

Report of the Assistant Director for Planning and Public Protection

Portfolio of the Executive Member for Finance and Performance

York Local Plan Update

Summary

1. The purpose of this report is to update members on the Local Plan examination and progress made in relation to the schedule of further work as well as other outstanding work to be submitted. The report focuses on correspondence between the Council and Inspectors since December 2020.

Recommendation

2. Members of Local Plan Working Group are asked to note the progress on the Examination of York's Local Plan.

Background

3. The 'Local Plan Update' brought before Members of Local Plan Working Group in October 2020 detailed the Submission of the Local Plan to Phase 1 Hearings sessions in December 2019 and subsequent requests from the Planning Inspectors. This confirmed that the schedule of further work published in January 2020 [EX CYC 33] was near completion. Additionally, that a response to their request for clarification of York's housing requirement had been fulfilled by the submission of the Housing Needs Update (2020) in October 2020.
4. Whilst officers had previously indicated that they would be able to submit the agreed evidence in accordance with the schedule of Further Work arising as result of the Phase 1 Hearing Sessions by 27 March 2020, Officer's have continued to make progress on the preparation of outstanding items from the schedule in spite of logistical issues as a result of the current pandemic. The main body

of this report sets out the recent submissions to satisfy the requests made by the appointed Planning Inspectors.

Inspector letter of 18 December 2020

5. The Inspectors wrote to the Council on 18 December 2020 to set out their concerns in relation to submission of outstanding work and the how the Council intended to progress the Examination, with a deadline to respond by 15 January 2020. This included a request for the Council to consider whether withdrawal of the Local Plan would be a more prudent and expedient way to proceed.
6. However, this letter also outlined how examination may proceed, subject to the Council's response and their consideration of the evidence. This set an intention for any evidence base submitted to the examination post phase 1 hearings sessions to be subject to consultation prior to a further public hearing session, subject to agreement upon receipt of the outstanding work.

Council Response to Inspectors on 22 December 2020

7. On 22 December 2020, the Council submitted a letter pertaining to the completion and submission of the outstanding work to complete the Schedule of Further Work agreed. This included the submission of the following:
 - Habitat Regulations Assessment (2021)
 - Schedule of Proposed Modifications, including an updated Key diagram.

Habitat Regulation Assessment

8. As part of the Schedule of Further work it was agreed that a further revision to the Habitat Regulation Assessment (2019) was required. This was to ensure the report was fully compliant with relevant caselaw¹ and took consideration of new evidence documents submitted in hearing statements in November 2019 (prior to the commencement of hearing sessions) by the Defence Infrastructure Organisation (DIO) in relation to their site ST35 'Queen Elizabeth Barracks' and Strensall Common SAC. The Inspector instructed that a review and update of the HRA should be undertaken and that consultation with Natural England and the DIO should ensue to

agree a Statement of Common Ground.

9. The revised draft HRA has now taken into consideration the points raised and evidence provided. In summary, the HRA identified the following necessary modifications:

Site, issue and policies	Outcome
<u>Strensall Common SAC</u> Wet and dry heathland Wetland features SS19/ST35, E18 & H59(A)	Adverse effect on the integrity on the site will be avoided if mitigation in the form of modifications to the policy wording is adopted
<u>Strensall Common SAC</u> Wet and dry heathland Recreational pressure and urban-edge effects SS19/ST35 & H59(A)	Adverse effects on the integrity of the site avoided by removal of policies. SS19/ST35 and H59(A)
<u>Strensall Common SAC</u> Wet and dry heathland Recreational pressure and urban-edge effects E18	Adverse effect on the integrity on the site will be avoided if mitigation in the form of modifications to the policy wording is adopted
<u>Strensall Common SAC</u> Wet and dry heathland Recreational pressure SS9/ST7, SS10/ST8, SS11/ST9, SS12/ST14	Adverse effect on the integrity on the site will be avoided if mitigation in the form of modifications to the policy wording is adopted
<u>Strensall Common SAC</u> Wet and dry heathland Recreational pressure SS15/ST17 & SS17/ST32, and H1a(A), H1b(A), H3(A), H7(A), H22(A), H23(A), H31(A), H46(A), H55(A), H56(A), H58(A) & SH1	Adverse effect on the integrity of the site is avoided with no need for mitigation
<u>Strensall Common</u> Wet and dry heathland Air pollution SS19/ST35, E18 and H59	An adverse effect on the integrity of the site is avoided with no need for mitigation
<u>Strensall Common</u> Wet and dry heathland Windfall development H1(P)	Adverse effect on the integrity on the site will be avoided if mitigation in the form of a new policy is adopted

Site, issue and policies	Outcome
<u>Lower Derwent Valley</u> Breeding and non-breeding birds Recreational pressure SS18/ST33 & SS13/ST15	Adverse effect on the integrity of the site is avoided if mitigation in the form of modifications to the policy wording is adopted
<u>Lower Derwent Valley</u> Mobile species Non-breeding birds SS13/ST15	Adverse effect on the integrity of the site is avoided if mitigation in the form of modifications to the policy wording is adopted
<u>River Derwent</u> Air pollution Floating vegetation community and populations of river and sea lamprey, and bullhead SS13/ST15	Adverse effect on the integrity of the site is avoided with no need for mitigation

10. Therefore, provided that all the modifications suggested above are adopted, the HRA concludes that the council can be certain to the required standard (i.e. without reasonable scientific doubt) that an adverse effect on the integrity of the European sites will be avoided. However, in terms of Policies SS19/ST35 and H59(A) it was not possible to be certain that adverse effects could be avoided because of reasonable scientific doubt concerning the effectiveness of mitigation measures at locations in such close proximity to Strensall Common SAC. Therefore, this latest HRA continues to recommend that both policies should be removed from the Plan, as previously recommended in the HRA (2019) and consulted on through the Proposed Modifications Consultation (June/July 2019).
11. In line with the Regulations, we consulted with our statutory body, Natural England, to understand their view on the conclusions reached prior to finalising the report and its submission. Natural England concurred with our conclusions and has submitted a formal response to this effect (see Annex J to the HRA (2021) [EXCYC45]). The Council welcome Natural England's conclusions and response to this report.
12. Natural England's letter of 8 October 2020 firstly concludes that they are "*satisfied that the modifications made to the screening assessment are in line with the ruling made by the Court of Justice*

of the European Union (the CJEU) on the interpretation of the Habitats Directive in the case of People Over Wind and Sweetman vs Coillte Teoranta (ref: C 323/17)” and that they have no further concerns with regards to this judgement in relation to the assessment.

13. Secondly, Natural England welcomed the proposed modifications to the plan, which are considered to satisfy their concerns raised in their letter dated 12 March 2020 regarding recreational pressure as a result of windfall development. In particular, they welcomed proposed policy GI2a which sets out a 400m exclusion zone around Strensall Common SAC and a further 5.5km zone of influence concerning recreational disturbance based on with the analysis provided by Footprint Ecology and in line with approaches we have supported around the country.

Proposed Modifications Schedule

14. During the Hearing Sessions during December 2019, a number of modifications to the plan were agreed to be made to clarify the Spatial Strategy set out in Section 3 of the Local Plan and as depicted on the Key diagram [CD001]. Principally, this was to ensure the plan period, applicable housing requirement and the resultant spatial distribution resulting from the application of the strategy principles ('spatial shapers') were clear.
15. Where applicable, the schedule updates previously proposed modifications set out in the Proposed Modifications Consultation (2019) [EXCYC20].
16. On this basis, the enclosed Proposed Modifications Schedule firstly proposes the following amendments to policy SS1 to:
 - Amend the plan period date to confirm that the applicable plan period is to 2033 and that delivery beyond this date, is to provide flexibility to ensure that the Green Belt boundaries will not need to be amended for at least 5 years beyond the plan period.
 - Amend the annual housing requirement is 822dpa, which takes into account our objectively assessed housing need of 790 dpa plus a shortfall of 32 dpa, as confirmed in our previous letter [EXCYC43], and that the plan therefore aims to deliver at least 13152 dwellings over the plan period;
 - Provide a new bullet point referencing the delivery of Gypsy and Traveller Provision and Travelling Showpeople provision.

17. Secondly, it presents a new section to include in Section 3 'Spatial Strategy' to articulate the spatial distribution of allocated development across the city. To ensure this is clear, the Key diagram has also been updated to reflect the spatial distribution of development across the city, in line with discussions held at Phase 1. This now identifies the type of land use allocations relevant to their location to be delivered. The key diagram has also been updated to remove ST35 on the basis of the outcomes of the HRA recommendations.
18. Thirdly, following discussion at the Phase 1 hearing sessions and further consideration for the delivery of gypsy and Traveller provision, a policy modification is proposed to policy H5 'Gypsy and Travellers'. This seeks to strengthen the policy approach to on-site delivery for those Gypsy and Travellers not meeting the Planning definition, encouraging on-site provision unless proven unviable. Additional modifications are also proposed to Section 10 'Managing Appropriate Development in the Green Belt' to clarify that GB4 makes provision for small scale affordable sites for Gypsies and Travellers not meeting the PPTS definition of a Gypsy or Traveller, to address need that may not be accommodated on strategic sites through policy H5.
19. Lastly, the schedule includes the Council's proposed modifications to policies in line with the outcomes and recommendations of the HRA to ensure legal compliance. It should also be noted that the HRA refers to modifications previously consulted on as part of the Preferred Modifications Consultation (2019) [EXCYC20], which remain relevant to the conclusions of the HRA report.

Council Response to Inspectors on 15 January 2021

20. The Council submitted a comprehensive response to the Inspectors letter of 18 December following careful consideration of the matters outlined and as requested by the deadline of 15 January.
21. Firstly, the Council confirmed that it is fully committed to progressing the Local Plan and that we are strongly of the view that it would be in the public interest for the examination hearings to continue, subject to their consideration of the submitted information and after appropriate consultation on the evidence base. The Council's response to the Inspectors' alternative, whereby withdraws the Plan

and resubmits at a later date, was not considered to represent the best interests of the City and local residents as this would involve even greater delay and cost in progressing towards the adoption of a development plan for the City.

22. Secondly, the Council submitted the updated Topic Paper 1: Green Belt Addendum (2021) Main report, Annex 1 (evidence base) and example proformas for the remaining annexes which justify in detail the boundaries identified against the clarified methodology. Complete annexes were stated to be submitted separately.
23. The updated TP1 Addendum report has been prepared further to:
 - Phase 1 of the hearings into the examination of the City of York Local Plan held at York Racecourse held in December 2019;
 - The submission of a Green Belt Clarification Note [EXCYC39] on 8 June 2020 by the Council - relating to 'homework' agreed during the above hearings on Green Belt matters;
 - The Inspectors letter to the Council [EXINS15] on 12 June 2020 regarding the proposed green belt in the Local Plan.
24. The Council's letter of response to the Inspectors [EXCYC40] on 22 June 2020 indicated that we would proceed to demonstrate that the boundaries are justified, notwithstanding your methodological concerns and to explain any misunderstandings in the methodology. The updated addendum simplifies and clarifies the methodology that has been adopted for setting York's Green Belt Boundaries, revising the text to reflect this, and its revisions explain in more detail the conclusions on boundary-setting that have been reached as a result.
25. There are three principal groups of changes that are reflected in the updated TP1 Addendum report.
 - i. the changes relate to issues that have been confirmed through the Examination process;
 - ii. the changes take into account the latest household projections and the need to set permanent boundaries; and
 - iii. changes have been made to address the methodological concerns that were identified in your letter of 12 June 2020
26. In this response, the Council recognised that the TP1 Addendum required modification to provide clarity and explain more simply and directly how the evidence base was applied, using key criteria,

principles and questions relevant to Green Belt purposes.

27. Officer's consider that we have addressed the concerns raised by the Inspectors (in June 2020) and that the updated TP1 Addendum report now provides an appropriate methodology to justify the boundaries which have been proposed.

Inspectors Letter of 29 January 2021

28. In their letter of response, the Inspectors welcomed the submission and clarification of York's position in relation the ongoing examination and invited the Council to :
- Clarify which documents the latest TP1 Green Belt Addendum (2021) supersedes;
 - Confirm a timetable for submission of the TP1 Green Belt Addendum Annexes; and
 - Prepare a comprehensive schedule of modifications put forward both during and since the previous hearing sessions for consultation purposes.
29. Additionally, the Inspectors raised procedural matters for consultation and future hearing sessions, including ensuring availability of the requisite resources and expertise to hold sessions virtually.
30. A further letter on 25 February also outlined the need to consider the validity of evidence base as the examination progresses to ensure it remains relevant and that this was a key consideration for the Inspectors in moving forward.

Council's response on 25 February 2021

31. In replying to the Inspectors, the Council's response (Annex A) confirmed:
- The Green Belt Topic Paper Addendum [EXCYC50] and its annexes (including Annex 1 [EX/CYC/50a] and Annex 2 submitted with this letter) supersede the first TP1 Addendum [EX/CYC/18 and EX/CYC/18a-f].
 - That in order to proceed to the next phase of hearing sessions, consultation must take place on documents submitted to the Examination by the Council since the Phase 1 hearing sessions. This clarified that the Council also understand that

(subject to further consideration following consultation) matters pertaining to housing requirements and Green Belt discussed at Phase 1 Hearing Sessions would fall to be revisited at the next session.

- The intention to proceed with virtual hearing sessions, which is compatible with the Council's Statement of Community Involvement Update (2020) [EXCYC49].

32. Additionally, the Council noted the Inspectors' concerns regarding the evidence base for the Local Plan remaining up-to-date as the Examination of the Plan continues. It was confirmed that as part of this process, there is a commitment to ensuring our evidence supporting the Plan remains relevant and that this is being kept under review to ensure that policies are examined on the basis of relevant information and assessment on which participants are given the opportunity to comment. This continues our approach taken prior to the previous hearing sessions with the submission of the York Economic Outlook (2019) [EXCYC29], demonstrating that our employment forecasts remain valid. Subsequently, this has informed a requested update in relation to York's housing requirement in our Housing Need Update (2020) [EXCYC43a].
33. The letter also addressed in detail the submission timetable for the TP1 Green Belt Addendum Annexes. As per our previous correspondence, officer's are transposing the annexes to ensure conformity with the format of the clarified methodology set out in the TP1 Addendum [EX/CYC/50]. Our work has confirmed that the overall results of the boundary-setting exercise remain essentially the same as that which resulted in the draft Plan already before the examination.
34. The timetable to deliver the remaining annexes takes into account the volume of boundaries to transpose into the updated format (as presented in the example proformas submitted on 15 January), as well as officer and consultant resources, which have been strengthened.
35. On this basis, officer's suggested staged submissions to demonstrate progress. Should documents be able to be submitted ahead of this timetable, we will of course seek to do so. This timetable is as follows:

TP1 Addendum Annex	Content	Submission
Annex 1: Evidence base	Submitted in 15 January 2021 [document EXCYC50a]	
Annex 2: Outer Boundary	Appended to this letter	
Annex 3: Inner Boundary	Part 1 (Sections 1-4: 52 boundaries) Part 2 (Sections 5-6: 64 boundaries) Part 3 (Sections 7-8: 61 boundaries)	31 March 2021 30 April 2021 30 April 2021
Annex 4: Other Urban Areas within the General Extent	Includes villages within and inset from the green belt	30 April 2021
Annex 5: Site Allocations		31 March 2021
Annex 6: Proposed modifications summary	Modifications to boundary proposed to be confirmed	30 April 2021
Annex 7: Trajectory update	Update to show progress against the submitted housing trajectory	30 April 2021

Inspectors Letter of 02 March 2021

36. The Inspectors response (Annex B) to the matters set out in the Council's letter above has been positive and confirms that the examination is to continue to consultation following submission of outstanding work.
37. Importantly, the Inspectors have agreed the timetable for submission of the Green Belt annexes by 30 April 2021 accepting that, given the apparent volume of work involved, a phased submission of the evidence may be the most expedient way forward for the Council and the examination. They confirm that *"..providing the 30 April date remains, we are content for the evidence to be submitted as the Council has set out... we are now treating the submission dates now set by the Council to be definite and final."*
38. In relation to their understanding of the Council's intention to proceed, the Inspectors also confirm that *"... it will not be necessary for us for formally suspend the examination"*.
39. Additionally, the letter confirms:

- Receipt of the Green Belt Topic Paper Addendum [EX/CYC/50] along with Annex 1 [EX/CYC/50a] and Annex 2 [EX/CYC/52] and that these documents now supersede the first TP1 Addendum documents [EX/CYC/18] and EX/CYC/18a-f].
 - documents listed for consultation are correct;
 - Consultation should repeat the Regulation 19 stage; and
 - Representations should focus only on matters pertaining to those main modifications and documents being consulted upon.
40. Whilst the Inspectors remain ready to do all they can to support the ongoing examination, they also express caution in relation to *“concerns we previously raised about any further delays to the examination remain, particularly those about the increased risk of other evidence supporting the Plan becoming out of date.”*
41. As set out in Council’s letter of 25 February, officers will seek to review the evidence base and refresh elements to ensure it remains valid for examination.

Next steps

42. In our recent correspondence with the Inspectors [EXCYC51], the Council reaffirmed their commitment to continue making progress through the examination towards the adoption of the Local Plan.
43. Officer’s are currently working to complete the GB Topic Paper Addendum annexes to meet the timetable set out at paragraph 34 of this report.
44. As per the Inspector’s most recent letter, officer’s will work concurrently with the Programme Officer to ensure that the forthcoming consultation and virtual hearing sessions are planned and executed appropriately. To help with this the Council will consider the Planning Inspectorate Guidance appended by the Inspectors and respond to the Inspectors in relation to the suggested way forward.
45. Notification of future stages will be uploaded onto the Local Plan Examination webpage (www.york.gov.uk/localplanexamination). Officer’s will continue to prepare in anticipation of future phases of examination.

Consultation

46. Consultation on the draft Local Plan has been undertaken in accordance with the adopted Statement of Community Involvement (2007) as follows:
- Preferred Options (2013)
 - Further Sites Consultation (2014)
 - Preferred Sites Consultation (2016)
 - Pre-Publication (Regulation 18) Consultation (2017)
 - Publication (Regulation 19) Consultation (2018)
 - Proposed Modifications (Regulation 19) Consultation (2019)
47. Prior to phase 1 hearing sessions in December 2019, the Inspectors also allowed interested parties to submit their response to the matters, issues and questions raised to the Council. This type of consultation is anticipated at future phases of the examination process.
48. In line with the Inspectors recent letter, a further period of public consultation (in line with Regulation 19) will be held for a period of 6 weeks and will focus on the aspects on evidence base and schedule of modifications. Consultation will be in accordance with the Council's Statement of Community Involvement (updated, 2020) which takes consideration for the current pandemic and will accord with the prevailing health advice.
49. A 'Consultation Statement' will be compiled by the Council to submit to the Inspectors post consultation in line with Regulation 22, which will seek to address Duty-to-Cooperate matters, where applicable, with neighbouring authorities and statutory consultees.
50. Following consultation, a 6 week notification period for the examination hearing session will be announced specifying the matters to be discussed and meeting arrangements and within which the Council will respond to issues, matters and questions from the Inspectors. Notification of future Local Plan hearing sessions/phases will be communicated by the Inspectors, via the Programme Officer.

Implications

51. **Legal** – The procedures which the Council is required to follow when producing a Local Plan derive from the Planning and

Compulsory Purchase Act 2004 (as amended) and the Town and Country Planning (Local Development) (England) Regulations 2012.

52. The legislation states that a local planning authority must only submit a plan for examination which it considers to be sound. This is defined by the National Planning Policy Framework as being:
- **Positively Prepared:** based on a strategy which seeks to meet objectively assessed development and infrastructure requirements;
 - **Justified:** the most appropriate strategy, when considered against the reasonable alternatives, based on proportionate evidence;
 - **Effective:** deliverable over its period and based on effective joint working on cross-boundary strategic priorities; and
 - **Consistent with national policy:** enable the delivery of sustainable development in accordance with the policies in the Framework.
53. In order for the draft Local Plan to pass the tests of soundness, in particular the ‘justified’ and ‘effective’ tests, it is necessary for it to be based on an adequate, up to date and relevant evidence base. The Council also has a legal duty to comply with the Statement of Community Involvement in preparing the Plan. (S19(3) 2004 Act).
54. In addition the Council also has a legal “Duty to Co-operate” in preparing the Plan. (S33A 2004 Act).
55. HRA’s are a requirement of the Conservation of Habitats and Species and Planning (various amendments) (England and Wales) Regulations 2018 (“HRA Regs”) and must assess the impacts of the Local Plan on sites designated under the EU Directive (92/431/EEC Habitats Directive).
56. **Financial (1)** – The work on the Local Plan is funded from specific budgets set aside for that purpose. Over the last five years, significant sums have been expended on achieving a robust evidence base, carrying out consultations, sustainability and other appraisals, policy development and financial analyses. Whilst this work remains of great value, it is important that progress is made to ensure that unnecessary additional costs and delays do not occur. Additional costs pertaining to resourcing, evidence base and examination must be supported to continue effectively. To ensure

appropriate completion of the timetable by end of April, additional resources have been approved.

Financial (2) - It should also be considered that if the approach taken is subsequently judged to be non compliant with Government Guidance could lead to further technical work and additional consultation adding to the identified costs and creating delay.

Financial (3) - Managing the planning process in the absence of a Plan will lead to significant costs to the council in managing appeals and examinations.

- **Human Resources (HR)** - none
- **One Planet Council / Equalities** - none
- **Crime and Disorder** - None
- **Information Technology (IT)** None
- **Property** - None
- **Other** – None

Contact Details

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**Report
Approved**



Date 05/03/2021

Wards Affected:

All

For further information please contact the author of the report

Annexes:

Annex A: Council letter to Inspector's 25 February 2021 [EXCYC51]

Annex B: Inspector's letter to Council 03 March 2021 [EXINS23]

Annex C: Examination Library v61 – Latest version as at 030321

Background documents

Inspectors letter 18 December 2020 [EXINS19]

<https://www.york.gov.uk/downloads/file/6293/ex-ins-19-inspectors-letter-to-cyc-18-dec-2020>

Council's letter 22 December 2020 [EXCYC44]

<https://www.york.gov.uk/downloads/file/6294/ex-cyc-44-letter-to-inspectors-22-dec-20-re-hra>

Inspectors letter 11 January 2021 [EXINS20]

<https://www.york.gov.uk/downloads/file/6299/ex-ins-20-letter-to-council-11-january-2021>

Council's letter 15 January 2021 [EXCYC48]

<https://www.york.gov.uk/downloads/file/6312/ex-cyc-48-letter-to-inspectors-15-january-2021>

Inspector's Letter 29 January 2021 [EXINS21]

<https://www.york.gov.uk/downloads/file/6332/ex-ins-21-inspectors-letter-to-cyc-29-january-2021>

Inspector's Letter 25 February 2021 [EXINS22]

<https://www.york.gov.uk/downloads/file/6394/ex-ins-22-inspectors-letter-to-cyc-25-february-2021>

Council's Letter 26 February 2021 [EXCYC53]

<https://www.york.gov.uk/downloads/file/6397/ex-cyc-53-letter-to-inspectors-26-february-2021>

List of abbreviations used in this report:

OAN/ OAHN – Objectively Assessed Housing Need

PINS – Planning Inspectorate

HRA – Habitat Regulations Assessment

ONS – Office for National Statistics

MHCLG – Ministry for Housing, Communities and Local Government

NPPF – National Planning Policy Framework

SNPP – Sub-national Population Projections
SNHP – Sub-national Household Projections
DSP – Demographic Starting Point
NPPG – National Planning Practice Guidance
OBR – Office of Budget Responsibility
SHMA – Strategic Housing Market Assessment
SAC – Special Area of Conservation
EU – European Union
SPA – Special Protection Area
RAMSAR – Internationally important wetlands
AA – Appropriate Assessment
NE – Natural England
MOD – Ministry of Defence
DIO – Defence Infrastructure Organisation
AEOI – Adverse effect on integrity
LDV – Lower Derwent Valley
HNU – Housing Needs Update