



**EXAMINATION OF THE CITY OF YORK LOCAL PLAN
2017-2033**

PHASE 3 HEARINGS

MATTER 5: QUEEN ELIZABETH BARRACKS, STRENSALL

CITY OF YORK COUNCIL STATEMENT

Matter 5 – Queen Elizabeth Barracks, Strensall

5.1 Are the proposed deletions of Policy SS19 and allocations ST35 and H59 necessary for soundness?

- 5.1.1 Yes, the proposed deletion of Policy SS19 and allocations ST35 and H59 is necessary on the basis that City of York Council (CYC), as the competent authority, cannot be certain that the development will not adversely effect the integrity of Strensall Common Special Area of Conservation (SAC). The CYC HRA (2020) EX/CYC/45 and associated appendices in EX/CYC/45a, justify these deletions. In coming to this view, CYC has given consideration to current conditions, the estimated impact of recreational pressure, the proposed mitigation measures and the relevant legal tests.
- 5.1.2 CYC has also had regard to the views of Natural England (NE) who support these deletions. Cogent reasons are needed to depart from them as established in case law¹. It is wholly appropriate for CYC to give great weight to the views of NE relating to nature conservation and it may reasonably rely on those views.

Current Conditions

- 5.1.3 The Council's 2020 HRA reflects NE's (2011) condition assessment of the underpinning SSSI, that Strensall Common was in 'unfavourable recovering condition'. NE subsequently published a new 'site check' assessment in 2021, which concluded that the SSSI had achieved 'favourable condition' across its entire extent. The condition assessment relates to the qualifying features of the SSSI and not the SAC. However, as the SSSI is notified for the equivalent wet and dry heathland communities that form the reasons for designation of the SAC, its outcomes can be taken as a reasonable surrogate for the SAC.
- 5.1.4 The outcome of the new site check is not reflected in the HRA 2020, but the CYC has considered it. While it provides updated and valuable contextual evidence by which the current status of the site can be judged, it does not materially change the outcome of the HRA. Indeed, the HRA 2020 does not suggest that adverse effects are

¹ R. (Morge) v Hampshire County Council [2011] 1 W.L.R. 268 at [45] (Baroness Hale) and R. (Prideaux) v Buckinghamshire County Council [2013] Env L.R. 32 at [116] (Lindblom J.).

happening on the SAC now but that it is not possible to rule out that increasing levels of recreational pressure could lead to harm arising.

- 5.1.5 A condition assessment is not explicitly designed to assess emerging threats, including recreational activities. In this context it is worth noting in the 2021 condition assessment that Natural England makes several references to the impact of recreation, notably the fire of 2019. A number of other incidents that relate to recreational pressure have also been recorded by the Strensall Training Conservation Area (see EX/CYC/45a, Appendix G).

Impact of Recreational Pressures

- 5.1.6 The impact of recreational pressure is dealt with extensively in the HRA 2020. A visitor survey by Footprint Ecology was undertaken to better understand likely impacts and uplifts in recreational use associated with development proposed in the Plan. The results of this are reflected in the HRA 2020 (and the full survey published in included in EX/CYC/14, Appendix D). This survey, as it acknowledges, and others like it are only 'snapshots' in time. The methodology (and limitations of a survey of this type are dealt with in EX/CYC/14, Appendix D, Section 2 and paragraph 7.8 – 7.10). However, it is consistent with similar surveys used in the context of Local Plan HRAs at a range of other European sites around the country. The approach is considered reasonable and appropriate to inform HRA and the CYC's duty as the competent authority.

Assessment of mitigation measures

- 5.1.7 The Defence Infrastructure Organisation (DIO) has put forward a range of mitigation measures. The HRA 2020, considers these in paragraph 4.2.121 to 4.2.223.
- 5.1.8 The HRA 2020 follows principles of case law, both UK and EU. In the 'Dutch Nitrogen case', the CJEU² confirmed that an appropriate assessment is not to take into account the future benefits of mitigation measures if those benefits are uncertain, including where the procedures needed to accomplish them have not yet been carried out or because the level of scientific knowledge does not allow them to be identified or quantified with certainty.
- 5.1.9 The HRA 2020 also refers to, and applies as appropriate, guidance provided within the Habitats Regulations Assessment Handbook which

² Coöperatie Mobilisation for the Environment and Vereniging Leefmilieu (C 293/17, C 294/17) [2019] Env. L.R. 27 at paragraph 30

states that for mitigation to be fully taken into account: '... all 'mitigation measures' should be effective, reliable, guaranteed to be delivered and as long-term as they need to be to meet their objectives ...' It goes onto state: 'Any doubts about the effectiveness, reliability, timing, delivery or duration of mitigation measures, should be addressed by the competent authority before relying on such measures when applying the integrity test.'

- 5.1.10 The HRA 2020 acknowledges the value that each of the proposed mitigation measures proposed by DIO can bring but considers that none can be relied on individually or as a package so as to meet relevant legal tests and the criteria laid out in the Habitats Regulations Assessment Handbook.
- 5.1.11 As dealt with in the HRA 2020, the impact of increased visitor pressure will effectively be experienced in perpetuity. Mitigation measures must also be effective in perpetuity. DIO indicate they will retain land ownership, but mechanisms to prevent responsibilities being transferred to a new owner are not in place. It is also noted that the special and unique ability of the military to secure its boundaries would be lost. In any event, retained land ownership would not overcome the other concerns with the efficacy of the proposed mitigation.
- 5.1.12 The subsequent mitigation measures proposed as modifications by DIO (SID 345) in its 2021 submission in response to consultation on proposed modifications have been considered but do not change CYCs view. None can be relied on upon to remove reasonable scientific doubt that they cannot be considered to be wholly effective, a reflection, in particular of the proximity of ST35 and H59 to the European site as outlined below.

400m Zone

- 5.1.13 CYC note that the DIO advocate boundary treatments to limit access within 400m, but setting aside matters of feasibility, questions remain about the effectiveness of boundary treatments, notably:
- There is access to the site at the end of Howard Road providing an easy entrance point onto the heath around 130m (H59) or 270m (ST35) from where the housing will be located.
 - In the areas away from the Howard Road entrance, there is a credible risk that the fence could be breached over time, given the publicly accessible parts of the common will be visible through the fence.
 - The wetland areas shown in the Masterplan Report and considered to preclude access are SuDS and in order to function properly these waterbodies are designed to be dry and can be

expected to be so for much of the year. As such they cannot be relied on as effective barriers to access.

- The fence will not provide an effective barrier to prevent invasive species spreading, for example through garden waste being tipped against or over the fence.
- The fence will not necessarily prevent fire spreading, e.g. the risk of sparks from garden bonfires or from children making campfires near the fence.

5.1.14 Mitigation is more feasible for development further away from the SAC – new housing across a wide area will result in very different pressures compared to focussed development directly adjacent to the SAC boundary. There is a very strong body of evidence that shows urban effects and recreation use being particularly associated with development in close proximity to the boundary of heathlands³. CYC would highlight:

- a) The likely limited effectiveness of SANG as mitigation for development in such close proximity to the SAC, other heathland areas such as Thames Basin Heaths or Dorset Heaths do not have SANG as mitigation for development within 400m - there is a presumption against development within 400m.
- b) Mitigation measures on a SAC such as strategic access management and monitoring are more relevant for development further afield, it is noted:
 - in the Dorset Heaths there are rural heaths such as Winfrith and Tadnoll have much lower levels of nearby housing compared to Strensall yet the 400m exclusion restricts growth adjacent to the heath and ensures confidence in the effectiveness of the mitigation for those visiting from housing growth further afield (typically by car).
 - People living so close to the boundary (within 400m) visit regularly due to convenience and it can be harder to engage through SAMM.

5.1.15 The use of a 400m zone is now well established around several heathland European sites in England and has been widely upheld in Local Plans and thoroughly tested at examination and public inquiries.

Application of Relevant Legal Tests

5.1.16 A competent authority may only authorise an activity (whether by planning permission or plan provision) on the protected site if they have made certain that it will not adversely affect the integrity of that site.

³ Examples: Kirby, J. S., & Tantram, D. A. S. (1999). Monitoring heathland fires in Dorset: Phase 1, Liley, D., Clarke, R. T., Underhill-Day, J., & Tyldesley, D. T. (2007). Evidence to support the Appropriate Assessment of development plans and projects in south-east Dorset.

This means that should be no reasonable scientific doubt as to the absence of such effects.

- 5.1.17 In the case of *Holohan*⁴ the Court of Justice of the European Union (CJEU) held that an appropriate assessment : “may not have lacunae and must contain complete, precise and definitive findings and conclusions capable of dispelling all reasonable scientific doubt as to the effects of the proposed works on the protected area concerned”.
- 5.1.18 The Council’s HRA has applied relevant legal tests in its HRA. The HRA prepared by DIO (July 2021), wherein reference to the principles of case law in the HRA is almost completely absent and fails to address or even mention either the test of ‘beyond reasonable scientific doubt’ or ‘absolute certainty’. Together, these omissions introduce an element of doubt concerning the interpretation of fundamental tests.

5.2 Could the difficulties identified by the Council and Natural England in relation to either site be overcome?

- 5.2.1 No, not in so far as this implies the inclusion of site allocations ST35/H59. The forecast level of increased recreational use associated with ST35 and H59 and the proximity of these sites to Strensall Common meant adverse effects cannot be ruled out.
- 5.2.2 This does not mean there are not alternative options for appropriate development at this site. CYC acknowledge Queen Elizabeth Barracks is a brownfield site (and note its public sector ownership). CYC is ready to actively work with the DIO to consider alternative uses for the site that meet Policy GI2aa and other Plan policies working closely with NE.
- 5.2.3 The HRA 2020 supported inclusion of Towthorpe Lane (E18) as an employment site. Here the HRA 2020 found that mitigation *would* be sufficient to remove the threat of an adverse effect beyond reasonable scientific doubt, allowing the Council to adopt this allocation. This reflects the very different characteristics of an employment compared with a residential development/allocation as outlined in HRA (paragraph 4.2.243 - 4.2.248).
- 5.2.4 The HRA does not identify adverse impacts associated with the current level of recreational use (it does highlight threats from a range of incidents – and increase use could increase the impact of these). Indeed, the current uses of the barracks includes an element of ancillary residential accommodation (including single living

⁴ *Holohan v. An Bord Pleanála* (C-461/17) [2019] P.T.S.R. 104

accommodation and transit bedspaces). New Policy GI2A, the content of which is endorsed by NE, allows for replacement residential to the level which currently exists as it would deliver no net increase. It also allows, subject to appropriate assessment, for non-residential uses (where it is easier to control occupants, and arguable more aligned with existing employment type use of the barracks); this would be similar to the approach adopted at Towthorpe Lane.

- 5.2.5 In this context, the quantum (if not location) of residential units at H59 of 45 dwellings (and potentially a higher figure) might be acceptable where GI2A requirements are met. The location of the housing on H59 would not be acceptable given the Green Belt boundaries defined (see response to question 5.3 below).
- 5.2.6 In short, the Plan does not exclude non-residential uses or replacement residential where these will not lead to adverse effects on the qualifying heathland features of the SAC or its typical species. Development at this site could therefore include employment or an employment led mixed use scheme including an element of replacement residential in accordance with GI2A.
- 5.2.7 CYC is committed to use its broader place making role to broker relationships with developers of appropriate non-residential uses to support enable this. DIO are aware of such efforts and intent. CYC would like to work creatively and effectively with DIO and NE to find solutions that meet Plan requirements.

5.3 In the event of the deletion of either site or both, what is the intention in relation to the resulting Green Belt boundary?

- 5.3.1 The proposed Green Belt boundary for Strensall is described in Annex 4 of the Green Belt Addendum EX/CYC/59f at pA4:245 to A4:268. The assessment notes that the previous allocations have been removed and there are no further allocations in Strensall. The modification to the boundary is shown in Annex 6 of the Green Belt Addendum EX/CYC/59h at pA6:42 (PM 101). The final Green Belt boundary for the village is shown on pA4:268 of Annex 4.
- 5.3.2 A clear and defensible Green Belt boundary has been defined in accordance with the NPPF, applying the boundary methodology set out in Section 8 of TP1 Green Belt Addendum (EX/CYC/59) and in accordance with Strategic Principles 6, 7, 12 and 13 (p38-39):
- SP6 - The Heritage Topic Paper Principal Characteristics set the framework for assessing overall impact and harm on the historic

character and setting of the city (and examining sprawl and encroachment).

- SP7 - The characteristics of York that are relevant to keeping land permanently open to protect the historic character and setting of the city and therefore relevant for setting the detailed boundaries of the York Green belt are: compactness, landmark monuments, and landscape and setting.
- SP12 - York Green Belt boundaries will be created that will not need to be altered at the end of the plan period (2033).
- SP13 - Detailed boundaries will be defined clearly, using physical features that are readily recognisable and likely to be permanent.

5.3.3 Boundary 5 (to the south of Strensall) is the only boundary that was impacted by the removal of the previous allocations. The proposed boundary seeks to ensure that Strensall Common to the east of the barracks is kept permanently open given its importance to Purpose 4 due to its historic association with the village and its contribution towards the setting and special character of the village and York's rural hinterland. The proposed boundary also seeks to prevent coalescence with Haxby (to the west) which is important to the setting of the historic city (Purpose 4). The proposed boundary also seeks to prevent unrestricted sprawl and limit further encroachment into the countryside in order to protect Purpose 1 and Purpose 3 by containing the main military barracks within the urban area given it does not function as part of the countryside in terms of its relationship or acceptable uses within it.

5.3.4 Boundary 5 is described on pA4:258-259. The proposed boundary follows clearly defined features which are recognisable, and which have been established for a significant period of time, therefore providing permanence. This includes a combination of carriageway, property curtilages, hedges, trees and fences line. The permanence of the proposed boundary is reinforced by containing the limits of the urban area in this location where it meets less dense and more open land uses. As a result, the boundary includes the military sports pitches and Strensall Park within the Green Belt as Strensall Park consists of lower density development and is interspersed with open areas. The sports pitches are acceptable uses in the Green Belt as they preserve openness.

5.3.5 The assessment acknowledges that there are very short stretches of linking boundary with no clear definition on the ground however they can be defined by reference to points on the identified boundaries on either side. Alternative boundaries have been explored in the assessment at pA4:259; however, the assessment concludes that the proposed boundary is necessary to prevent future sprawl and encroachment and the alternatives would not achieve this. The proposed boundary is sound.

- 5.3.6 For ease of reference, maps showing all of the Green Belt boundaries in question have been appended to this Statement (see Appendix 1).

5.4 In the event of the retention of either site, or both, are the Green Belt boundaries reasonably derived?

- 5.4.1 The previous allocations ST35 and H59 are shown on the City of York Publication Draft Local Plan Policies Map – North (CD004A). As set out in the answer to Q5.1 above, the allocations were deleted due to the potential adverse effects on the integrity of the Strensall Common SAC as evidenced in the CYC HRA (2020) EX/CYC/45.
- 5.4.2 The allocations were deleted due to non-Green Belt related reasons therefore in the event that the allocations are retained, the previously proposed Green Belt boundary as detailed on the Policies Map will be applied. This boundary was considered appropriate and reasonably derived when the allocations were defined and there are no changes in Green Belt matters or policy which would alter this.
- 5.4.3 As shown on the Policies Map, a clear and defensible Green Belt boundary was defined in accordance with the NPPF and the boundary methodology set out in Section 8 of TP1 Green Belt Addendum (EX/CYC/59).
- 5.4.4 The previously proposed Green Belt boundary around H59 follows clearly defined and recognisable features including mature tree belt, woodland, and the curtilage of properties. These features offer permanence and provide a clear distinction between built up areas and open land.
- 5.4.5 In relation to ST35, the boundary follows clearly defined and recognisable boundaries including the curtilage of properties and the eastern and southern extent of the barracks. These features have been established for a significant period of time, therefore providing permanence. The boundary excludes Strensall Park from the Green Belt. This is not within the allocation ST35 however given that the allocation adjoins Strensall Park, it would form a more definitive boundary. If ST35

is removed, there is less of a linkage between the main barracks site and Strensall Park due to the intervening sports and playing fields.

- 5.4.6 In the event of the retention of either or both sites, the previously proposed Green Belt boundary is recognisable and permanent and is reasonably derived.

5.5 If any development of allocation H59 is to be governed by general development control policies, is this sufficient?

- 5.5.1 Site H59 is proposed for deletion. The development of H59 is limited by the HRA matters outlined in this hearing statement and the identification of the site within the Green Belt. Notwithstanding this, development control policies are sufficient to govern all non-strategic sites as explained in CYC's Phase 3 Matter 8 hearing statement in response to question 8.2.

5.6 Is allocation H59 deliverable?

- 5.6.1 The site has been deleted from the Plan, for the reasons outlined in 5.2, and as such is not deliverable. However, the site was initially identified for housing in the submission version Plan and the CYC has not identified deliverability issues outside of those identified in this statement.

5.7 Are there any site-specific issues (other than those in 5.2 above) relating to allocation H59?

- 5.7.1 No, CYC has not identified any other site-specific issues.