

Examination into the City of York Core Strategy

Exploratory Meeting at 14.00 hours (2pm) on Monday 23 April 2012

Summary of the Inspector's Key Concerns

I have asked the Council to respond to these concerns before the Exploratory Meeting (see web site) and to give me a timetable for any extra work considered necessary.

Introduction

1. From my initial reading of the submitted Core Strategy (the CS) and supporting documents I have some significant concerns regarding its compliance with the legal requirements and its potential soundness.
2. This is not an exhaustive list of all potential matters of soundness - there are a number of other issues that will need to be addressed should the Examination progress. A comprehensive list of matters and issues will be set out in due course if the Examination continues. I have asked the Council a series of Preliminary Questions, some of which relate to my concerns here, and these can be seen on the Council's web site.
3. I have not at this point reached a definite conclusion that the CS is unsound, either on the specific points set out in this note or in terms of other matters. This meeting does not mean that I have failed to appreciate the hard work that has gone into the CS. But before progressing to arranging hearing sessions these key concerns merit further discussion.
4. My concerns are set out below and they are either legal compliance matters or soundness issues concerning **what** will be delivered; **where** it will be delivered; **when** it will be delivered; and **how** it will be delivered through the CS and other subsequent Plans and Documents.

Legal Compliance - Duty to Co-operate and the Sustainability Appraisal

Duty to Co-operate

5. Amended section 20(7B) of the 2004 Act establishes that the duty to co-operate imposed by amended section 33A is incapable of modification by me at this Examination. Therefore, this is one of the first things that I have to examine because if the legal requirement is not fulfilled then I have no choice other than to recommend non-adoption of the CS.
6. Document CD23 provides information on this duty, but it is 'broad brush' and deals primarily with the very early stages of initiating the overall co-ordination of wide ranging strategic policy across the various sub-regions of which the City of York forms a part. It does not address the relevant questions about the 'local' strategic impact of the CS itself on its immediate neighbours in terms of its allocations, policy implications, and its infrastructure and infrastructure requirements – or vice versa (i.e. the impact of neighbouring Plans on the City of York). The duty is about strategic planning in the context of localism.

7. The Council has said it will produce a further Supporting Paper on how it has satisfied the legal duty to co-operate during the preparation of the CS, and I will consider this before making any further judgement on this matter.

Sustainability Appraisal

8. The Council will be aware of the various court cases on Sustainability Appraisals (SA) of Plans, including that at Forest Heath and the recent case involving the Joint Greater Norwich Core Strategy. The judge in that last case said that "*the need for outline reasons for the selection of the alternatives dealt with at the various stages*" of a Plan's preparation has to be addressed in the final SA of that Plan.

Forest Heath: <http://www.bailii.org/ew/cases/EWHC/Admin/2011/606.html> (see in particular paragraphs 15 to 17 and 40).

The Greater Norwich judgement of 24 and 29 February 2012 is not yet available on the Bailii web site. The Court upheld one of the grounds of challenge in finding that the local planning authorities there had not complied with the requirements of the Strategic Environmental Assessment regime because they had not properly considered alternative options that did not rely on significant housing growth in one part of the plan area. The Court ordered that the housing strategy for the Broadland District be reconsidered.

9. Thus, the final SA here has to outline the reasons why the various alternatives previously canvassed are still not as good as the proposals now being put forward in the CS. So far as I can see, the final SA (CD3) does not undertake this assessment adequately in its section 4, although the SA is missing its Annex 3 and it might be that this missing Annex may do this.
10. The Preferred Options SA (CS15) considers options and alternatives in its section 4, but I have difficulty in understanding from that why particular alternatives were not chosen in preference to others that were. The text appears to be a generalised discussion of the options, concentrating on the proposed policies performance against SA objectives, without clear conclusions as to which overall alternative strategy should be pursued. The same is true of the Issue and Options 2 SA (CS6). Moreover, I am not convinced that the options selected are reasonable policy alternatives.
11. At submission I became the joint SA authority with the Council, and this joint responsibility continues until my final report is issued. However, the Council will become the competent authority on adoption and so it will have to deal with any resulting s113 challenge under the 2004 Act. Is the Council satisfied that the SA accompanying the draft plan (the submission CS) adequately gives reasons, or summarises or repeats the reasons that were previously given, for rejecting any reasonable alternatives, and that those reasons if given previously are still valid?

The overall strategy and the amount of development, its distribution, and its delivery across the City of York area

12. The CS is the place to make key decisions about the distribution of development and to set out clear guidance for the allocation of sites in future Plans. The strategy for the amount and distribution of development needs to be clear and based on a robust justification. It also needs to be realistically deliverable. I am concerned that this may not be the case with the submitted CS.

Appropriate strategy

13. In order to be sound, the CS has to be justified using proportionate evidence to show that it is the most appropriate strategy when considered against the reasonable alternatives. For the reasons set out above on my SA concerns, I am

not convinced that the overall strategy is, in fact, the most appropriate as I cannot identify what reasonable alternatives were considered and why they were rejected.

Residential development

14. Policy CS6 identifies around 12,270 dwellings out of the 16,000 proposed during the plan period. This leaves some 3,730 dwellings for which the CS does not specify a geographical location, which it should do as a vital strategic matter.
15. The CS takes account of windfalls in the first 10 years of the plan period, which Government policy says should not be done unless compelling evidence of genuine local circumstances that prevent specific sites being identified is provided. This has not been done. Correcting this would increase the numbers of unidentified dwellings by some 1,400 to around 5,130 dwellings.
16. It is clear from the above that the Areas of Search are likely to be used to accommodate most of the 5,130 dwellings in the longer term. The shortfall is so large that the CS has to take this hard, strategic decision now – it cannot rely on the hope that windfalls or other brownfield sites will take up a shortfall of such a large extent. Key sites which are critical to the delivery of the housing strategy over the plan period must be identified in the CS. But I can find no evidence on the potential capacity of these Areas of Search, or even on their likely area for housing. And they are not assessed in the SHLAA.
17. I am aware that some representors believe the Council has under-allocated in terms of housing numbers, and that the proposed densities in policy CS9 are too high. If the Examination shows these to be justified concerns, then any necessary increase in housing numbers or relaxation in housing densities would exacerbate the above situation.
18. There is no housing trajectory in the CS, and that in the evidence base (CD13) is unclear about how and when all the required housing will be accommodated in the plan period, especially during its end period.
19. There is no information on whether the CS has identified specific deliverable sites sufficient to provide five years worth of housing against the housing requirements, and a supply of specific, developable sites or broad locations for growth for the next two five year periods (15 years in total), as required by Government policy.
20. I am not confident that the evidence shows that the larger villages in the settlement hierarchy can accommodate 13% of the new housing over the plan period. The CS does not say how this would be split up between the villages.
21. Policies CS3 and CS4 leave the detail of the York Central and British Sugar/Manor School strategic allocations to supplementary planning documents (SPDs). The sites are too large, too complex and, most importantly, the level of detail in the CS is too sparse on what goes where and when for this to be left to SPDs. They should each be guided by an AAP, like the City Centre (policy CS2), and the CS policies need more detailing.

Employment development

22. Policy CS16 sets out the strategy for the development of employment land. Irrespective of whether the amount chosen is right or wrong for York's regional role (which is for the Examination to debate), the CS does not provide any detail on the amount of land needed to be allocated to meet the chosen target; is not totally clear on where it will be located; and does not say when or how it will be delivered. There is no proper analysis in the CS of need balanced against committed sites and allocated sites, by site and over time – that is, there is no 'employment land trajectory'. This major question cannot be avoided.

23. Document CD14 sets out some of this missing information, the relevant parts of which should be in the CS. But it also shows that the analysis does not cover the whole plan period (only to 2029, and that with some uncertainty), and that there is a large over-supply in B1 (a) offices and B1 (b) research and development. The CS does not say what the implications of this over-supply might be (for instance, on housing numbers and the sub-regional economy of nearby Districts), nor what it intends to do (if anything) about it. Again, the CS must answer these obvious strategic questions.
24. The Area of Search C (Northminster) is left in the CS as a possible development but the figures in CD14 seem to indicate that it is not needed during the plan period. That begs the question as to why the CS even mentions it and tentatively suggests its allocation, especially as it lies in the Green Belt.

Community facilities development

25. Policy CS11 and paragraph 11.7 identify the need for a new swimming pool and a community stadium. These are key strategic land use decisions which need to be taken in the CS, but the policy fails to identify where, when or how these facilities will be provided. Similarly for a new fire station mentioned in policy CS12 and paragraph 11.11. There are other new strategic sports facilities mentioned in the evidence base which might also be required during the plan period, such as a measured closed circuit cycling facility to accommodate training and competitive events, and these are not dealt with in the CS, which they should be.

Waste and Minerals

26. The CS does not seem to deal adequately with the strategic issues of waste disposal. How and where will waste be disposed of or otherwise treated or handled? Is any of this cross-boundary? In particular, what is planned for Commercial and Industrial Waste and for Construction, Demolition and Excavation Waste? No clear strategic guidance is given to whatever 'the appropriate DPD' is that will handle these matters, nor is there any timescale for that DPD.
27. What minerals will actually be required during the plan period? Is coalbed methane required? What mineral reserves are there and where? What should be done to safeguard them? Are Minerals Safeguarding Areas or 'landbanks' required? Are sites for future mineral working needed and identified? Where are the criteria-based policies against which planning applications for mineral working will be considered and specific sites will be allocated? Is it necessary to include policies to safeguard existing and potential storage, handling and processing facilities for the bulk transport of minerals? What monitoring targets are therefore necessary? These basic questions are not answered. No clear strategic guidance is given to whatever 'the appropriate DPD' is that will handle these matters, nor is there any timescale for that DPD.

Deliverable and so effective

28. To be effective (a soundness criteria) the CS should be deliverable over its period. In a number of cases there appear to be significant infrastructure or remediation costs associated, for instance, with the strategic allocations for new development (e.g. two rail bridges for York Central). The Council's Infrastructure Delivery Plan (CD9) is generalised and deals with infrastructure by function across the whole of the plan period and not by allocated site. The infrastructure policy (CS25) does not assist – indeed it says that critical elements of infrastructure have not been considered – and there are some expensive road schemes mentioned in CS18 which are to be funded by developments (paragraph 15.9). It is not at all clear which infrastructure requirements are needed to be completed before each proposed development site can proceed.

29. The CS does not provide any information about the financial viability of any of the key sites, particularly the strategic allocations or the Areas of Search. Given the apparent reliance on these locations to provide a significant proportion of housing, and possibly employment development, it is not clear that the spatial strategy is realistically deliverable.
30. To enable the CS to be deliverable, the sites and the amount of development identified in it should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened. There appear to be a large number of different costs in the CS likely to be applied to development, such as requirements for affordable housing, education and training, road schemes, open space, green infrastructure, air quality, renewable energy, sustainable construction and drainage, and other infrastructure contributions such as those in paragraph 22.3. I have not seen any evidence which shows that development would be deliverable when taking account of these additional costs requirements together with the normal cost of development and on-site mitigation. Would there still be acceptable returns to a willing land owner and willing developer?
31. I am concerned that there is no overall assessment of viability which justifies the affordable housing or renewable energy and sustainable construction policies (policies CS10 and CS21 respectively). As an aside on policy CS21, I have not yet located the evidence (it does not appear to be in LD19) which gives the local justification for requiring developments to have renewable energy and sustainable construction targets which are in advance of those set by Parliament for the country as a whole. If it is in the evidence base please can it can be pointed out to me - or it can be provided later.
32. Given the uncertainty about development viability, the contingency 'risk' planning in the CS is inadequate. I am concerned that the CS does not give a clear indication of what it would do if a vital infrastructure project or a requirement necessary to develop a site was cancelled or delayed. For instance, what happens if one or more of the strategic allocations cannot be delivered on time or at all?

The Green Belt and Areas of Search

33. As the Areas of Search are key sites which are critical to the delivery of the housing and (possibly) the employment strategy in the later part of the plan period, they need to be identified now and removed from the policy CS1 Green Belt, thus setting boundaries which will endure beyond the plan period. Leaving such important strategic decisions to a lower level Plan will lead to confusion and uncertainty. The Areas cannot just be 'safeguarded land' outside the Green Belt because some of it is clearly needed for development within the plan period. On the other hand, I am not convinced that sufficient work has been undertaken to enable a proper decision to be made on the exact choice and boundaries of the Areas.

Supplementary Planning Documents

34. Supplementary planning documents should only be necessary where their production can help to bring forward sustainable development at an accelerated rate, and must not be used to add to the financial burdens on development. It would seem that many of the proposed SPDs in the CS are, in fact to be used to add to the financial burden of developments.
35. Moreover, as I have already mentioned, many of the policies in the CS have been inappropriately devolved down to SPDs. Many of them appear to be deliberately designed to avoid the independent examination of policies that would significantly affect development in the City of York area. And many of them seem to be used to avoid taking the difficult, crucial, strategic decisions that should be decided now in the CS.