HS/P3/M5/QEB/4). Certain reasonable assumptions have been made and are explained below.

2.0 The HRA tests

2.1 The requirements of the Conservation of Habitats and Species Regulations 2017 (as amended), and the authorities, have been set out previously. They are not repeated here save to say underline the high threshold imposed by the need to show that there is no adverse impact on the integrity of the designated site recently emphasised by the Court of Appeal at para. 9 of *Wyatt* [2022] EWCA Civ 983 (EX/CYC/95).

3.0 Proposal and setting

3.1 H59 was allocated in the original Local Plan to provide 45 dwellings. The allocation is located on the northern boundary of the Queen Elizabeth Barracks (QEB) beyond existing military housing and shares a boundary with Strensall Common SAC which in this location is dominated by mature gorse. It lies within approximately 130m of Howard's Road which provides open access to the Common (i.e. the straight line distance measured from the edge of the housing and across open land to the access point based on DIOs masterplan). The conservation objectives remain unchanged and following Natural England's most recent condition assessment in 2021, SAC remains in favourable condition across its entire extent.

4.0 Screening

4.1 The HRA of the Local Plan was unable to rule out likely significant effects from all residential allocations within 7.5km of the SAC boundary (including H59 and ST35) from recreational pressure (and urban-edge effects from ST35 and H59).

4.2 The removal of ST35 does not affect this outcome and, given the proximity of H59 to the Common and its residential use, a risk remains (see paragraphs 3.5.50 – 3.5.58 of the

Council's HRA (EX/CYC/45)) that there will be a likely significant effect on the site and its conservation objectives could be undermined. A risk is all that is required to trigger an appropriate assessment and it follows that an appropriate assessment is required for H59.

4.3 It follows that the removal of ST35 does not affect the outcome of the Council's existing HRA of the Local Plan and an appropriate assessment is required for H59.

5.0 Appropriate assessment for H59

Potential impacts

5.1 Potential impacts remain similar to those described in the existing HRA of the Local Plan (and DIOs July 2021 submission) and focus on recreational pressure and urban-edge effects.

Recreational pressure

5.2 With H59, ST35 and all other allocations, the combined results of the Footprint and PCP visitor surveys predicted an increase in visitor pressure of 23.2%. Of this, H59 contributed 1.2%, ST35 13.4% and the remaining allocations 8.6% (see bullet points under paragraph 4.2.61 of the Council's HRA EX/CYC/45). The HRA considered that this would lead to an increase in, amongst others:

- Trampling;
- Eutrophication;
- Stock-worrying; and
- The frequency of fires

5.3 With the removal of ST35, the numbers of visitors from H59 and all other allocations would remain unchanged. In contrast, the removal of ST35 would lead to a 13.4% decline in visitor numbers resulting in an overall increase in visitors from H59 and all other allocations of 9.8% (i.e. 23.2% - 13.4%).

5.4 Housing at H59 would also lie only half the distance (130m) to the access point at Howard's Road than ST35 (270m) making regular access to the Common easier and more likely.

Urban-edge effects

5.5 Although the removal of ST35 would reduce the likelihood or scale of urban-edge effects, these would still be provided by H59 given its location within approximately 20m of the SAC. With reference to DIOs most recent Masterplan, housing at H59 would be even closer to the SAC boundary than at ST35 and be closer to the access point at Howard's Road. Drawing on experience elsewhere, the HRA of the Local Plan considered that anticipated impacts would include, amongst others:

- The creation of desire lines and short-cuts away from the established network of paths/trails;
- The creation of holes in fences to provide easy access to the Common;

- Fly-tipping, increasing the potential for the introduction of invasive species;
- More frequent visits (often with dogs);
- The building of dens; and
- An increase in fire risk from garden activities running out of control or (eg barbeques, bonfires and compost bins) or similar activities carried out on the Common. This risk would be enhanced by the gorse dominated heathland nearby; gorse presents a significant fire risk.

5.6 H59 lies closer to the Howard's Road access point and, from the illustrative Masterplan, housing would be situated closer to the SAC than ST35. Therefore, it can be expected that despite being a smaller allocation than ST35, the relative frequency of such effects is considered more likely.

5.7 Such urban edge effects would be absent from all other more distant allocations.

6.0 Integrity test without mitigation

6.1 On the basis of the evidence available, the HRA of the Local Plan (see paragraphs 4.2.235 to 4.2.242 of EX/CYC/45) concluded that the Council was unable to ascertain that the Plan would not adversely affect the integrity of Strensall Common if ST35 and H59 remained.

6.2 Given that potential impacts from recreational pressure and urban-edge effects will persist with the retention of H59, the opinion expressed in the Council's HRA remains unchanged even with the removal of ST35 and the site cannot be allocated on this basis.

7.0 Assessment of mitigation proposed by DIO

7.1 The HRA of the Local Plan also fully considered mitigation measures put forward by DIO at that time (2020) for both H59 and ST35 which included the following:

- Signage/information;
- Car park barriers;
- Wardening;
- Information packs;
- Public open space within the allocations;
- Residential layout including boundary features (ie fences and SuDS to provide a 'moat');
- Additional fencing; and
- Byelaws

7.3 The Council's HRA of the Local Plan found that none, either individually or as part of a package, would be able to satisfy the tests laid out in (section C.5.1, Principle 5 of) the HRA Handbook. This states that for mitigation measures to be taken into account, they should be

*'effective, reliable, timely, guaranteed to be delivered and as long-term as they need to be to achieve their objectives.'*¹

7.4 A similar, though modified and more detailed suite of measures was put forward by DIO in its 2021 response to proposed modifications including an illustrative Masterplan showing arrangements on the ground in an attempt to demonstrate a design that would not give rise to an adverse effect on integrity.

7.5 However, in its Examination statement of July 2022 (EX/HS/P3/M5/QEB/1), the Council indicated that its opinion remained unchanged for the same reasons as described in the HRA of the Local Plan.

7.6 The removal of ST35 would not change this opinion. Comments on just four elements of the overall mitigation package as examples, are provided below:

- Car park barriers. These would have no beneficial effect on residents living adjacent to the SAC- not only do they appear to be already in place and so cannot represent mitigation, but are ineffective when access on foot is available via Howard's Road;
- Wardening of any substance is not considered financially viable given the cost that would have to be borne by such a small number of dwellings;
- Boundary features. Maintaining an effective barrier is an issue. Even those on military sites can be breached (for example, Holton Heath in Dorset) allowing uncontrolled access to the Common. It is not clear from DIO's submission and illustrative Masterplan whether SuDs are proposed at H59. Even if they are, SuDs are designed to be dry and so it would not be reasonable to rely on them to provide an effective barrier; and
- Open space. Residents wishing to make use of the open space (AGS2) would have to pass the existing access point to the Common on Howard's Road. It is implausible that residents would not look to visit the SAC when it is closer and readily accessible.

7.7 For the purposes of this exercise, it is assumed that mitigation originally put forward for both ST35 and H59 would be applied to H59 alone if suitably adapted to reflect the absence of ST35. For instance, the open space within ST35 would not be provided but that other open space, eg AGS2 would be.

7.8 The proximity of the H59 allocation and housing within it to the SAC, and the easier access to Howards Road, both described above, would remain. Because of this, and despite H59 being much smaller than ST35, this would make the relative frequency of harmful effects more likely. The mitigation measures proposed by DIO would not reduce the likelihood of these events from occurring.

7.9 Therefore, the removal of ST35 does not affect the outcome of the Council's existing HRA of the Local Plan. Adverse effects on the integrity of Strensall Common from H59 with the mitigation proposed by DIO cannot be ruled out beyond reasonable scientific doubt.

¹ Tyldesley, D. and Chapman, C. (2013) The Habitats Regulations Handbook (latest edition). DTA Publications Ltd.

8.0 Additional mitigation that could make H59 acceptable

8.1 The mitigation put forward over time by DIO is considered ineffective to remove the threat from recreational pressure and urban-edge effects.

8.2 These threats explain why a growing number of local authorities across the country have used the opportunity provided by new local plans to establish 400m (or greater) buffer zones to protect the qualifying habitats of heathland and woodland SACs where no net increase in residential development would be allowed eg Cannock Chase, Dorset Heathlands and Burnham Beeches, amongst others. These have been tested at Examination and subsequently adopted.

8.3 Policy GI2a proposes a similar approach and introduces a 400m buffer (measured in straight line) around the SAC boundary where no net increase in residential accommodation would be permitted. It states (in part):

GI2a: Strensall Common Special Area of Conservation (SAC)

Development not directly connected with or necessary to the management of the SAC will only be permitted where it will not adversely affect the integrity of the Strensall Common SAC, either alone or in combination with other plans or projects. Proposals will be determined in accordance with the following principles:

- a) There is an 'exclusion zone' set at 400m linear distance from the SAC boundary. Permission will not be granted for development that results in a net increase in residential units within this zone. Proposals for non-residential development within this zone must undertake Habitats Regulation Assessment to demonstrate that they will not harm the integrity of the SAC.*

8.4 It is noted that part of the ST35 allocation and QEB as a whole, lies beyond the 400m threshold. Accordingly, and mindful of GI2a, it is considered that it would be possible for the homes on H59 to be relocated to a position elsewhere within QEB but beyond the 400m threshold. An updated HRA of the Local Plan would then be able to ascertain that the risk of adverse effects arising from urban-edge effects and recreational pressure would be removed.

8.5 Land beyond the 400m threshold but within the QEB estate is limited but opportunities could arise alongside Strensall Road/Ox Carr Lane.

8.6 Importantly though, should H59 be relocated beyond the 400m threshold, an application for planning permission would still be subjected to the requirements of GI2a and not only require a project-level HRA (as it would lie within the 400m – 5.5km zone) but, in addition, provide mitigation including, but not necessarily limited to the following:

- ensuring land within the 400m threshold and between any housing and the Common, was managed to provide an effective buffer/barrier to urban-edge effects and fire;
- the provision of adequate open space; and
- measures to prevent roads, within and providing access to the allocation, acting as additional car parks for the Common.

8.7 These measures would have to provide compelling evidence to satisfy the competent authority and Natural England that they would be '*effective, reliable, timely, guaranteed to be*

delivered and as long-term as they need to be to achieve their objectives' to remove reasonable scientific doubt.

8.8 GI2a also allows for new residential development within the 400m threshold where a net increase in accommodation would not arise. This would relate to the anticipated disposal of the base and, presumably, demolition of military housing and subsequent replacement with the same or a smaller number of new dwellings.

8.9 This would be acceptable because the base has long been occupied by a (military) residential population which would have made use of the SAC and so contributed to visitor numbers. It is reasonable to assume that such visitors would have been captured by the visitor surveys of 2019 and 2020. As the HRA of the Local Plan concludes, and Natural England agrees, that adverse effects from recreational pressure or urban-edge effects were not then evident, there are no reasons to prevent the construction of replacement dwellings that would accommodate the same or smaller number of residents, once the base is abandoned and its military population departs.

8.10 The assessment of military occupancy is, therefore, of critical importance. It is, however, complex, as whilst there would appear to be regular, short-term occupation of single accommodation by military personnel, fewer families appear to be permanently resident. Furthermore, such temporary occupants can be expected to display different behaviours to permanent residents and in addition, it is presumed that dogs are not allowed on the base. The size of the population of the base and how this would equate to the number of dwellings that DIO aspire to build, will have to be agreed by DIO and the Council (and then be subjected to a project-level HRA with any planning application).

8.11 At present, a shared, accurate understanding of what would constitute the residential population of the base does not exist.

8.12 We suggest that the baseline figure should be an average of the 2019/20 populations when the two visitor surveys were carried out which would pre-date inconsistencies in military use brought about by the coronavirus pandemic.

8.13 If the figure agreed by the Council and DIO amounted to less than 45 new dwellings, these could be accommodated within the quantum of housing provided by H59. However, for reasons described above regarding the likelihood of urban-edge effects from the current location of H59, it would again have to be relocated. In this instance, though, a new location could remain within the 400m threshold. To reduce the likelihood of urban-edge effects, such as fire, this would have to be located as far from the SAC boundary as possible.

8.14 Again, importantly, a project-level HRA would be required. Similarly, mitigation including, but not necessarily limited to, the provision of adequate open space and measures to prevent roads, within and providing access to the development, acting as additional car parks for the Common, would be required to reduce recreational pressure on the SAC. These measures would have to provide compelling evidence to satisfy the competent authority and Natural England that they would be *'effective, reliable, timely,*

guaranteed to be delivered and as long-term as they need to be to achieve their objectives' to remove reasonable scientific doubt.

9.0 Integrity test with additional mitigation beyond that proposed by DIO

9.1 In conclusion:

- (1) Should the 45 dwellings of H59 be relocated beyond 400m distance from the Common and be adequately mitigated in terms of open space and car parking, then the Council would be able to ascertain, beyond reasonable scientific doubt, that adverse effects on the integrity of Strensall Common could be ruled out; alternatively
- (2) Should the number of houses hosting the military, residential population in 2019/20 be equal to or less than the quantum of housing proposed in H59, then this number of dwellings could be permitted in a different location but within the 400m threshold and still allow the Council to be able to ascertain, beyond reasonable scientific doubt, that adverse effects on the integrity of Strensall Common could be ruled out.