

Local Plan Working Group

Report of the Director for City and Environmental Services

City of York Local Plan – Safeguarded Land

Purpose of the Report

1. This report provides further information on the role of safeguarded land and the reasons for the draft Local Plan including such a designation for some sites. It makes reference to a legal opinion sought from John Hobson QC on how the Local Plan should address this matter. Both the instructions to Counsel and the legal opinion on the matter of the opinion are included as Annex A and Annex B to this report.

The Approach to Safeguarded Land

2. The preferred options consultation draft of the Local Plan and the subsequent publication draft that was considered by Cabinet on the 25th September 2014 included a policy and allocations of safeguarded land. This land is intended as a reserve for consideration for development at the time of a subsequent Plan review. Its purpose is to help ensure that the Green Belt as defined in the Local Plan endures beyond the Plan period.
3. There has been considerable debate about both the need for such land to be designated and the term safeguarded land. In view of this debate the Council has sought external legal advice on the merits of including safeguarded land in the Local Plan and the implications of not including such a designation. Before examining the implications of the legal advice, the report recaps on the national policy and how it has been interpreted to date in the preparation of the Plan.

National Policy and Saved RSS policy

4. The National Planning Policy Framework (NPPF) sets out the national policy position on determining the boundaries of the Green Belt and the role of safeguarded land as a tool to help ensure that Green Belt boundaries endure beyond the Plan period.
5. The NPPF sets out policy on setting Green Belt boundaries in paragraphs 83 to 85. This policy repeats in summary form the previous policy that was set out in Planning Policy Guidance Note 2 published in the mid 1990s.
6. The Local Plan that is currently in preparation will set for the first time the detailed boundaries of the green belt with the City of York Unitary Authority area. As such, the start point for setting the boundaries is the national policy and the saved policy from the now revoked Regional Spatial Strategy. That saved policy sets out the main purpose of a green belt surrounding York, which is to: *Protect and enhance the nationally significant historical and environmental character of York, including its historic setting, views of the Minster and important open areas.*
7. Returning to the application of the NPPF in particular the approach to defining the green belt boundaries where paragraph 83 says 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.* In helping to achieve this degree of permanence paragraph 85 provides further policy on determining boundaries including: *where necessary, identify in their plans 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 Approach taken in the Local Plan

8. The preferred options draft Local Plan and the subsequent publication draft discussed at Local Plan working Group in September 2014 sought to apply the national and saved regional policies in setting out the extent of the Green Belt and identifying a reserve of *safeguarded land* to ensure that the Green Belt boundary is capable of enduring beyond the Plan period. To do this the Plan included policy to identify safeguarded

land and protect it from development until such time as a plan review identified the need for the land to be allocated for development.

9. This approach in the Plan was challenged in representations made to the preferred options draft. These representations stated that there is no requirement to identify safeguarded land and that the term safeguarded land is misleading as the land may be developed in the future.

Counsel's Opinion on the Matter of Safeguarded Land

10. In view of the challenges made to the Plan the Council has sought a legal opinion from Leading Counsel John Hobson QC of Landmark Chambers. The instructions to Counsel from the Council's solicitor and the subsequent opinion from Counsel are appended to this report at Annex A and B. Paragraph 8 of the instructions (Annex A) sets out a series of questions in respect of how long the Green Belt should endure and the role of safeguarded land. It is the answers to these questions that form the main body of the opinion from Counsel.
11. The opinion from Counsel is very clear on the need for the Green Belt to endure beyond the Plan period and that land not needed for development during the Plan period should be protected as safeguarded land. Any other course of actions places the Plan at risk of being found unsound at examination. Paragraph 16 of the advice states that

"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 areas could be met, and in particular a failure to indicate how those 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"

12. In respect of the period of time beyond the Plan period for which the Green Belt should be expected to endure, Counsel advises that this is a matter for planning judgement. He goes on to say that a ten year period beyond the life of the Plan, as used in the Publication Draft Local Plan, would be appropriate.

Options

13. Option 1. Continue to include safeguarded land designations in the Plan to ensure that the Green Belt will endure for a minimum of ten years beyond the end of the Plan period as advised by Counsel.
14. Option 2. Consider an alternative approach to that included as option 1 to this report. This could be to either not include safeguarded land or to consider a reduced time period for safeguarded land designations. .

Analysis of Options

15. Option 1, which is to include safeguarded land designations in the Plan, will ensure that the Green Belt will endure for a minimum of ten years beyond the end of the Plan period. This is consistent with the advice received by Counsel included as Annex B to this report.
16. Option 2, is for Members to instruct officers to consider an alternative approach to option 1, either through including no safeguarded land designations in the Plan or to include designations for a reduced time period. Officers consider that to not include safeguarded land designations in the Plan would mean that the Green Belt boundary would be very unlikely to endure beyond the plan period. This is contrary to Counsel advice and to national policy. It is considered that there is a strong likelihood of such an approach being found unsound at examination.
17. In terms of the consideration of a reduced time frame for safeguarded land designations Officers consider that York is in a unique position and that there is no precedent or basis on which to make a judgement on an alternative time period. It is considered that to do this would increase the risk of the Plan being found unsound at examination due to a reduced level of permanence. This would be contrary to the Counsel advice which concludes that a period of ten years beyond the end of the plan would be an appropriate timeframe.

Council Plan

19. The information in this report accords with the following priorities from the Council Plan
- Create jobs and grow the economy
 - Get York moving
 - Build strong communities
 - Protect the environment

Implications

20. The following implications have been assessed.
- **Financial (1)** – Work on the Local Plan is funded through the Local Plan Reserve. A review of the Local Plan reserve is being undertaken to see whether all commitments can be funded. Over the last four 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, the longer it takes to progress the Local Plan, the more will have to be redone at additional cost.
 - **Financial (2)** - 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)** – The production of a Local Plan and associated evidence base requires the continued implementation of a comprehensive work programme that will predominantly, although not exclusively, need to be resourced within CES.
 - **Community Impact Assessment** A Community Impact Assessment (CIA) has been carried out for the local plan to date and highlights the positive impact on the following groups: age, disability and race.
 - **Legal (1)** – 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.

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 deliver of sustainable development in accordance with the policies in the Framework.
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- **Legal (2)** The Council also has a legal duty to comply with the Statement of Community Involvement in preparing the Plan. (S19(3) 2004 Act). Planning Inspectorate guidance states that “general accordance” amounts to compliance.
 - **Legal (3)** The Council also has a legal “Duty to Co-operate” in preparing the Plan. (S33A 2004 Act).
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- **Crime and Disorder** – The Plan addresses where applicable.
 - **Information Technology (IT)** – The Plan promotes where applicable.
 - **Property** – The Plan includes land within Council ownership.
 - **Other** – None

Risk Management

21. The main risks in producing a Local Plan for the City of York are as follows.

- The risk that the Council is unable to steer, promote or restrict development across its administrative area
- The potential damage to the Council's image and reputation if a development plan is not adopted in an appropriate timeframe.
- Risks arising from failure to comply with the laws and regulations relating to Planning and the SA and Strategic Environmental Assessment processes and not exercising local control of developments.
- Risk associated with hindering the delivery of key projects for the Council and key stakeholders.
- Financial risk associated with the Council's ability to utilize planning gain and deliver strategic infrastructure.

22. Measured in terms of impact and likelihood, the risks associated with this report have been assessed as requiring frequent monitoring.

Recommendations

23. It is recommended that Members of the Local Plan Working Group recommend Cabinet to:

Agree option 1 in this report to include safeguarded land designations in the Plan to ensure that the Green Belt will endure for a for a minimum of ten years beyond the end of the Plan period.

Reason: So that an NPPF compliant Local Plan can be progressed.

Contact Details

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**Report
Approved**



Date 21/1/2015

Specialist Implications Officer(s) N/A

Wards Affected: *List wards or tick box to indicate all*

 All

For further information please contact the author of the report

Annex A: Instructions to Counsel

Annex B: Advice from John Hobson QC, Landmark Chambers.