

Examination of the Ryedale Plan- Local Plan Sites Document

Hearing Statement – Ryedale District Council

Statement 1 – Matter 1- Procedural/Legal Requirements

Plan preparation

- 1.1 Has the Plan been prepared in accordance with the Local Development Scheme in terms of its form, scope and timing?

Yes. The Local Development Scheme (LDS) clearly outlines the scope of the LPSD and its relationship to other Development Plan Documents. The form and scope of the plan is consistent with the description of the document in the LDS. (The Local Planning Authority is also of the view that the scope and content of the plan is also consistent with requirements of s.19 of the Planning and Compulsory Purchase Act 2004 and Regulations 5,6,8, and 9 of the Town and County Planning (Local Planning) (England) Regulations 2012.)

The LDS has been periodically updated to reflect progress in the production of the LPSD (LPSD). The most recent revised schedule was agreed with Members prior to Publication of the Plan. This included a publication date of November 2017 and a submission date of March 2018. The document was published and submitted in accordance with these dates.

The Council's Statement of Legal Compliance and Procedural Issues confirms that the Plan has been prepared in accordance with the LDS in terms of its form, scope and timing.

- 1.2 Have requirements been met in terms of the preparation of the Local Plan, notification, consultation and publication and submission of documents?

Yes. This is detailed in the Council's Statement of Legal Compliance and Procedural Issues; Statement of Consultation (SD04) and Representation Statement (SD05).

The consultation used to inform the development of the plan has overlapped with consultation and engagement used to inform the LPS and in that respect, consultation under Regulation 18 has covered a number of episodes of consultation between 2009-2015.

A detailed database of specific consultees (including the bodies listed in Regulation 2), general consultees and others who have expressed an interest in being kept informed of the evolution of the plan, has been used to notify and consult these bodies at relevant stages in the process. A range of documents (including committee reports, consultation material and consultation statements) provide evidence that representations made in response to consultation have been taken into account as the plan has emerged- as required by Regulation 18.

At publication stage and in accordance with Regulations 19 and 35:

- The proposed submission documents and statement of representations procedure were made available for inspection at Ryedale House and published on the Council's web-site
- A statement of representations procedure and statement of the fact that the documents were available for inspection at Ryedale House and on the Council's web-site was sent to each of the general and specific consultation bodies
- All of the bodies consulted as part of Regulation 18 were informed of the publication of the plan
- The proposed submission documents and statement of representations procedure were consistent with the details outlined in Regulation 17

In accordance with Regulation 22 and at the submission stage, the Local Planning Authority:

- Submitted the LPSD; Policies Map; Sustainability Appraisal Report; Consultation Statement (pursuant to Regulation 18); Representation Statement (pursuant to Regulation 20); copies of representations made in accordance with Regulation 20 and supporting documents to the Secretary of State on 29 March 2018. All of the documents were sent electronically and paper copies of key submission documents (Plan, Policies Maps, Representations, Sustainability Appraisal report) were sent, following the amendment to Regulation 22 which came into force on 15 January 2018.
- All of the documents were then made available at Ryedale House and published on the Council's web-site with a statement of the fact that the documents were available for inspection
- General and specific consultation bodies were notified as well as other contacts on the Local Plan database.

There has been an oversight on the part the Council, which has resulted in an inability to comply in full with the requirements of Regulation 24. Whilst the Local Planning Authority had published the details of Hearing Sessions and the name of the Inspector, (part a) these were not provided specifically to the duly made representors at least 6 weeks prior to the hearing sessions (part b). The letter was sent a day late- having been ready to send. The Council would like the Inspector to ask if those respondents consider that through this delay of only one day whether they have been prejudiced by this action.

1.3 Has the preparation of the LPSD (LPSD) complied with the Statement of Community Involvement?

Yes. The Statement of Community Involvement, identifies a range of ways in which consultation and engagement in the plan process will be undertaken. These include making consultation material available at the Council offices, libraries and the web-site; exhibitions, questionnaires and meetings with specific groups.

Over the course of the preparation of the document all of these methods have been employed at appropriate stages. For example, during the earlier stages of the

LPSD's production in 2009 exhibitions were held across the District to publicise the sites put forward for consideration in the plan process and site selection issues.

The Council has used its web-site to ensure that the site information is been continually available to view, to provide progress updates and to promote consultation at specific stages in the process. Press releases have also been prepared to promote key stages in the process and this endured that a local press article covered the publication of the plan.

Consultation material to support specific consultation in 2015 and 2016 was made available at the Council's offices and libraries and all groups on the Local Plan database were notified.

The Council has had on-going meetings with Local Councils and with specific and general consultees over the course of the preparation of the plan.

Sustainability Appraisal

1.4 How has the Sustainability Appraisal (SA) informed the preparation of the Local Plan at each stage and how were options considered?

Sustainability Appraisal has informed the production of the LPSD from the early stages of the plan process, as noted in the Council's Statement of Legal Compliance and Procedural Issues. The SA Scoping (TE01) was developed from 2009 and has informed the sustainability appraisal framework which is embedded in the Site Selection Methodology (SSM). The SA Scoping was refreshed to consider locally-specific sustainability matters, and was formulated with advice from the designated consulting bodies: Historic England, Natural England and the Environment Agency. The Scoping informed the SSM (SD03) is the operational process of the SA which has been applied to assess the sustainability credentials of individual sites and which has informed site choices/ combinations at specific settlements. The SA process assessed sites at a settlement level, which is appropriate given that individual settlements have specific sustainability issues. This is discussed in SD03 Sustainability Appraisal and the background papers and these documents highlight the way in which site choices have been made against 'competing' social, economic and environmental issues/objectives.

It should be noted that through the sustainability appraisal process it became clear that for the settlement of Staxton/Willerby none of the sites submitted were capable of being taken forward as allocations due to constraints associated with heritage assets.

The sustainability appraisal process has also been used to highlight mitigation measures and for the proposed site allocations some of these are included within the proposed development principles which have been established for sites. The SSM tables have been continually updated, as and when new information was provided, and the SSM tables have been viewable on the Council's website (and remain viewable) for different points in time (2015) and (2017) For example, the application of specific drainage techniques for site SD5 due to the identification of the ground source protection zone, and the identification of a green infrastructure corridor

utilising land in flood zone 2 and 3 at site SD6 have been directly identified through the SA/SSM process.

Since the Submission of the Plan, further mitigation measures have been identified concerning the following matters:

- Noise attenuation matters concerning Karro Foods and the proposed allocation of SD3, where specific mitigation measures have been discussed to overcome Karro's concerns regarding current and future operations with residential development.
- Minerals Safeguarding: The County Council as Minerals and Waste Authority have been in discussions with the LPA concerning the formulation of words which would allow the minerals resource to be evaluated within the context of the development proposals, thereby providing a framework for the utilising of the resource where it is both feasible and viable. This would be suggested as a modification to the Plan.
- Development in the archeologically sensitive Vale of Pickering, through the discussed inclusion of an appendix which would set out the archaeological evaluation framework for sites around the Vale of Pickering.

1.5 How has the SA been reported?

The SA consists of the following Documents:

Sustainability Appraisal Scoping Report updated in 2014 and again in 2017 (TE01) which was developed for the Ryedale Plan in 2009, and this defined the Site Selection Methodology (SD03) which is the operational component of the SA for the sites, work on developing this commenced in 2011. The SA Scoping was refined to provide a settlement-specific context. The settlement-specific Site Selection Methodology Tables (SD03) have been prepared for each settlement, and these have been continually updated since 2013, and are available to view on the Council's website. This is also recorded as a narrative, in the Settlement Background Papers (TE02), which explains how the sites have been subjected to on-going appraisal and where their consideration has changed. The SA of site assessment is also alongside the Sustainability Appraisal of site specific policies (SD03), this was then supplemented post Publication by an Addendum of the Sequential Test and Committed sites (SD03).

1.6 Has the methodology for the SA been appropriate? What concerns have been raised and what is the Council's response to these? Have the requirements for Strategic Environmental Assessment been met?

The methodology for the SA/SEA of the LPSD is proportionate and reflective of both strategic, settlement and site-specific sustainability considerations to be considered in a site-specific document. The SA Scoping Report which informs the sustainability appraisal of the Ryedale Plan did undergo locally- specific refinement to reflect local sustainability considerations, and this was supported by the specific consultation bodies.

A small number of respondents raised concerns regarding the SA process during the 2015 Sites Consultation because they considered that there should have been a singular SA document to accompany the sites consultation.

The Council were clear in the consultation material produced that at this stage (Sites Consultation), which was around assessment of sites, that the Site Selection Methodology Tables were being employed to appraise the sites in terms of Sustainability Appraisal requirements. The SSM was developed from the SA objectives set out in the SA Scoping Report and the LPS.

The interim findings were set out in the consultation document produced for the 2015 Sites Consultation, which was focussed on option choices and preferred sites, whilst also explaining why other sites had not performed well enough to be identified as a potential site allocation. The application of the SSM has been responsive to changes in the circumstances of sites, and as new evidence became available about the sites developability and deliverability the SSM tables have been updated accordingly. The SSM tables therefore have the ability to provide a framework for assessment within the context of each settlement, and provide the ability to consider sites specifically. The SSM tables, whilst having a broad evaluation system are not numeric in their evaluation, and the council have stressed this in the publication material produced during the site assessment process.

The specific consultation bodies were satisfied with the assessment process. Natural England were satisfied when they realised that the SSM and objectives were not applied in a numerical manner, but the substantive nature of the issue raised, so as to ensure that biodiversity matters were not undermined by the greater number of more economically orientated policies. The Environment Agency asked for slight revisions to the element of the SSM concerning drainage sensitivities, which were undertaken after the 2015 Sites Consultation. Historic England are also broadly satisfied with the approach taken in the SA process, and the Council has responded to specific matters raised through the Publication Representations.

As the proposed allocations and site-specific policies were iteratively tested under the SA process this was then formulated and presented in the Sustainability Appraisal Report covering both policies and the allocations (SD03) in conjunction with the SSM tables and as a narrative in the Settlement Background Papers.

Habitat Regulations Assessment

1.7 How was the Habitats Regulations Assessment (HRA) carried out and was the methodology appropriate?

The HRA which has informed the production of the LPSD was carried out in accordance with the regulations and advice was received from Natural England during the production of the HRA Screening and the Appropriate Assessment. This was undertaken over the course of the preparation of the LPSD so that it informed the site choices, and identified any required mitigation. The HRA screening evaluated the sites and updated the document at appropriate intervals to reflect the position of sites. The methodology is considered to reflect the guidance at the time, and that it

utilised technical material and evidence to make informed decisions. The Council undertook bird surveys to establish whether, terms of the North York Moors SPA, there would be an impact on Golden Plover that can loaf/forage on farm land. It also sought technical information from site submitters to evaluate mitigation in terms of surface water management. The screening also looked at the features of the designated sites, and the potential sites, and looked at whether there would be no likely significant effects. In doing so, it also considered the impacts of in-combination effects of other plans and projects at an adopted, or advanced stage.

- 1.8 Was the approach in accordance with recent judgement of the Court of Justice of the European Union (12 April 2018-Case C-323/17) which ruled that it is not appropriate to take account of measures intended to avoid or reduce the harmful effects of a plan or project on a European site at the screening stage as part of the Habitat Regulations Assessment (HRA)?

The LPSD was submitted on the 29 March, and unable to take account of the judgement, as it was not yet released. The Council's initial view (as set out in the Council's Initial Response EX/RDC/1) was the in taking into account the in-combination effects, there was some embedded mitigation a result of the operation of the Local Plan Strategy, primarily through treatment of surface water, or development of green infrastructure, and since this was not a site-specific requirement, and was on sites distanced from the Derwent SAC this would result in no likely significant effects.

The Council has, since that response, discussed the implications of the ruling with Natural England, and they have concluded that even embedded mitigation would, under the judgement, still represent mitigation. Accordingly, the Council has reflected on the matter, and has decided to undertake a revised HRA in which where a positive in-combination effect with another Plan is identified, and mitigation would result, it is considered that such sites would be concluded to be "unable to rule out no likely significant effects", and on that basis, the sites would therefore proceed to appropriate assessment. The Derwent Catchment extends in coverage all the sites which have been taken forward.

The Council will also need to consider any in-combination effects with the Joint Minerals and Waste Plan which is now at Examination in Public, and therefore at an advanced stage. The consideration of the inclusion of the mineral working at Watts Quarry has become necessary since it was granted planning permission.

The Council is proposing that a revised HRA will be available for the Hearing Sessions, and that would, be potentially subject to further revision which took account of any proposed changes to the Plan (known as Main Modifications), would re-consult on the HRA on the basis of any changes proposed to the Plan.

- 1.9 What were the relevant designated sites considered?

The HRA screening considered the below listed designated sites. They were informed by those considered in the HRA of the Local Plan Strategy.

- North York Moors SAC*
- North York Moors SPA*

- River Derwent SAC*
- Lower Derwent SAC, SPA and Ramsar*
- Eller's Wood and Sand Dale SAC*
- Strensall Common SAC
- Fen Bog SAC
- Beast Cliff SAC
- Flamborough Head SAC SPA and Bempton Cliffs SPA
- Humber Estuary SAC/SPA/Ramsar
- Arnecliff and Park Hole Woods SAC
- Skipwith Common SAC

Comments were also made in respect of the Humber Estuary due to fluvial connectivity.

Natural England were satisfied with the scope of the sites identified.

- 1.10 What potential impacts of the Plan were considered? What were the conclusions of the HRA and how has it informed the preparation of the Plan?

No sites considered as potential or proposed allocations were physically on Designated Sites.

Key impacts were identified through the HRA undertaken for the LPS, and this was again considered in the HRA of the LPSD. The first matter considered was the extent to which recreational pressure would have an effect on Designated Sites, and the second impact on water quality through changes in run off rates, sedimentation and potential for contamination.

The key impacts considered were in respect of potential indirect recreational pressure being areas of tourism, and whether noise as a result of development would impact on loafing activity of the Golden Plover. Based on the locations of the sites and the features of the designated sites no specific mitigation measures were identified. More direct recreational pressure was potentially capable at sites in Malton and Norton, due to the proximity of the River Derwent, and the availability of access.

These sites also had the capacity to directly affect the rates of run-off with implications for changes in the levels and flow of the Derwent, and potential for contamination. Sites in Malton and Norton were therefore subjected to Appropriate Assessment. This identified that sites in Malton and Norton would need to have well-executed green and blue infrastructure to provide attractive alternatives for recreational activity. Also to ensure that any run-off was attenuated to Greenfield levels, and that the quality of the water would be enhanced through pollution control measures- thereby resulting in improved water quality. The conclusions of the HRA have informed the development principles of the LPSD for sites SD3 and SD4.

- 1.11 What concerns have been raised and what is the Council's response to these? Specifically what is Natural England's position and the Council's response?

No objections were received to the Habitats Regulation Assessment HRA undertaken to support the Publication LPSD. Natural England were satisfied with the assessment process. In response to the recent court judgement Natural England have advised the following:

“Competent authorities undertaking HRAs should be aware of a recent ruling made by the Court of Justice of the European Union (the CJEU) on the interpretation of the Habitats Directive in the case of People Over Wind and Sweetman vs Coillte Teoranta (ref: C-323/17). The case relates to the treatment of mitigation measures at the screening stage of a HRA when deciding whether an appropriate assessment of a plan/project is required. The Court’s Ruling goes against established practice in the UK that mitigation measures can, to a certain degree, be taken into account at the screening stage.

As a result, Natural England advises that any “embedded” mitigation relating to protected sites under the Habitat Regulations 2017 Regulation 63 (1) should no longer be considered at the screening stage, but taken forward and considered at the Appropriate Assessment stage to inform a decision as whether no adverse effect on site integrity can be ascertained. In light of the recent case law, any reliance on measures intended to avoid or reduce harmful effects at the likely significant stage is vulnerable to legal challenge. You may also want to seek your own legal advice on any implications of this recent ruling for your decisions.”

Natural England then went onto make observations regarding some areas on the HRA which they considered would need revisiting within the context of the judgment. These are in summary:

- References to water attenuation and hydrology in relation to sites in Appendix 3
- References to The Local Plan Strategy requires that improved connections around the sites are made to local countryside in Appendix 3.

The court judgement has clear implications for the HRA assessment process. The Council has reflected on the above advice and will be preparing a revised HRA in due course which does not apply embedded mitigation at the Screening Stage. However, it is considered that the overall HRA conclusions reached for the LPSD remain the same. This is because in terms of mitigation measures embedded through the LPS or those demonstrably identified in the LPSD, ultimately do not lead to a change in the conclusion of no likely significant effects on the Designated Sites.

Other matters

1.12 Has the Council had regard to the specific matters set out in S19 of the 2004 Act (as amended) and Regulation 10?

Yes. A number of the specific matters set out in S19 of the Act are addressed as specific matters in this paper. There are however, a number of other matters in S19 relating to the preparation of local development documents. The Councils’ Statement of Legal Compliance and Procedural matters outlines the regard that has been given to: National Policy; the Regional Strategy; other local development documents which have been adopted by the authority and the resources available for influencing proposals. In addition, the Council’s Self- Assessment of Soundness has been prepared to outline compliance with national policy.

The Plan has been prepared with regard to North Yorkshire County Council's Local Transport Plan and the Health and Safety Executive's hazard impact zones relating to hazard installations and pipelines have been applied to sites as part of the site assessment process/ SSM. This is in accordance with Regulation 10.

- 1.13 Does the Plan include policies in relation to the mitigation of and adaptation to climate change?

The proposed LPSD is to operate in accordance with the Local Plan Strategy. Therefore policies: SP14, SP15, SP17, SP18 are relevant policies as they look at biodiversity resilience, enhancing blue-green infrastructure, utilisation of sustainable urban drainage (where it is feasible) and the use of renewable energy and sustainable building (in so far as capable since the Government's removal of the Code for Sustainable Homes). The LPSD has specific development principles which are to enhance the resilience of the sites and contribute to reducing greenhouse gas emission and improving air quality. For example - through the use of EV charging capability, site-specific opportunities for green and blue infrastructure such as at Slingsby, with the trees of the Balk, the formation of an area of public open space next to the river at Pickering Beck.

- 1.14 How have issues of equality been addressed in the Plan?

Ryedale's key inequality is around access to the housing market for local residents, combined with a low wage economy. The provision of a range of housing through land allocations will contribute towards meeting the needs of local communities including:

- Housing for the elderly and/or those with disabilities- with a requirement for single storey units in schemes of 50 units or more;
- Affordable housing provision that meets identified needs which is inclusive and integrated into the allocations;
- Maximising accessibility to services, facilities, recreation, education and opportunities for employment
- There was no need identified for a further site to be provided for the Gypsy and Traveller communities.