

## Annex B

# 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 When the RSS was revoked in February 2013 the Green Belt policies and Key Diagram were expressly excluded from the revocation.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.

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**

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