

8.0 MM5.11, Policy H5a): The Osbaldwick Site

8.1. The proposed allocations at the Osbaldwick Site are not reasonable, viable or deliverable. The Osbaldwick Site is categorically not capable of delivering further pitches.

8.2. Sections 13(1) and 13(5) of the Equality Act 2010 provide that:

(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

(5) If the protected characteristic is race, less favourable treatment includes segregating B from others.

8.3. The allocation of – effectively - 17 Pitches at Osbaldwick amounts to Direct Discrimination under Sections 13(1) and 13(5) of the Equality Act 2010. It does not comply with the Public Sector Equality Duty under s149 of that Act. To this extent, the Local Plan is not legally compliant.

8.4. The proposed allocations at Osbaldwick do not represent an available, suitable location for development and are inconsistent with National Policy to ensure Sustainable Development. The site does not meet the requirements as set out at Paragraph 13 PPTS, or the corresponding criteria set out at Policy H5(c) of the Local Plan.

8.5. The allocations are inconsistent with National and Local Plan Policy. To this extent, the Local Plan is not sound.

8.6. Aerial photographs of the Site at Osbaldwick are provided at Appendix 8 to this document.

8.7. As is shown in Appendix 8, the Site is located some distance from the local community on the edge of an industrial estate and immediately adjacent to a large Waste Transfer Station. There is no bus stop or shop within reasonable walking distance, and access to and from the site on foot is through an industrial estate characterised, during working hours, by the movements of large trucks and skip wagons. This is profoundly and demonstrably unsafe, and has already led to the tragic death of one elderly resident of the site.¹

8.8. Existing residents of the Site experience chronic social exclusion and isolation as a direct consequence of the inappropriate location of the Site. This has had and continues to have clear consequences for the health and welfare, and the social, educational and economic opportunities of the people living at the site. Children report that they feel socially excluded as they are not able to leave the site safely to play with other children, and there is no practical or sustainable transport link between their home and their local community. In our experience, 11 and 12 year old children have been left in a situation in which they *recognise and feel* the social exclusion they suffer due to the location of their site, and the impact that this has on them. “*The only children we ever get to play with are other Travellers.*” (See s13(5) Equality Act 2010)

8.9. The Design and Access statement for an application by the Council in 2013 to add a further 6 pitches to the site (Appendix 6) recognises that the adjacent land use involves ‘*forklift*

¹ See Newspaper Report Here - <https://yorkmix.com/updated-health-and-safety-executive-investigate-death-of-elderly-woman-struck-by-a-lorry-in-york/>

movements throughout the working day together with large lorry movements and loadings' but adds that 'It is an adjacency already established in relation to the existing Gypsy and Traveller Site.' In relation to the 'inert waste transfer station' immediately to the west of the site it is stated that 'site activities are limited to agreed working hours.' There is no acknowledgement of the impact on site amenity or residents' health of the permanent presence of large and dominating piles of waste. The wind continues to blow dust across the site whatever the time of day, and the rats continue to run.

8.10. Paragraph 4.22 of the Committee Report for Application ref: 13/02704/GRG3, provided at Appendix 9, states that:

'4.22 Murton Parish Council considers that the surrounding industrial/commercial area is incompatible with good housing. Whilst the area to the north is open countryside officers agree that the area to the south has a heavily commercial character. Nevertheless the existing site has been occupied by Travellers for at least 20 years and is overcrowded. This suggests that whilst the character of the area (including the access to the site) is far from ideal it has not deterred residents from living there. There is a severe undersupply of sites in York for travellers. Officers understand that the application site is available and consider that the presence of the existing site would help to integrate the extension into the surrounding area.' (Emphasis added)

8.11. The CYC Draft Local Plan (April 2005) Policy H16: Residential Sites for Gypsies/ Travellers, as provided at Appendix 10, sets out the criteria against which this application should have been assessed, including:

'a) the proximity of the site to local services and facilities to ensure these are accessible to those on site;

b) the potential to achieve safe access for pedestrians, people with mobility problems, carers with children, cyclists and vehicles;

c) the extent to which the site impacts on important open areas;

d) the need to ensure the site is visually integrated with the surrounding area;

e) the potential impact of the site on the amenity of the environment, neighbouring properties or the operation of sensitive agricultural or other land uses, by virtue of noise and disturbance from traffic generation and on-site business activities and likewise the residential amenity of those on site.'

8.12. No assessment was made in the determination of the 2013 planning application against criteria a) or b). The waste transfer station immediately adjacent to the Site was noted, at paragraph 4.11 of the Committee Report (Appendix 9), but its impact on the health or residential amenity for occupants of the site was not further considered or assessed. Rather, the fact that people who were already chronically socially disadvantaged as a result of the 'far from ideal' location in which they had been, effectively, dumped, and who had nowhere else to go had not gone anywhere else was considered sufficient grounds to justify imposing the same conditions on other Gypsies and Travellers.

8.13. This was and is utterly unacceptable.

8.14. The documents that were included in the Planning Application included the CYC ‘Traveller Sites Management Plan’ (See Appendix 7) in which it is stated that:

‘The aim of this plan and the councils approach to site management is that we ensure the same high standards in providing management and support services on Travellers’ sites as we do to customers in other forms of social housing, taking in account the distinct cultural need and values of the communities we serve.

Effective site management is key to the success of Gypsy and Traveller sites, maximising opportunities for them to be sustainable, successful, self financing and for the travelling community to exist more harmoniously alongside the settled community. Site management should be firm, fair and consistent, treating all residents equally and taking action early if residents break site license agreements. Site Officers should seek to involve residents in management issues so that they take more responsibility for their site and assist in providing solutions to any issues that arise.’

8.15. Personal testimony from a previous resident of the Site,² who was forced to leave her home of 35 years at the Osbaldwick Site due to safety concerns confirms that the Council has been unsuccessful in achieving these aims:

‘The way we were treated as residents on Osbaldwick site by council, police, the NHS, health visitor and Royal mail were inhumane. These are the people who are there to protect and serve the public. All residents on Osbaldwick site are denied such things. Ambulances were held back because they cannot come on site without a police escort, one time one of the residents had taken a seizure in which an ambulance was called, it was stationed at the top of Osbaldwick industrial estate for 40 minutes waiting for a police escort to accompany them.

The running of the site from YORK council is absolutely diabolical!

Site repairs never get done, people are waiting years for things such as no hot water, no electric over the Christmas holidays, mould growing on bathroom, sewage coming up through the sinks, infested with rats (there are that many that they’re getting in to people’s caravans and vehicles) bins not getting emptied, the drains outside of residents pitches flooding and not receiving post on to site these are just a small number off thing that don’t get done. Osbaldwick site has never been a suitable or safe place to live due to the industrial estate and waste disposal site that surround it, there has already been 1 death due to the site’s location. People have only stayed here this long because they have nowhere else to go.’

8.16. At a meeting of the Local Plan Working Group on 16th January 2023, we raised our significant concerns that the Policy failure in H5(b) has led to the Council’s intention to expand the Osbaldwick Site by a further 13 pitches - in addition to the 4 allocated in H5(a) (see paragraphs 4.4 – 4.8 of Document ex_cyc_121a)

8.17. The Council’s Corporate Director of Place recognised the very considerable difficulties that the Council has experienced in managing the site effectively; but abdicated responsibility for the consequences of the Policy failure of Local Plan to the Council’s Housing Team; stating that:

² Provided at Appendix 111

'That's not a planning issue, that's a managerial issue.'

8.18. We disagree. The Council's plans to expand the site can only exacerbate existing difficulties experienced by the Housing Team in achieving effective management of the Site that are, in large part, a consequence of its inappropriate *location*.

8.19. The Corporate Director of Place further stated that the Housing team would be supported in improving management of the site via *'the additional capital that will be invested at the (Osbalwick) site, through those off-site contributions.'*³

8.20. The s106 agreement for the development of the Strategic Site at Monks Cross confirms that these funds may not be used for ongoing management of the site: Rather, 'off-site contributions' brought forward through H5(b) may be used *'to fund the off-site development of [...] Travellers pitches within the administrative area of the Council and for no other purpose.'*⁴

8.21. The Planning Permission that was granted under ref: 13/02704/GRG3 imposed a number of Planning Conditions, including, at Condition 2: *The development hereby permitted shall be carried out only in accordance with the approved plans numbered 3993(05)01/A, 3993(05)02B and 3993(05)03/B.* (See Decision Notice – Appendix 12.)

8.22. Those plans include, at Drawing 3995 (02)05 B,⁵ plans to provide grazing space for horses, including post and rail fencing and field shelters, and a children's play area. Fly-grazing in York has been a serious issue, and has led to car accidents, crop damage, and the death of horses. It has been the cause of significant tension between communities.

8.23. As far as we are aware, field shelters and post and rail fences for grazing horses have never been provided at the Osbalwick Site. This breach of condition has been raised with the Council's Planning Enforcement Team.

8.24. In 2016, the Council granted an application by the Waste Transfer and skip hire company (16/02250/FUL) to vary condition 4 of their original permission and to raise the height of the waste piles (which immediately overlook the Traveller site) from 2m to 5m. The Housing Team, responsible for managing the site was not consulted in this application, let alone the residents of the site, and no mention whatsoever was made of the Traveller Site in the Officer Report to recommend approval of the application.

8.25. The increase in the height of the waste piles has significantly exacerbated issues with environmental quality and safety at the Site. Residents report the presence of brick dust, blowing across their pitches, and an increase in rats on the site. Work has commenced in partnership with the University of York to supply air quality monitoring equipment to residents, in order that the environmental issues associated with the 2016 permission may be proven, and hopefully addressed. Clearly, these impacts should have been assessed by the Applicant and the Planning Officer as a part of the determination of the 16/02250/FUL application. They were not.

³ See <https://www.youtube.com/watch?v=DVcCh7IAhGo&t=630s>; from 37.58

⁴ See S106 Agreement – Monks Cross. Available on the CYC Planning Website; Ref: 18/00017/OUTM

⁵ See Appendix 13

8.26. The ‘Site Identification Study’ of 2014; SD060; considered the suitability of the site at Osbaldwick for the delivery or further pitches at ‘Appendix 3: Sites with No Potential at Stage 2:’

‘This is an existing Gypsy and Traveller site which has an implemented planning permission for 12 pitches. Planning permission has recently been granted for an extension of a further 6 pitches (18 total). The site should be safeguarded for residential Gypsy and Traveller use in the Local Plan. The site is over the recommended number of pitches for a site and therefore it is not considered suitable for further intensification or expansion, beyond which is already permitted.’ (Emphasis added).

8.27. The Council’s Hearing Statement for Matter 4: Spatial Strategy and Site Selection Process, stated in response to question: ‘b) Is the methodology (for site selection) used for each justified?’ :

4.11.10 Yes, the methodology used for each is based on robust and credible evidence that is proportionate (for housing and employment see Annex 2 of SD049a, for Gypsy, Traveller and Travelling Showpeople see Paragraph 3.2.5 of SD060). They have been subject to extensive consultation [CD013]. The portfolio of sites in the Plan are the most appropriate when considered against the reasonable alternatives and have been subject to sustainability appraisal (see response to Question 4.11c).

8.28. Due to its failure to pass the first phase of the site selection process, the Osbaldwick Site was not reassessed in Document SD005: ‘York Local Plan Preferred Options’ June 2016.

8.29. The proposed modification to the Green Belt boundary contained at Paragraph 4.8 ex_cyc_121a makes it clear that the land that is required by Condition 2 to the 2013 permission to provide horse grazing, field shelters and children’s play areas is now intended to deliver, instead, a further 4 – 17 new pitches. These will inevitably be closer to the Waste Transfer Site and its waste piles next door than the existing pitches, the residents of which, as above, are already experiencing environmental harm as a result of their proximity.

8.30. The Explanatory Notes for H5 in the Local Plan state that:

5.42. The suitability of sites not allocated for Gypsies, Travellers or Travelling Showpeople in this Local Plan will be assessed against the locational principles within criteria i-v of Policies H5 and H6 (Part C) as appropriate.’

8.31. Following a meeting between the Council and YTT on the 16th February; the Council has provided a further document - ‘Gypsy and Traveller Policy: Position Paper’ (Appendix 3) – to give further detail and reasoning for its decision to allocate a further 17 pitches at Osbaldwick. Within this document it is stated that:

‘The submitted version of the Local Plan identified the existing traveller site at Osbaldwick wholly out of the Green Belt. Modifications proposed in April 2021 sought to limit the area excluded from Green Belt to that which had been developed with traveller pitches. That modification significantly reduces the site’s capability to expand and in recognition of the assumptions identified above, it has been reconsidered. A revised modification is now proposed, which aligns the site’s Green Belt along the northern and western boundaries with the site boundary of the scheme approved (under application 13/02704/GRG3) for the expansion of the traveller site.

[...]

*In response to the inspectors' seeking greater clarity on how many pitches could be provided on each Council owned site, further assessment of the Osbaldwick (and Clifton) site was undertaken. Regard was given to its constraints and the amount of land needed to provide pitches of a size equivalent to those currently on the site. **No in-principal issues were identified that conflict with the considerations set out in part C of Policy H5 (Gypsies and Travellers) and it was concluded that the site is capable of being configured as two self-contained sites, and that all policy requirements can be satisfied.*** (Emphasis added)

8.32. It is clear that, again, the Osbaldwick Site has not been assessed against the locational principles at criteria i-v of Policy H5(c) in order to determine that it represents a *'suitable location for development'*, where the Pitches are *'achievable with a realistic prospect that development will be delivered on the site within 5 years.'*

8.33. In response to a recent request for the assessment that the Council has made of the ability of the Site to meet the criteria set out in Policy H5(c), we have been advised that *'Policy H5(c) concerns new sites.'* No assessment has been made, and, alarmingly, it appears from this response by the Council that in the event that the CYC Housing Team submits a planning application to the CYC Planning Department to expand the Site further, the Council will, once again, excuse itself from the need to make an appropriate planning assessment against the relevant Policy on the basis the site already exists.

8.34. The fact that those Gypsies and Travellers who have already been condemned to an existence on the edge of an industrial estate immediately next door to a large waste transfer site - where there is no reasonable access to services or facilities and no residential amenity whatsoever - have not made themselves roadside homeless to escape the appalling conditions that arise as a result of the extremely poor, and discriminatory planning practices and policies of York City Council will be used to justify subjecting other members of their Race to the same conditions. This is manifestly discriminatory and it is unlawful under s13(1) and s13(5) of the Equality Act 2010.

8.35. The standards and criteria that the proposed expansion of the site has been assessed against relate only to the boundaries of the Green Belt, and the amount of land required to provide pitches. These concerns were not the basis for the failure of the Site to pass the first phase of the Site Selection Process.

8.36. There has been no consideration by the Council of its obligations under the Human Rights Act 1998 or the Equality Act 2010 in its Policy making decisions here. There has been no consultation with the existing residents of the site, or with the Housing Team who is ultimately responsible for its management.

8.37. Based on an analysis of the Council's own documents, as well as an assessment of the Site against the criteria set out in Policy H5(c); the Osbaldwick Site does not offer a suitable location for development, and the delivery of pitches there is not achievable. There is no realistic prospect that development will be delivered on the site within 5 years.

8.38. There is no 'site design and layout' solution that can overcome the issues at the site that relate to its *location*. The answer to the Planning Inspectorate's question about *'when'* these allocated pitches may be delivered, is, emphatically, **never.**