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Examination of the Kirklees Local Plan

Hearing Statement: Matter 26 (Questions A, C, D, M and N)

On behalf of: Empire Knight Group

HSP/DPA/JGI/MC0692

January 2018



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1 Introduction

- 1.1 This Hearing Statement is prepared on behalf of Empire Knight Group and responds to the Stage 4 Matters, Issues and Questions (MIQs) raised by the Inspector (**ID: EH13.1**). Specifically, this Hearing Statement addresses Matter 26, Questions a.), c.), d.) m.) and n.).

Background

- 1.2 Empire Knight Group is the freehold owner of the proposed allocation identified in Kirklees Borough Council's ("the Council") draft Local Plan as site MX1930 ("the site"). The site is identified within the draft Local Plan as being suitable for a mixed use development with an indicative capacity to deliver 441 dwellings and 44,258 sq m of employment floorspace.
- 1.3 Since March 2017, Empire Knight Group has been in discussion with the Council over the proposed allocation of the site. Such discussions have focused on the likely achievable mix of land uses and the fact that the employment element of the proposed allocation is not considered to be viable or deliverable. This is reflected in the Statement of Common Ground between Empire Knight Group and the Council (**ID: SC005**) and also the Hearing Statement in relation to Matter 32.
- 1.4 In September 2017, Empire Knight Group submitted a formal pre-application request (ref. 2017/20381) to the Council for a development comprising up to 625 residential dwellings (Use Class C3), up to 70 extra care apartments (Use Class C2) and associated development at the site.
- 1.5 Following ongoing community consultation and discussion with the Council, the proposals have been modified and it is anticipated that an outline planning application will be submitted in mid-February for a residential-led mixed use development comprising up to 630 residential dwellings (Use Class C3), up to 70 care apartments (Use Class C2/C3/D1), a local centre of up to 500 sq m (Use Class A1/A2/A3/A4/A5/D1) as well as associated development.

Purpose of Representations

- 1.6 Empire Knight Group is bringing forward a proposed development at site MX1930. In order to ensure the most effective and deliverable allocation, the following recommendations are made:
- As currently drafted, site allocation requirements are set out in text boxes. In order to ensure effective and deliverable allocations, it is considered that the Local Plan

should clearly define what should be read as the policy and what should be read as explanatory/reasoned justification. Policies should include the intended land uses and development parameters, whilst the explanatory/reasoned justification should include an indication of those issues that the Council will seek to discuss as part of any planning application.

- In relation to the Inspector's sub-questions (i. – vii.) for Question c.) it is considered that such matters should not be referred to within the policy wording for each allocation. However, should it be considered necessary, detail on such matters could be set out within the explanatory/reasoned justification.
- A specific requirement for a masterplan is not considered necessary for allocations as there is a requirement already set out within Part 1 of the Local Plan, through Policy PLP5.
- Regarding ADMM50 in relation to site MX1930, it is not considered that this amendment is necessary in order to make the Local Plan sound.

1.7 Further detail and evidence in relation to the above is set out in the remainder of this Statement.

2 Matter 26: General Approach in Part 2 of the Plan

Issue

Does Part 2 of the Local Plan set out an effective framework for the delivery of allocations and the protection of designated sites, which is robust and in line with national policy?

Questions

a.) Does the inclusion of site allocation wording in text boxes, rather than policies, have implications for the effectiveness and deliverability of Part 2 of the Local Plan?

2.1 As currently drafted, it is not clear whether the text box should be read as a single policy or whether parts of the text box act as explanatory/reasoned justification to support elements of the allocation. Such an approach is considered to negatively impact the effectiveness and deliverability of Local Plan, as it provides developers with little assurance as to how a proposal will be determined.

2.2 As set out in *R (Cherkley Campaign Ltd) v Mole Valley DC [2014] EWCA Civ 567* at paragraph 16, it is the ‘policy’ that a development is considered against and although explanatory/reasoned justification text is relevant to the interpretation of policy, it is not itself a policy or part of a policy:

“Leaving aside the effect of the saving direction, it seems to me, in the light of the statutory provisions and the guidance, that when determining the conformity of a proposed development with a local plan the correct focus is on the plan’s detailed policies for the development and use of land in the area. The supporting text consists of descriptive and explanatory matter in respect of the policies and/or a reasoned justification of the policies. That text is plainly relevant to the interpretation of a policy to which it relates but it is not itself a policy or part of a policy, it does not have the force of policy and it cannot trump the policy. I do not think that a development that accorded with the policies in the local plan could be said not to conform with the plan because it failed to satisfy an additional criterion referred to only in the supporting text. That applies even where, as here, the local plan states that the supporting text indicates how the policies will be implemented.” (emphasis added)

2.3 In light of the above ruling, it is considered that the Council should amend its current approach to provide a clear policy to establish the main land use(s) and development

parameters with associated explanatory/reasoned justification to provide a starting point for more detailed matters relating to, for example, site constraints, design matters, potential developer contributions etc.

- 2.4 Such an approach is considered to provide an effective and robust framework to assess future development proposals, whilst providing suitable guidance and flexibility to developers bringing forward proposals on allocated sites.
- 2.5 In relation to site MX1930, further site specific evidence is set out in Empire Knight Group's representation to Matter 32.

c.) Are other site constraints and related mitigation measures clearly defined in Part 2 of the Plan? Is there sufficient detail to effectively guide development and make it clear what will be permitted?

- 2.6 For proposed allocations, the Local Plan sets out the site constraints and related mitigation measures within the text boxes under a number of headings including 'constraints', 'other site specific considerations' and 'reports required'. When read as a whole, it is considered that such an approach defines the key issues associated with each allocation.
- 2.7 However, it is considered that such matters should be clearly set out within the explanatory/reasoned justification for each allocation and not within the policy itself as this is considered to be too inflexible for developers.
- 2.8 In relation to the Inspector's sub-questions (i. – vii.) it is considered that such matters should not be referred to within the policy wording of each allocation. However, should it be considered necessary, detail on such matters could be set out within the explanatory/reasoned justification for each allocation. This would provide sufficient guidance to developers, whilst maintaining flexibility as a number of the issues raised (such as access points, mitigations measures etc.) are matters that would be discussed and agreed as part of the planning application process.

d.) Should Part 2 of the Plan specify when Masterplans are required in association with an allocation site? Which sites would these apply to?

- 2.9 Whilst masterplans are an important component when developing large strategic sites, and indeed one has been prepared by Empire Knight Group in relation to site MX1930, a specific requirement for a masterplan is not considered necessary for the proposed allocation. Such a requirement is already set out within Part 1 of the Local Plan, through Policy PLP5.

- 2.10 Policy PLP5 outlines a range of detailed criteria to guide the preparation of masterplans (subject to the scale of development and where feasible and appropriate) and paragraph 6.25 of the policy justification (as amended by SP-MM5 in **SD4**) outlines when a masterplan will be required to support development:

“The council will normally require a masterplan to be submitted for developments which are to be developed in separate phases over a number of years, for multi-plot developments where there may be a multiple landowners and it is important to co-ordinate the delivery of infrastructure and ensuring the place shaping principles and other policy requirements are met as set out in the plan, and for mixed use development to ensure that different land uses to be developed on a site are capable of being delivered.”

m.) On employment and mixed-use sites, how have the indicative capacity floorspace figures been derived? Has a particular proportion of different B use classes been assumed?

- 2.11 The Council’s Part 2: Site Allocation Methodology document (**ID: BP23**) explains the approach taken to establish the indicative capacity floorspace figures. This outlines that unless there was site specific information presented to the Council (such as a masterplan with a detailed ratio) a standard calculation was used.
- 2.12 For employment purposes, the calculation was a standard ratio of area/employment type (B1a = 10%; B1b = 10%; B1c = 10%; B2 = 60%; and B8 = 10%) across the developable area of the site. For mixed used sites in particular, this calculation was applied to 50% of a site’s developable area, with the other 50% being left for residential development.
- 2.13 In respect of the mixed use allocation MX1930, which as currently drafted is identified for 44,258 sqm of employment floorspace, it is not entirely clear on the different proportion of different B use class assumed.
- 2.14 Notwithstanding this, and as demonstrated in Empire Knight Group’s Hearing Statement in relation to Matter 32, employment uses are not considered to be financially or commercially viable at the site due to the site’s characteristics, location, and market demand in the local area.
- 2.15 Instead, it is considered that site MX1930 is better suited as a housing allocation, with a capacity to deliver approximately 700 homes. This form of development is considered to be

deliverable, albeit the financial viability remains marginal. A financial viability assessment will support the upcoming planning application for the site.

n.) Are the proposed site allocation modifications relating to effects on the wider highway network necessary for reasons of soundness? (ADMM4, 5, 7, 11-20, 24, 26, 27, 29, 32, 33, 37-40, 48, 50, 53, 58, 61)

2.16 Regarding ADMM50 in relation to site MX1930, it is not considered that this amendment is necessary in order to make the Local Plan sound. Whilst the amendment provides further guidance and clarification for developers, and thus makes the allocation as a whole more effective, it is considered to take on the role of an explanatory/reasoned justification to guide future development at the site rather than forming part of the policy itself.

3 Summary and Recommendations

3.1 In order to ensure the most effective and deliverable allocation within the Council's Local Plan Part 2, the following recommendations are made:

- As currently drafted, site allocation requirements are set out in text boxes. In order to ensure effective and deliverable allocations, it is considered that the Local Plan should clearly define what should be read as the policy and what should be read as explanatory/reasoned justification. Policies should include the intended land uses and development parameters, whilst the explanatory/reasoned justification should include an indication of those issues that the Council will seek to discuss as part of any planning application.
- In relation to the Inspector's sub-questions (i. – vii.) for Question c.) it is considered that such matters should not be referred to within the policy wording for each allocation. However, should it be considered necessary, detail on such matters could be set out within the explanatory/reasoned justification.
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