



29th January 2015

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 delivery 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).
 - **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 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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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.

Annex B

THE COUNCIL OF THE CITY OF YORK

**IN THE MATTER OF THE PREPARATION OF
THE YORK LOCAL PLAN**

ADVICE

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 4th 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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