

Report of the Director of Economy and Place

Portfolio of the Executive Leader (incorporating Economic Development & Community Engagement)

## **York Local Plan Update**

### **Summary**

1. The purpose of this report is to update members on the Local Plan examination including additional technical evidence regarding the Objective Assessment of Housing Need (OAN) which was submitted to the Planning Inspectorate (PINS) on 29<sup>th</sup> January 2019 following approval by the Corporate Director of Economy and Place in consultation with relevant Members in accordance with the delegated authority from Council.
2. The report also updates members on further work undertaken in relation to the Habitat Regulation Assessment (HRA) and the implications for the submitted Plan. These issues will be considered at Local Plan Working on the 27<sup>th</sup> February 2019 and the minutes will be circulated to Executive.

### **Recommendations**

3. The Executive are asked to:
  - i) Note the additional OAN evidence already submitted to PINS following approval by the Director of Economy and Place in consultation with the relevant Members under delegated powers.

*Reason: To allow Officers to progress York's Local Plan through to hearing sessions to determine the OAN.*

- ii) Approve the modification schedule attached at Annex E to the report for submission to PINS for examination.

*Reason: So that York's Local Plan can progress through examination.*

## **Background**

4. As Members are aware the Local Plan was submitted for examination on 25<sup>th</sup> May 2018. The Council has been appointed two Inspectors, Simon Berkeley and Andrew McCormack to undertake the examination. The Inspectors wrote to the Council on 24<sup>th</sup> July 2018 setting out their initial observations in relation to the Plan. Key issues raised were in relation to OAN, green belt and infrastructure delivery. Officers reported an update on the response to LPWG on 20<sup>th</sup> September 2018 following the release of revised sub-national household projections by Office for National Statistics (ONS).
5. The Council responded to the Inspectors in detail on 13<sup>th</sup> November 2018 and advised that since the publication of new national evidence on population and household projections in September which showed a marked downward trend in forecast growth for York we had been in dialogue with the Ministry of Housing, Communities and Local Government (MHCLG) regarding the assessment of housing need. Specifically the letter set out the intention of the Council to commission an update to the OAN to look at any potential implications of the new evidence with the suggestion to Inspectors that they should consider allowing early hearings on this matter specifically. The letter also confirmed the Council's approach to greenbelt and the delineation of greenbelt boundaries and confirmed that we would produce an addendum to Topic Paper 1 (Approach to York's Greenbelt) providing the additional clarification that the Inspectors have requested.
6. The Inspectors wrote back to the Council on 14<sup>th</sup> December confirming that the York Local Plan would be examined under transitional arrangements applying the 2012 NPPF, acknowledging the provision of additional evidence and agreeing to a phased approach to hearing sessions, with the first phase dealing with Duty to Co-operate, legal matters, OAN and Greenbelt principle.

## **Objective Assessment of Housing Need (OAN)**

7. The Council has now received the OAN Update from consultants GL Hearn (Annex A) which was issued to PINS on 29<sup>th</sup> January 2019 and

published on the York Local Plan examination webpage ([www.york.gov.uk/localplanexamination](http://www.york.gov.uk/localplanexamination)) along with a covering letter updating on other related matters including the HRA and greenbelt (Annex B). This evidence was approved for submission to the Examination by the Corporate Director of Economy and Place in consultation with relevant members, in accordance with the delegated authority from Council.

8. The OAN Update report concludes that overall the 2016 based subnational population projections (SNPP) for York show an average annual population growth over the period 2012 to 2037 of 24,036, significantly lower than the previous (2014 based) figure of 36,348 for the same period upon which the submitted Local Plan was based. GL Hearn's analysis of the components of population change suggest that the 2016 based population projections provide a more robust assessment of population growth for York than their predecessor which is also ratified by more recent population estimates in the Mid Year Estimates (2017, ONS). The main reason for this change relates to updated forecasts of international migration along with a downward trend in fertility rates and revised assumptions for increases in life expectancy.
9. These population figures are then translated into household growth and a dwelling requirement using a range of assumptions on household representative rates and also including a vacancy rate of 3%. The household formation rates analysis undertaken identifies a potential constraint within the official projections particularly for those aged 25-34 yrs. GL Hearn have therefore developed an alternative household representation rate scenario whereby the rates for this age group, and those aged 35 to 44 yrs are part returned to the household formation rates seen in the 2008 based (pre-recession) projections. These calculations result in an adjusted dwelling requirement of 679 per annum (an increase on the demographic starting point (DSP) of 484 dwellings per annum).
10. In accordance with National Planning Practice Guidance (NPPG) applied under transitional arrangements GL Hearn have then considered whether it would be appropriate to consider any uplifts to account for economic growth or to improve housing affordability (market signals). They have calculated the housing need required to meet an economic growth of 650 jobs per annum (based on the Local Plan target underpinned by the Employment Land Review Update, 2017). Using a series of assumptions including economic activity rates from the Office

of Budget Responsibility (OBR) results in an economic led need for housing of up to 790 dwellings per annum.

11. GL Hearn have also provided an updated analysis of housing market signals which show that house prices are relatively high in York and that housing affordability is a significantly worsening issue over the last five years. Affordable Housing needs remains at 573 dpa. In accordance with NPPG an uplift to improve affordability is required and considering the evidence GL Hearn proposes a 15% uplift. When applied to the demographic starting point (484 dpa) this 15% uplift would result in an OAN of 557 dpa which is some way short of the economic led need of 790 dpa.
12. The report therefore concludes that the OAN in York is 790 dpa which would be sufficient to respond to market signals, including affordability adjustments as well as making a significant contribution to affordable housing needs. Only by providing this level of housing growth would the population be sufficient to meet the economic growth potential whilst ensuring that there will be improvements to household representative rates among younger persons.
13. The updated OAN of 790 confirms to the Council that the robustness of submitted plans housing supply, based on the OAN of 867 dwellings per annum, is strengthened further by the reduction in the OAN. Officers consider that the submitted plans proposed housing supply can be robustly demonstrated to meet the revised OAN of 790 dwellings per annum both for the plan period (to 2033) and post plan period ( to 2038). The proposed housing supply in the submitted Plan will provide the required flexibility in order to be able to demonstrate to the Inspector that the Plan can respond to unforeseen circumstances over the duration of the plan period. In addition the submitted Plan proposes to create a green belt boundary for York which will endure beyond the end of the plan period to meet longer term development needs, a requirement of the National Planning Policy Framework (NPPF, 2012) against which the Plan will be examined, applying transitional arrangements.
14. The new revised evidence updates the previous OAN evidence submitted with the plan – the 2017 Strategic Housing Market Assessment (SHMA) Update. This evidence was approved for submission to the Examination by the Corporate Director of Economy and Place in consultation with relevant members, in accordance with the delegated authority from Council.

## Habitat Regulations Assessment (HRA) - Strensall Common Special Area of Conservation (SAC)

15. Habitat Regulation Assessment (HRA) is a requirement of the Conservation of Habitats and Species and Planning (various amendments) (England and Wales) Regulations 2018 (“HRA Regs”). This requires that an assessment of the impacts of the Local Plan on sites designated under the EU Directive (92/431/EEC Habitats Directive) must be undertaken. The purpose of the Habitat Regulations Assessment (HRA) is to identify any aspects of the Local Plan that would have the potential to cause a likely significant effect on Natura 2000 or European sites (Special Areas of Conservation (SACs), Special Protection Areas (SPAs) and Ramsar sites), (either in isolation or in combination with other plans and projects), and to identify appropriate avoidance and mitigation strategies where such effects are identified.
16. There is a legal requirement for all Local Plans to be subject to a HRA. The need for HRA is set out within Article 6 of the EC Habitats Directive 1992, and interpreted into British law by the Conservation of Habitats & Species Regulations 2018. For York, this requires assessment of ‘likely significant effects’ on Strensall Common Special Area of Conservation (SAC), River Derwent SAC and the Lower Derwent Valley Special Protection Area (SPA/ RAMSAR) as well as 4 sites within 20km of the authority boundary.
17. The purpose of the Habitats Directive is to "*maintain or restore, at favourable conservation status, natural habitats and species of wild fauna and flora of Community interest*" (Habitats Directive, Article 2(2)). This relates to habitats and species, not the European sites themselves, although the sites have a significant role in delivering favourable conservation status. European sites (also called Natura 2000 sites) can be defined as actual or proposed/candidate Special Areas of Conservation (SAC) or Special Protection Areas (SPA).
18. The Habitats Directive applies the precautionary principle to protected areas. Plans and projects can only be permitted having ascertained that there will be no adverse effect on the integrity of the site(s) in question. The process for assessing the potential effects on European protected sites included a screening stage, where an assessment of whether likely significant effects exist. Following that, an appropriate assessment (AA) is undertaken to establish whether adverse effects on the integrity of protected sites would occur

19. The screening exercise undertaken as part of the submitted HRA concluded that significant effects from recreational pressure on the dry and wet heathland communities at Strensall Common Special Area of Conservation (SAC) could not be ruled out alone, therefore an appropriate assessment was undertaken to establish whether adverse effects on the integrity of protected sites would occur. The AA concluded that if the proposed modifications to the Publication Draft Local Plan were adopted that *'the Council can ascertain that Policies SS19/ST35 (Queen Elizabeth Barracks, Strensall), E18 (Towthorpe Lines) and H59 (Land at Howard Road, Strensall) will have no adverse effect on the integrity of Strensall Common European site in terms of recreational pressure and that there would be no residual effects and no need for an in combination assessment'*. The conclusion was based on the adoption of a suite of modifications to policy SS19 (Queen Elizabeth Barracks, Strensall) including but not limited to, the erection of a barrier between the allocation and the Common, the management of open space within the policy area and the development of a funded wardening service to influence public behaviour on the SAC of existing and future residents. Drawing on the experiences of other proposals elsewhere in the country it was believed that these mitigation measures would provide sufficient confidence to allow effects on the integrity of the site to be ruled out.
20. Following submission of the Local Plan in May 2018, with the proposed modifications outlined in paragraph 19 above [CD003], the Council received correspondence from Natural England regarding the HRA. Natural England stated in their letter dated 4<sup>th</sup> June 2018 (EX/CYC/1) that in reference to the threat posed by recreational pressure that they *'did not agree that adverse effects on integrity can be ruled out based on the evidence available'* and went on to recommend that *'robust and comprehensive visitor assessment will be necessary to determine whether the mitigation outlined in policy SS19 are adequate to offset the impact of the proposal and the wider impact of the plan and allocation H59 in particular'*.
21. Accordingly the Council commissioned Footprint Ecology to undertake this assessment and advised Natural England that we would seek to agree the visitor survey methodology to ensure it meets expectations.
22. The Visitor survey was commissioned in June 2018 using and the methodology was discussed and agreed with Natural England in July 2018. Surveys were undertaken in August and September 2018 at the Lower Derwent Valley SPA, Skipwith Common SAC and Strensall

Common SAC. Final reports were issued in December 2018 and February 2019 respectively.

23. Key findings from the Strensall Common Visitor Survey included the following:
- 73% of interviewed visitors brought their dogs – of the 190 dogs observed 45% of them were off-lead during the interview;
  - 43% of dog walkers visited daily;
  - 78% of all interviewees visited regularly throughout the year;
  - The median distance travelled to the site, as the crow flies, was 2.4km and 75% of visitors came from within a radius of 5.5km, the median length travelled whilst on the Common was 2.5km;
  - Overall visits were expected to increase by 24%, reflecting a 61% increase in housing within 500m of the SAC;
  - Recreational impacts, typically comprising trampling, fires, eutrophication from dog fouling etc was evident although these were mainly limited in extent and severity and generally found in close proximity to car parks;
  - The report also identified that the worrying of livestock by dogs is already resulting in a loss of animals and may jeopardise future grazing – future grazing will be a vital tool in restoring the SAC to favourable condition; and
  - The report concluded (in the absence of mitigation) that given the scale of the increase in access predicted from the visitor surveys, the proximity of new development and concerns relating to the current impacts from recreation, adverse impacts on the integrity of the SAC cannot be ruled out as a result of the quantum of development proposed. In addition for the individual allocations that are adjacent to the site it will be difficult to rule out adverse effects on integrity.
24. The report then considers potential mitigation measures but in the main these comprise a range of measures similar to those already proposed in the existing modified policy SS19. Drawing on the outcomes of the evidence it is imperative that the mitigation measures can be shown robustly to not only address the causes of the evidence of harm occurring on the site but especially to reduce the worrying of livestock. The report casts doubt particularly in relation to the effectiveness of the open space proposed within site ST35 (Queen Elizabeth Barracks).
25. The submitted Plan includes a 7ha allocation of open space (OS12) as part of the ST35 site adjacent to the site and the Common. It is doubted

whether this amount of space would be sufficient to enable the provision of a circular route of 2.5km (that represented the median distance walked by visitors to the common). It is estimated that in order to create a circular route of this length it would require an area of land of circa 30ha. It is also considered that the creation of new open space adjacent to the Common would lack the natural setting which is highlighted by many visitors as one of the main reasons to visit the SAC currently. This new evidence suggests that the proposed new open space would prove less attractive than previously anticipated and that new residents would still seek access to the Common with their dogs.

26. The report recognises that a permanent barrier (as currently proposed in policy SS19) could restrict direct access to the common but it refers to evidence from a similar case at Talbot Heath in Dorset where the Secretary of State questioned the effectiveness of a barrier to reduce access to the adjacent SAC/SPA because its permanence could not be guaranteed and refused the application. The report acknowledges that the MODs current presence gives greater confidence that a barrier could be maintained but questions whether this can be guaranteed, particularly in the longer term. The report also states that around the Thames Basin Heath European site (SPA) all residential development is precluded within 400m of the heathland to reduce the magnitude of the threat applying the pre-cautionary principle. Whilst the Thames Basin Heath is a SPA, designated for the protection of birds, rather than a SAC it is considered that the proximity issue is a relevant consideration in relation to the distance of the proposed allocations (ST35 and H59) to the Strensall Common SAC.
27. Evidence from around the country shows that all the proposed mitigation measures already suggested in Policy SS19 of the submitted Local Plan and those considered in the Footprint Ecology report could potentially contribute to a reduction in harmful impacts from increased recreational pressure. However, the Habitat Regulations Assessment Handbook 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. The Visitor Survey report provided by Footprint provides objective evidence that concludes that the effectiveness of the measures proposed are likely to be of varying success and that the long term implementation of such measures would be challenging. The report concludes that *'At Plan level HRA it will be necessary to have confidence that the above mitigation measures are feasible and achievable in order to rule out adverse effects on integrity on Strensall*



*Common SAC as a result of increases in recreation there needs to be confidence that the measures will be successful'.*

28. It is considered that the Visitor Survey report provides new, strong evidence (or objective information) that the proposed mitigation cannot be completely relied upon. Therefore the Council, as the competent authority, would not be able to conclude that site allocations ST35 and H59 and the associated site specific policy SS19 would not undermine the conservation objectives for the SAC (which require the maintenance or restoration of the extent and distribution of the heathland features). This new evidence also contradicts the expectation of the submitted HRA that the additional requirement for a wardening service would remove the threat of an adverse effect on the integrity of the SAC; the increase in visitor numbers of 24% is particularly compelling. Fundamentally this scale of increase, the uncertainty surrounding the effectiveness of mitigation and the associated increase in the worrying of livestock ensures that adverse effects on integrity (AEOI) cannot be ruled out.
29. To avoid an AEOI it is recommended by the HRA that the ST35 and H59 allocations are both removed from the Plan. The updated HRA report is attached as Annex C to this report. H59 is proposed to be removed alongside ST35 because there is no meaningful way to mitigate the effects of recreation arising from the general site allocation either on site or in-combination with the larger site allocation ST35. It is considered that it would also be difficult to limit access to the common from the site given the location of the allocation in close proximity to Scott Moncrieff Car Park. Removal of both sites is therefore proposed in the schedule of modifications (Annex E).
30. The effect of removing both allocations (ST35 and H59) reduces the residual increase in recreational pressure from the remaining Local Plan allocations to 6%. It should also be noted that in arriving at this figure the report did not consider the open space associated with these other strategic allocations which could reasonably be expected to reduce the number of at least some of these visits. Therefore it is concluded that there is no need for additional mitigation for these allocations.
31. The previous HRA ruled out AEOI from site E18 (Towthorpe Lines) a 4ha employment allocation adjacent to the southern boundary of the SAC on account of its employment function and the lack of threat posed by employees. It is considered that workers and business visitors and the anticipated absence of dogs will pose little threat to the SAC.

Outside business hours it is possible that if left unsecured the site could be used as a car park for visitors to the Common. However, it is considered that this potential threat can be removed by relatively simple measures that preclude the use of the site outside business hours and to be a secure site. Annex E to this report provides a proposed modifications schedule which includes suggested amendments to policy EC1 (Employment allocations) and GI2 (Biodiversity) to strengthen the submitted Plan in relation to the E18 allocation.

### **Habitat Regulations Assessment (HRA) – Lower Derwent Valley Special Protection Area (SPA) and Skipwith Common Special Area of Conservation (SAC)**

32. The Visitor Survey for the Lower Derwent Valley (LDV) and Skipwith Common SAC was commissioned in conjunction with Selby District Council). Key findings include:
- Virtually all (92%) of interviews were with those who had undertaken a day trip/short visit directly from home that day;
  - The most frequently recorded activity across all survey points was dog walking (32% of interviewees). Walking (30% interviewees) and bird or wildlife watching (20%) were also frequently recorded activities;
  - There were markedly different activities recorded at the different survey points. Dog walking was mostly at Skipwith Common, rather than the LDV and no dog walkers were interviewed at all at Bank Island (Wheldrake), where walkers (44% of interviewees there) predominated;
  - Dog walkers were the group who visited the most frequently, with 19% visiting daily or most days;
  - Overall, most (90%) of interviewees had travelled by car, with only small numbers arriving on foot (4%), by bicycle (4%) or by bus (1%). Cars were the main mode of transport at all survey points.;
  - Overall the scenery/variety of views was the most common given reason for the choice of site to visit that day, cited by 42% of interviewees (across both the LDV and Skipwith survey points);
  - Close to home featured much more strongly as a reason for site choice at Skipwith Common, where it was cited as frequently as the scenery/variety of views.;

- Across all survey points and all interviewees, the median distance from home postcode to interview locations was 11.7km and 75% of interviewees had come from within 15.5km;
  - The median distance from home postcode to interview location at Skipwith Common was 8.8km, compared to 11.2 at Wheldrake Ings and 13.2 at Bank Island; and
  - At Bank Island and Wheldrake Ings the data show people moving along the river between the two survey points and at Wheldrake Ings the route to the hides is the key focus, with some visitors following the river bank and others walking directly across the field.
33. Overall the results show that the two sites are used for a variety of recreational activities, but the data suggests relatively low levels of use. There were some differences between the LDV and Skipwith Common. The LDV appears to draw people from a wider area predominantly for walking and for the wildlife. The site is promoted as a nature reserve and many interviewees were coming for that reason. Marked trails and hides provide the main routes, and are designed to minimise impacts.
34. The report considers that the closest points of open access on to the LDV from York are well managed and likely to attract people specifically interested in wildlife. It also suggests that of the two sites, Skipwith Common is the more vulnerable due to the particular issues relating to dogs off leads and grazing.
35. In conclusion the Visitor Report considers that there are likely significant effects from development on both LDV and Skipwith Common. However, at the plan level HRA, it is considered that the results presented should be sufficient to rule out adverse effects on the integrity for both sites with respect to recreation for any single development alone, unless they are large-scale and within 1km. The submitted Local Plan does not include proposed allocations within 1km of either LDV or Skipwith Common SAC. The report also states that the results should be able to rule out adverse effects on the integrity of the sites in relation to recreational pressure for the quantum of development as a whole (i.e. in-combination) but considers that monitoring and review should be included within the plan to understand whether future avoidance or mitigation measures will be required. Annex E to this report includes a proposed modifications schedule which suggests an additional monitoring and review mechanism to ensure the outcomes of the report can be reflected in order to understand whether future avoidance or mitigation measures will be required.

36. Overall, the outcome of the Visitor Survey concurs with our HRA Appropriate Assessment (2018) the outcomes of which are reiterated in the revised HRA report (Annex C). This provides confidence in the existing mitigation proposed in the Local Plan and as part of the schedule of modifications submitted in May 2018 (CD003).

### **Natural England (NE)**

37. City of York Council (as the 'Competent authority') at the Appropriate Assessment stage must consult Natural England and have due regard to any representations they make.
38. Officers met with Natural England on 4<sup>th</sup> February 2019 to discuss the potential implications of the Visitor Survey evidence on the submitted Local Plan. Natural England has since confirmed their initial thoughts on these surveys and the letter is appended as Annex D to this report.
39. For the Lower Derwent Valley (LDV) and Skipwith Common SAC NE concur with the results of the survey which suggests that additional visitor pressure resulting from housing allocations within the Plan are unlikely to result in an adverse effect on integrity. They do also highlight anecdotal information about recreation pressure occurring from adjacent village communities and comment that the survey did not assess visitor pressure from adjacent villages such as East Cottingwith, Ellerton and Thorganby which lie outside of the CYC boundary and may have therefore under recorded recreational pressures.
40. For Strensall Common SAC NE conclude that they concur with the conclusions of the Visitor Survey that *'given the scale of increase in access predicted from the visitor surveys, the proximity of new development and concerns relating to current impacts from recreation, adverse integrity on the SAC cannot be ruled out as a result of the quantum of development proposed. In addition, for individual allocations that are adjacent to the site it will be difficult to rule out adverse effects on integrity'*. It also states, in relation to potential approaches to mitigation that *'Natural England does not believe it is possible to rule out an adverse effect on the integrity of the Strensall Common SAC as a result of allocations currently included in the draft York Local Plan'*.

### **Ministry of Defence (MOD)**

41. Officers met with representatives from the Defence Infrastructure Organisation (DIO) and their agents Avison Young on 12<sup>th</sup> February to

discuss the above implications for the site allocations at Queen Elizabeth Barracks following an earlier meeting in November when the draft findings of the Visitor Survey were shared. A letter was sent to the Council on 21<sup>st</sup> February from the DIO which is provided at Annex F to this report.

42. Officers met with the DIO and their agents in November 2018 to advise of the draft findings of the Visitor Survey for Strensall Common after agreeing the methodology for the survey with both the DIO and NE in July 2018. At this meeting officers discussed their concerns regarding the outcomes of the draft report and informed the DIO that we would be requesting a meeting with NE as soon as possible. Due to Natural England's capacity issues they were unable to meet the Council until 4<sup>th</sup> February 2019. As noted in paragraph 20 of this report the Visitor Survey was specifically requested by Natural England in their letter of 4<sup>th</sup> June 2018 in order to determine whether the mitigation outlined in policy SS19 of the submitted Local Plan was adequate to offset the impact of the proposed Queen Elizabeth Barracks site allocation (ST35) and the wider impact of the plan and allocation H59 in particular.
43. The Local Plan has been submitted and is now being examined by PINS. Following consideration of the Visitor Survey and the discussion with Natural England Officers recommend that the Strensall Barracks site is removed from the Local Plan so that it remains sound. Whilst the commitment from the DIO to explore further mitigation measures is welcomed the Council, as the competent authority, must apply the precautionary principle as required by the Habitat Regulations. On the basis of the additional evidence it is considered that the proposed mitigation in the submitted Plan cannot be completely relied upon. Therefore the Council cannot conclude that site allocations ST35 and H59 and the associated site specific policy SS19 would not undermine the conservation objectives for the SAC (which require the maintenance or restoration of the extent and distribution of the heathland features).
44. As outlined in paragraphs 46 and 47 of this report it is possible that the proposed modifications outlined in this report and attached as Annex E could be subject to formal consultation if required by the Inspectorate through the examination process and the DIO would be able to engage in this statutory process. It is important that the Council continues to demonstrate progress with the Local Plan and that it deals with the matters outlined in this report swiftly. The letter to PINS from the Council on 29<sup>th</sup> January 2019 confirmed that the Council would be meeting with Natural England on 4<sup>th</sup> February and that should any outcomes from the

meeting result in main modifications to sites that we would be in a position to put that forward to PINS by mid March.

### **Modifications to the submitted Local Plan**

45. Annex E to this report sets out officers proposed modifications to the submitted Local Plan as a result of the Visitor Survey and updated HRA. These modifications propose the removal of housing sites ST35 and H59 resulting in the deletion of 545 dwellings from the submitted plans housing supply. Officers consider that the submitted plans proposed housing supply can be robustly demonstrated to meet the revised OAN of 790 dwellings per annum both for the plan period (to 2033) and post plan period ( to 2038). The proposed housing supply in the submitted Plan provides the required flexibility in order to be able to demonstrate to the Inspector that it can respond to unforeseen circumstances over the duration of the plan. In addition the submitted Plan proposes to create a green belt boundary for York which will endure beyond the end of the plan period to meet longer term development needs, a requirement of the National Planning Policy Framework (NPPF, 2012) against which the Plan will be examined, applying transitional arrangements.

### **Next steps**

46. Officers have received an indication from the Planning Inspectorate (PINS) that now they have received the revised OAN and with the potential for implications arising from the HRA that further targeted consultation may be required prior to hearings to ensure that interested parties can make their views known prior to holding hearing sessions. It is anticipated that this consultation would be required to be directed to those parties who made a representation at the Regulation 19 stage (Publication consultation, Feb-April 2018) for a six week period.
47. Officers are requesting that this consultation takes place after the purdah period ahead of York's local elections which starts on the 26<sup>th</sup> March 2019 and this will therefore effect the timetabling of hearing sessions. It is important to continue to demonstrate progression to PINS particularly having regard to the threat of intervention and therefore it is imperative that issues in relation to the HRA and Strensall Common SAC are dealt with swiftly.

## **Consultation**

48. As detailed in paragraph 46 above further targeted consultation may be required on the additional OAN evidence already submitted to PINS and proposed modifications to the submitted Plan as a result of the updated HRA. This consultation would be for a six week period and would be specifically with those parties who have made a representation at Regulation 19 stage.
49. When examination hearings commence on issues set out in the Local Plan, a statutory 6 weeks notice period will be given to allow interested parties to attend the meeting. Those able to take part will have registered their interest through the Regulation 19 consultation held between 21<sup>st</sup> February and 4<sup>th</sup> April 2018. Our appointed Programme Officer will ensure participation by registered parties is appropriate for the session.
50. Any further modifications made to the plan to make it legally compliant or sound in line with national policy during the examination process, will be consulted on prior to adoption of the plan. This will be a citywide consultation seeking comments on the changes prior to Members consideration at committee.

## **Implications**

51. In terms of procedural compliance it is the HRA that carries the highest potential residual risk. 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).
52. The HRA has been an iterative process throughout Plan production and concluded at Submission stage that, with mitigation, adverse effects on the integrity on SACs, SPA's and RAMSARs could be ruled out. The new evidence produced highlights that the increase in development at Strensall common is likely to be lead to adverse impacts on the integrity of the site. In order to satisfy the HRA Regulations, the Council will need to need to make a modification to the plan to remove site allocations ST35 and H59.

## **Risk**

53. 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.
54. 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.
55. 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).
56. In addition the Council also has a legal “Duty to Co-operate” in preparing the Plan. (S33A 2004 Act).
57. Financial – **Financial (1)** – The work on the Local Plan is funded from specific budgets set aside for that purpose. 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 it is important that progress is made to ensure that unnecessary additional costs do not occur.
58. **Financial (2)** - It should also be considered that if the approach taken is subsequently judged to be non compliant with Government Guidance either before or after submission this could lead to further technical work and additional consultation adding to the identified costs and creating delay.



59. **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.

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### Chief Officer Responsible for the report:

Neil Ferris  
Director of Economy and Place

### Executive Members Responsible for the Report:

Cllrs I Gillies and K Aspden

Report  
Approved



Date 18/02/2019

### Specialist Implications Officer(s):

Legal Implication: Alison Hartley, Legal Services Manager (Corporate Governance)

Financial Implication: Patrick Looker, Finance Manager

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

 All

For further information please contact the author of the report

### Back ground Papers:

Letter from Natural England to City of York Council, 4<sup>th</sup> June 2018

[https://www.york.gov.uk/downloads/file/16322/letter\\_from\\_natural\\_england\\_-\\_04\\_june\\_2018](https://www.york.gov.uk/downloads/file/16322/letter_from_natural_england_-_04_june_2018)

Letter from City of York Council to Natural England, 19<sup>th</sup> June 2018

[https://www.york.gov.uk/downloads/file/16323/response\\_to\\_natural\\_england\\_from\\_cyc\\_-\\_19\\_june\\_2018](https://www.york.gov.uk/downloads/file/16323/response_to_natural_england_from_cyc_-_19_june_2018)

**Letter from Inspectors to City of York Council setting out their initial observations on the submitted York Local Plan, 24<sup>th</sup> July 2018 (EX/INS/1)**

**[https://www.york.gov.uk/downloads/file/16579/exins1 -  
\\_initial observations 24 july 2018](https://www.york.gov.uk/downloads/file/16579/exins1_-_initial_observations_24_july_2018)**

**Response from City of York Council to Inspectors on their initial observations, 13<sup>th</sup> November 2018 (EX/CYC/7)**

**[https://www.york.gov.uk/downloads/file/17066/excyc7 -  
\\_city of york letter of response to inspectors 13 november 2018](https://www.york.gov.uk/downloads/file/17066/excyc7_-_city_of_york_letter_of_response_to_inspectors_13_november_2018)**

**Letter of response from Inspectors to City of York Council, 14<sup>th</sup> December 2018 (EX/INS/2)**

**[https://www.york.gov.uk/downloads/file/17204/exins2\\_inspectors\\_i  
nitial observations 14 dec 2018](https://www.york.gov.uk/downloads/file/17204/exins2_inspectors_initial_observations_14_dec_2018)**

**Letter to Inspectors from City of York Council outlining progress on the submission of additional evidence as requested by the Inspectors and enclosing Housing Needs Update (GL Hearn), 29<sup>th</sup> January 2019 (EX/CYC/8)**

**[https://www.york.gov.uk/downloads/file/17379/excyc8 -  
\\_response to pins 290119](https://www.york.gov.uk/downloads/file/17379/excyc8_-_response_to_pins_290119)**

**CD003 – Modifications schedule submitted with York Local Plan (May 2018)**

**[https://www.york.gov.uk/downloads/file/15871/cd003 -  
\\_city of york local plan publication draft schedule of minor m  
odifications to 25th may 2018 pdf](https://www.york.gov.uk/downloads/file/15871/cd003_-_city_of_york_local_plan_publication_draft_schedule_of_minor_modifications_to_25th_may_2018_pdf)**

**Annexes:**

**Annex A: Housing Needs Update (GL Hearn, 2019)**

**Annex B: City of York Council letter to PINS, January 2019**

**Annex C: Updated Habitat Regulations Assessment (2019)**

**Annex D: Letter from Natural England (February 2019)**

**Annex E: Proposed Modifications Schedule**

**Annex F: Letter from Defence Infrastructure Organisation (DIO), February 2019**

**Annex G: Better Decision Making Tool**

**List of abbreviations used in this report:**

**OAN – 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**