



HEARING STATEMENT

Examination of the New Settlement (Maltkiln) Development Plan Document (DPD) – Matter 1

Prepared for: Mr B Dent

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1. INTRODUCTION

- 1.1. Veritas Planning Ltd. has been instructed to represent Mr B. Dent in relation to the Examination in Public ("EiP") of the New Settlement (Malkiln) Development Plan Document ("Malkiln DPD").
- 1.2. The following Hearing Statement provides our response to the Matters, Issue and Questions provided by the Inspector on 30th July 2024. The responses are specific to the questions that the Inspector has agreed my client should contribute to, and in the format and order of the Matters, Issues and Questions provided by the Inspector.
- 1.3. For the reasons provided in this Hearing Statement, my client's position is that the DPD as currently prepared is unsound, in conflict with policy requirements, has not been positively prepared and is not justified with sufficient evidence. There are also material issues with the Council's approach to consultation, in particular given the long delay between the DPD being prepared and this EiP. The DPD should not be adopted.

2. RESPONSES TO THE INPSECTORS MATTERS, ISSUES AND QUESTIONS

MATTER 1 - LEGAL COMPLIANCE

Issue 1 – General Principles

Question 1: What evidence can the Council point to which demonstrates that it has engaged constructively, actively and on an ongoing basis in relation to the known cross-boundary issues?

- 2.1. During the preparation of the DPD the Harrogate Borough Council (“HBC”) dissolved, and the North Yorkshire Council (“NYC”) took over the preparation of the DPD. The new NYC took over the administration of seven local authority areas (Harrogate, Ryedale, Richmondshire, Selby, Craven, Hambleton and Scarborough Borough Councils) and Yorkshire County Council.
- 2.2. Whilst the Duty to Co-operate Statement (SDNS01) provides that the Maltkiln DPD has been prepared in co-operation with the then Selby District and North Yorkshire County Councils, there is no mention of the other Borough Councils that now form part of the North Yorkshire Council (Ryedale, Richmondshire, Craven, Hambleton and Scarborough Borough Councils). There is no evidence that these previous Councils have had any input into the preparation of the document and, whilst they have now been merged into the new NYC, there has been no engagement prior to that merger in relation to the Maltkiln DPD.
- 2.3. Apparently, the delivery of this allocation has previously been considered not to have cross boundary effects with these boroughs, however there can be no doubt that, post-merger, the scope and extent of housing delivery in this location has the potential to impact upon delivery in these areas.
- 2.4. There is no evidence of constructive engagement with these previous LPA areas prior to the creation of NYC, nor consideration of wider effects across these boundaries following the merger.

Question 3: Has the Duty to Cooperate under sections 22(5)(c) and 33A of the 2004 Act and Regulation 4 of the 2012 Regulations been complied with, having regard to the advice contained in the National Planning Policy Framework ('the Framework') and the Planning Practice Guidance ('the PPG')?

- 2.5. For the reasons set out in paragraphs 2.1 to 2.5 above, the Duty to Co-operate has not been satisfactorily fulfilled.

Issue 2 – Public Consultation

Question 3 - Were adequate opportunities made available for participants to submit and make representations, having particular regard to the length of public consultation and the process for making comments?

- 2.6. The DPD has had a very long preparation period. Whilst work was begun in 2018, there has been little substantive progress since the last opportunity to comment (Reg 19) on 3rd October to 25th November 2022. At the anticipated date of the EiP almost two years has lapsed since the last opportunity for the public to make comments.
- 2.7. Since that time there have been a number of changes that have a material effect on the decision to adopt the Maltkiln DPD as proposed. These are briefly set out below:
- Change of Government – The new Labour government have indicated a substantial change in the emphasis in relation to the delivery of affordable housing (40%+), the use of brownfield sites and the creation of large new settlements (10-50,000 homes) to meet housing needs.
 - Merger of the 8 previous LPA's – The merger of the 8 previous LPA's that now form NYC has created several, previously cross boundary, opportunities to deliver housing in the new NYC area that did not exist prior to the merger.
 - Delivery of Maltkiln to meet needs– The adopted Local Plan Housing Trajectory (SDNS14: Picture 2.1) provides the Maltkiln Settlement contributing to land supply in 2024/25 onwards. The Maltkin DPD now estimates at para 5.5 that the new settlement may contribute towards the end of the plan period (2014-35), with the majority taking place after 2035. The Settlement is not therefore expected to make a material contribution to the adopted Local Plan targets and should therefore be considered as a potential supply source to the emerging NYC Local Plan.
 - Option Agreement has expired – An Option Agreement relating to the acquisition of a

significant portion of the site has expired and is unlikely to be reinstated. This casts the overall delivery and currently estimated timescales in significant doubt.

- Heronby (3,400 dwellings, 21km/13miles to the SE) – the previously planned new settlement has been deleted from the emerging Selby Area Local Plan. Heronby was included in the Publication Version Selby Local Plan (consulted upon during Aug. – Oct. 2022) and deleted in the Revised Publication Version (Consulted upon during Mar.-Apr. 2024). No publicly available assessment of the implications of this decision has been provided, in the context of the NYC administrative area, to support the Maltkiln DPD.

- 2.8. The above is not an exhaustive list, but indicative of the many features and matters that have a bearing on the consideration of the Maltkiln DPD that have changed in the last two years. These are all material matters pertinent to the preparation and soundness of the DPD. My client and other members of the public have had no opportunity to comment on the emerging Maltkiln DPD in light of these changes.
- 2.9. Soundness is also a measure of how effectively the evidence base (including public consultation) accurately reflects the situation at the time of adoption. The Public Consultation exercises are two years old and the passage of time has rendered them of limited value.
- 2.10. As far as a public consultation is concerned, the Council appear to be of the view that nothing has changed in the last two years that is relevant to the soundness of the DPD, or that warrants consultation with the public. This is not the case.
- 2.11. The Council appear to have internally considered whether the removal of my client's site would change their approach to pursuing Maltkiln. To continue the pursuit of Option 3 in the Sustainability Assessment has been considered by the Council (SDNS10 - NYC Executive Committee, 12th Dec 2023, pages 7-17). This opportunity has not been offered to members of the public.
- 2.12. For these reasons the public consultation exercise has been inadequate in creating opportunities for participants to submit and make representations, having particular regard to the length of time that has elapsed since the last public consultation exercise, the various material changes in circumstances since that time and the process for making comments.

Issue 3 – Sustainability Appraisal

Question 1: What are the 'concept options' in the Sustainability Appraisal ('SA') based on? How have they been determined, and do they adequately reflect a reasonable range of alternatives? If not, what should the SA have considered at this stage?

- 2.13. There is no clear rationale for the three concept options set out within the SA.
- 2.14. My client is concerned to see that, of the three options considered in the SA there is only one that had the backing of a land promoter (Option 3). This appears to have been an overriding factor in the selection of option 3, rather than the overall relative sustainability of the development option.
- 2.15. Whilst the involvement of a land promoter may be a material factor in the *deliverability* of the option this is not a matter that directly effects the relative *sustainability* of any given option.
- 2.16. Notwithstanding the above, it is clear from the commentary within the SA that the availability of land was a material factor in the selection of the Option 3 (CDNS02, Page 5, last bullet). This circumstance has now changed, due to my client's withdrawal. The three options would therefore now rank equally in relation to the existence of an effective land promoter.
- 2.17. For good order, the updated Submission Draft SA (CDNS02) makes no attempt to assess the implications of the removal of my client's land from the proposed settlement boundary. This is apparently as this change in circumstances occurred after the Regulation 19 Consultation in October 2022.
- 2.18. The removal of my client's land from the development has a fundamental effect on the ability of a future scheme to deliver the benefits of sustainable development originally envisaged in the Harrogate Local Plan. The reduction of the available site area by circa 128ha or 42% provides a severe constraint on the ability of the emerging settlement to deliver a cohesive, well-located range of services and facilities in the manner sought within the Harrogate Local Plan and set out within the SA.

Question 2: Are there any other reasonable spatial options that should have been tested by the Council through the SA, and if so, why?

- 2.19. There are a number of other spatial options that should have been considered, not least an option that excludes my client's land but retains the central focus of Option 3. No such option has been considered or publicly consulted upon.
- 2.20. Other obvious alternatives that should have been assessed include a further option which provides for a crossing of the Harrogate/Leeds Railway line, and that has its local centre/focus to the southeast of this rail route.
- 2.21. It is the purpose of SA exercises to consider reasonable alternative options in order to deliver robust, effective and deliverable strategies for meeting needs. These needs should be considered in the round in a transparent and evidence led manner. This has not occurred. The council should have considered the implications for sustainably developing a new settlement in this location on a site excluding my client's site. To do otherwise fails to acknowledge that the removal of my client's land would have significant consequences to the successful delivery of the settlement.
- 2.22. The Council appear to have internally considered whether the removal of my client's site would change their approach to pursuing Option 3 in the SA (SDNS10: NYC Executive Committee 12th Dec 2023, App. B, para 4.25 to 4.30). These options should however have been assessed in a clear and transparent manner through an update to the SA process.
- 2.23. To not do so, undermines the SA of the proposed DPD, in particular the council's original rationale for the selection of Option 3 (CDNS02, Appended Reg.19 SA, pg. 5) within SA.

Question 4: The preferred option (Option 3) is predicted to have likely significant negative effects in terms of biodiversity and potential significant negative effects in terms of landscape including retaining the area's rural character. How will these negative effects be addressed by the DPD?

- 2.24. This question remains valid, but the answer to this needs to include consideration of how the assessment of these potential negative effects would be altered and, the effects be addressed or mitigated in an option that excludes my client's land.
- 2.25. As yet there is no SA of this option and the likely environmental effects before the Inspector. This should be undertaken, consulted upon and made available in the interests of clear,

objective and robust decision making.

SJV

Sept 2024