

City of York Local Plan Examination

Phase 4 Hearing Sessions

Hearing Statement on behalf of Defence Infrastructure Organisation

Matter 5: Green Infrastructure

August 2022

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For and on behalf of Avison Young (UK) Limited

Question 5.3

Will (new) Policy GI2A and the associated text be effective in protecting Strensall Common SAC?

- 1.1 The Planning statutory framework requires that Local Planning Authorities must be satisfied that their Plans are sound when they are submitted for examination. This is confirmed by Section 20(2) of the Planning and Compulsory Purchase Act (2004) which states the authority must not submit a development plan document *“unless they think it is ready for independent examination.”* The Procedure Guide for Local Plan Examinations (Updated 4 February 2022) adds that *“The LPA should only submit a plan if they consider it to be sound and there will not be long delays during the examination because significant changes or further evidence work are required”* (para 1.2).
- 1.2 We must assume, therefore, that CYC was happy that the Local Plan was sound when it was submitted. In addition to this we note that proposed new Policy GI2a was not included in the Local Plan as submitted on 25 May 2018 and it is proposed to be included by way of a Main Modification (PM70 of EX/CYC/58 dated April 2021).
- 1.3 GI2a may therefore only be added into the Plan if it is needed to make the Plan sound. DIO has already responded to the York Additional Consultation (July 2021) and would refer the Inspector’s to these previous objections to Policy GI2a.
- 1.4 DIO have an absolutely fundamental objection to the addition of this policy at this stage of the plan making process (or at least that part of it which would create a 400m exclusion zone around Strensall Common). Modifications may only be brought forward at this stage on the basis that they are required to make the Plan sound. That in turn could only be so here if the additional protection that is proposed by way of an exclusion zone were required to avoid a breach of the Habitats Regulations.
- 1.5 DIO strenuously disagrees with CYC’s in principle concerns over development within 400m of Strensall Common. For the reasons given at previous stages of engagement (see sections 3 and 4 of Appendix 1). However, even assuming that the Inspectors were to agree with the Council’s concerns, and were to approve the deletion of site allocations ST35 and H59 accordingly, it could not arguably be required to go further than this and include policy would GI2a (criterion a). Such a policy could only be needed for this purpose if, without it, the adoption of the plan breached the Habitats Regulations. If site allocations ST35 and H59 are deleted, then the Plan will not contain any commitment or authorisation for development within 400m of Strensall Common such as would engage the obligation for appropriate assessment or the prohibition on the authorisation of such development. Accordingly, the obligations under the Habitats Regulations in relation to such development are not arguably engaged by the Plan.
- 1.6 In short, this additional policy could only be considered necessary if the Inspectors have already agreed with CYC’s position on the deletion of ST35 and H59. But, in that case, the Plan will contain no commitment to development of the kind referred to in G12a(a) (within 400m of Strensall Common), and hence such a policy is not arguably required for compliance with the Habitats Regulations.
- 1.7 It follows, not only that GI2a is not necessary for soundness, but that it would positively unlawful for policy GI2a to be adopted by way of a main modification (and to do so would render the plan as a whole unlawful).
- 1.8 The HRA (2020) [EX/CYC/45] states at para 4.2.335:

"Mindful of the visitor survey evidence, the creation of a new policy, as an addition to Policy GI2, to both preclude residential development within 400m of the boundary of Strensall Common SAC and ensure that mitigation is provided to prevent adverse effects arising from windfall residential development on land within the 5.5km threshold, would allow the risk of adverse effects on the integrity of the SAC to be avoided or mitigated."

- 1.9 This along with the preceding text in the HRA, is not sufficient to warrant the introduction of a new policy in the York Local Plan. There is no explanation as to what specific Visitor Survey evidence Waterman are referring to that would justify this policy and as far as we can see there is no evidence in the visitor survey that supports the proposition of a 400 metre buffer based on visitor survey evidence. The policy is simply not based on robust evidence.
- 1.10 The HRA fails to properly consider whether a policy such as GI2a is necessary to ensure that the Plan does not pose a threat to the integrity of Strensall Common SAC. GI2a is therefore not required to ensure adverse effects as a result of development is avoided and mitigated.
- 1.11 The HRA has made a number of recommendations as regards changes to and the deletion of allocations and that is as far as the Plan needs to go to ensure that it does not have an adverse effect on the integrity of the SAC.
- 1.12 There are further problems with PM70 (identified in Appendix 1) but are highlighted as follows:
- a) the Policy derives from a recommendation made by Waterman in the HRA, but the HRA does not examine whether it is necessary to prohibit all housing development within 400m of the SAC boundary and neither does it contain an analysis that justifies such a conclusion;
 - b) there is no Strensall specific, evidence either within the HRA or elsewhere, which demonstrates that any and all housing developments proposed within 400 linear metres of the boundary of the HRA would cause harm to the integrity of the SAC and that such harmful effects could not be prevented or mitigated;
 - c) there is no evidence because, in spite of what Waterman says, the 400m buffer has its origins in analysis of cat predation and intense development in areas with large populations which are not a concern at Strensall, and although Waterman argues that a 400m rule has been introduced elsewhere to tackle urban edge effects also, these can be ruled out through design and the control / management of behaviours;
 - d) there is also no evidence because, so far as we are aware, there is not a single example of either an urban edge effect or other inappropriate behaviour being caused / committed by any of the existing residents that live within 400m and no data which demonstrates that those living within 400m of a protected site are more likely than anyone else to behave inappropriately towards it; and,
 - e) on the available evidence in respect of current and forecast levels of use, part (b) of the Policy is simply not justified.
- 1.13 Any other development proposed, post adoption of the Local Plan, which it is considered may impact adversely on the SAC, will have to be the subject of HRA at the planning application stage and the integrity of the SAC will be safeguarded through that process.
- 1.14 The primary effect of PM70 would be to forestall any future planning application for residential development within 400m of Strensall Common. Whatever conclusions the Inspectors reach on the current proposals at ST35 and H59, there is not arguably an evidential basis to support so sweeping a policy. Further, whatever the evidence, PM70 is not arguably needed for compliance with the Habitats Regulations and hence not needed to make the Plan sound.

- 1.15 An exclusion zone, such as that proposed in GI2a, goes well beyond what is required to make the Plan sound and Proposed Modifications 70 and 71 (EX/CYC/58) and all other modifications that refer to this proposed new policy (including PM58, PM59, PM60, PM61, PM63, PM65) should be rejected.

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