

SITE ALLOCATION AND DEVELOPMENT MANAGEMENT POLICIES DPD EXAMINATION

Inspector	Geoffrey Hill BSc DipTP MRTPI	
Programme Officer	Mrs Julie Salgado-Pérez Ground Floor, Christ Church Precinct, County Hall, Fishergate, Preston, PR1 8XJ	Mobile: 07554438121 e-mail: programmeofficer@lancashire.gov.uk

By e-mail to:

Mrs J Salgado-Pérez
Programme Officer

21 October 2011

Dear Mrs Salgado-Perez

REVISIONS TO THE DPD AND FURTHER PUBLIC CONSULTATION

- 1 I note that, as stated in the letter of 14 October, the Joint Authorities (JAs) propose to undertake formal consultation on matters relating to changes to Policy LF1 and the changes to the boundaries of the Lancaster West Business Park shown in Part 2 of the DPD as BWF17.
- 2 It could be argued that, certainly insofar as the proposed changes to BWF17 are concerned, following the 'Wheatcroft' principles, reducing the allocated area may not impinge upon the soundness of the Plan in that seemingly no interests of parties not previously engaged in the process would be affected. Also, the changes would not (seemingly) undermine the soundness of the Plan in that, after deletion of the extension areas, sufficient land would be available to meet the anticipated needs set out in the Core Strategy. I leave this for the JAs to consider in the light of their closer understanding of local views.
- 3 The JAs have already publicised a number of minor proposed changes, to reflect the debate at the various hearing sessions. This is a positive move, and is welcomed by me. These will, it is hoped, have addressed initial concerns expressed by many of the participants, and overcome difficulties for the eventual adoption of the DPD. There are, perhaps inevitably, further matters where further consideration needs to be given by the JAs.
- 4 I note that publicity so far to the proposed change to the Huncoat / Whinney Hill allocation, as shown in Part 2 as BWF8, has brought forward at least one significant response. I comment on this in greater detail below.
- 5 Following my letter of 17 October, this letter expands on my preliminary thoughts where revisions may be required to the DPD to make it 'sound' in the terms of the tests given in PPS12. Some of these became apparent at

the hearing sessions. For other points, these have arisen from my further consideration of the discussion at the hearing sessions. If changes are to be made to the DPD to address these points, then these too should be subject to formal public consultation. It is fair to emphasise that these are my early thoughts and I have not had the opportunity to consider in detail all the matters raised in the representations and at the hearing sessions. That is, there may be further points I would wish the JAs to consider, but it is unlikely that these will be major or significant ones which bear upon the soundness of the DPD.

Points where the DPD can be seen to be unsound

Heysham Port: Policy WM2, site BWF4

- 6 At the hearing it became apparent that the operators of the port and Lancaster City Council consider that the allocation of Heysham Port under Policy WM2 is inappropriate because;
 - a) of a clash with the City Council's planning policies which see the area of BWF4 being used for port-related industry and commercial uses
 - b) the port operators are unwilling to accept a waste processing operation which is not ship-related
 - c) there may be no area of land big enough to accommodate a WM2-scale process within the port area.
- 7 In which case the reference in Policy WM2 (and allocation BWF4) would fail the test of being justified, in that there is no apparent need for the processing of ship-borne waste under the Core Strategy. Also, the policy would not be effective in that, with the land owners being unwilling to accept a general waste operation to serve the Lancashire / Morecambe area on this land, this aspect of the DPD would not be deliverable.
- 8 It was also accepted that BWF4 should be deleted from Policy WM4 as no land would be available at the port for inert waste processing.
- 9 These points were discussed at the hearing session on Friday 14 October, where it was indicated that it would be necessary to remove BWF4 from Policy WM2 and to identify a replacement site to accommodate the anticipated waste arisings for the Catchment Area.

Farington HWRC: Policy WM3, site BWF24

- 10 As raised at the hearing session on 14 October, the allocation of the extension to the Farington HWRC represents a *prima facie* conflict with national policy as set out in Planning Policy Guidance 2 *Green Belts*. The HWRC is essentially an urban development and, in the terms discussed in PPG2 should be regarded as inappropriate development in the Green Belt.
- 11 A HWRC does not meet any of the purposes of including land within a Green Belt, as given at paragraph 1.5 of PPG2; indeed, it would appear to be directly in conflict with the third bullet point under this paragraph. Neither can it be seen to be a use which is seen to have a positive role to

play in fulfilling the objectives given at paragraph 1.6 of PPG2. In particular, it would seem to be directly contrary to the final bullet point of that paragraph.

- 12 In view of what is said at Section 38(6) of the Planning and Compulsory Purchase Act 2004, a planning application must be determined in accordance with the development plan; that is, it would be reasonable to expect that a scheme identified in an adopted development plan has a high probability of being approved. However, in the case of Farington HWRC there ought to be a presumption against the principle of further development here, having regard to the advice and guidance on inappropriate development in the Green Belt given in PPG2.
- 13 The discussion of the allocation of the site under Part 2 of the DPD acknowledges the site is in Green Belt, and indicates that a developer pursuing the scheme in a planning application would have to demonstrate special circumstances to justify the development. Whereas – exceptionally – inappropriate development may be permitted in the Green Belt, this has to be on the basis of very special circumstances¹ (my emphasis) - not just “special circumstances”.
- 14 A development plan document should not be indicating that a positive decision will be made on an application which is clearly contrary to a long established and well-respected national planning policy. As it stands, Policy WM3 would give such support, seemingly unconditionally. This would appear to be a conundrum.
- 15 Despite what is said at paragraph 3 of section 8 of the Core Strategy (CS), it is not clear as to how much the Green Belt location represented a “primary” constraint in the site identification process here. Furthermore, paragraph 6.9.1 of the Core Strategy says that HWRCs should be close to residential areas. Farington is clearly in open countryside.
- 16 From what was said at the hearing session, I appreciate there have been difficulties in finding an alternative site for a suitable HWRC site in this part of the County. It would be useful to have sight of an appraisal report which set out the process and findings which led to the selection of this site and the alternatives which were considered and rejected. It is possible that there might be sound reasons relating to waste recycling targets which indicate this to be the best practical option.
- 17 Such considerations may represent very special circumstances which would justify permitting the enlargement of the existing Farington HWRC, but it would be wrong to pre-empt this by giving such a clear and positive indication in this DPD. Such a proposal should only be brought forward as an acknowledged exception to national policy and be open to consideration on its own merits in the light of the operative development plan policies relating to Green Belt in this part of Lancashire and the advice and

¹ See paragraph 3.1 of PPG2,
and

R(Chelmsford BC) v First Secretary of State & Draper [2003] EWHC 2978 (Admin), particularly paragraphs 55-58

guidance given in PPG2. Whereas Part 2 of the DPD does acknowledge its location in the Green Belt and the need for particular justification, my concern is that these caveats are not part of the DPD's main (WM3) policy.

- 18 It is not obvious how the JAs might be able to readily revise the DPD to address this point. Allocation BWF24 could be deleted from Policy WM3 and Part 2 of the DPD, but this may leave the plan deficient in meeting the expectations of the Core Strategy in this part of Lancashire. It may be that an alternative site – or sites – could be identified which do not conflict with national policy and could be included as specific allocations. Alternatively, the DPD could be used to modify the Green Belt boundary – as envisaged in Section 2 of PPG2 – with the broad analogy of the scheme representing limited development or limited expansion (see the box under paragraph 2.11 of PPG2). Another option may be to revise the wording of Policy WM3 to introduce clear indications that development at this site must be able to demonstrate very special circumstances to justify a departure from the normal presumption against inappropriate development in the Green Belt. There may be other approaches which would meet the needs of the Core Strategy and the tests of soundness given in PPS12.
- 19 I leave this as point for the JAs to consider how best to take further forward.

Whitemoss: Policy LF3, site ALC2

- 20 Having considered the written submissions and the evidence given orally at the hearing sessions I have concerns over how this site is seen to contribute to meeting the needs set out in the CS.
- 21 Whereas there are no specific quantified expectations for the disposal of hazardous waste given in the CS, the CS does envisage such waste continuing to arise throughout the Plan period. A figure of 165,000 tonnes per annum is given (table after paragraph 6.8.7). The table after paragraph 6.8.6 shows that, historically, 165,000 tonnes of hazardous waste arisings has led to the need to dispose of 17,000 tones of residual waste within the plan area.
- 22 Paragraph 4.3.2 argues that the amount of hazardous waste being sent to landfill is declining, but I cannot identify where in the Core Strategy or the current DPD it is demonstrated that this will fall away completely. CS paragraph 6.8.10 envisages a continuing need to dispose of such residues, and indeed paragraph 4.3.2 acknowledges such a need. That is, it might be reasonable to assume that there will be a continuing need to find a location for the disposal of perhaps up to 17,000 tonnes per annum throughout the Plan period. Paragraphs 6.8.11 and 6.8.12 endorse the concept of self-sufficiency (ie it should accepted that hazardous waste residues after treatment should be disposed of locally).
- 23 The DPD supports the continuation of disposal of such wastes at Whitemoss, but only until 2018; that is, some 2-3 years short of the Plan period. It is not clear where disposal of this type of waste will be diverted to after 2018. I acknowledge that other sites may operate across the

North West which could accept some, if not all, of this type of waste, but I need to see that this approach is supported by the operators of these other sites, and by the Regional Technical Advisory Body (as a proxy for a regional planning overview).

- 24 The justification for seeking to close Whitemoss by 2018 appears to be based on the very strongly expressed local opposition to the present operations continuing. This opposition is based upon – amongst other matters – a perception of harm to health, harm to residential amenity (living conditions) and the impact of the waste operation to the image of the wider Skelmersdale area and the consequent effect on its economic regeneration. I fully accept such concerns are genuine and sincerely held, and this represents a material consideration. However, a perception of harm is rarely a determinative consideration; such a perception needs to be backed up by evidence of harm that has occurred or where there is a reasonable probability of such harm occurring.
- 25 For the most part, the evidence of harm is anecdotal or based on theoretical or generalised academic studies of such waste operations. There was little hard evidence of recorded and quantified harm attributable to activity at this particular site, at least in recent years, and particularly none from the Environmental Health Officer of the local council or the Environment Agency. This also has to be seen in the context of what is said in Section 8 of the CS at paragraph 6, where proximity to residential areas and cumulative impact are seen to be “secondary constraints”.
- 26 From what I have read and heard, there seems to be a degree of ambivalence on the part of the JAs over these matters. If the present operations at Whitemoss are indeed seen to be causing unacceptable harm to local interests, then there would seem to be no justification for this DPD accepting a further extension of the site area and its operational life at all. If the JAs believe, as discussed at the hearing sessions, that such harms are controllable to within acceptable limits up to 2018 through the application of Policy DM2 and (as advised in PPS10) by pollution controls imposed by an Environment Agency waste permit, then this would seem to undermine the strength of the view that this site has to shut because of its unacceptable impact on local residents and businesses. Rationally, the same controls should be able to keep the operations within acceptable limits throughout the Plan period.
- 27 It seems to me that further thought needs to be given in this DPD to the disposal of hazardous waste during the Plan period and beyond, having regard to the expectation of at least (my emphasis) a 10 year provision, as set out in paragraph 18 of PPS10. There may be a number of possible alternative options to address this need and I do not propose to suggest what may be feasible or acceptable. The points where I need further evidence to be satisfied that the DPD can be seen to be sound are:
- a) If the present scale of operations at Whitemoss can be controlled within acceptable limits up to 2018 (in a period where such wastes are argued to be declining), why cannot this continue after 2018? If the controls would not be effective after 2018, why are they considered to be effective up until then?

- b) If it is accepted that the controls would not be effective in the longer-term, then this would seemingly support the view that the site has to be deleted now. If so, what alternative approach should be put forward to dispose of the anticipated arisings of residual hazardous waste?
- c) If Whitemoss is to remain in the DPD as proposed, where will the anticipated residual amounts of hazardous waste be disposed of after 2018? What is the supporting evidence for this and where can it be found? What is the regional context to support the envisaged response? Would such a response meet the test of soundness, and how?

Huncoat / Whinney Hill

- 28 Referring back to the point made in paragraph 4 above, comments have been received from Messers D&J Leitherd in response to the publicised proposed change to delete Omega Atlantic's land from the Huncoat / Whinney Hill site allocation under Policy WM2 and BWF8 in Part 2 of the DPD. There is no plan to show the boundaries of D&J Leitherd's land, but I assume it is the remainder part of the area after the deletion of Omega Atlantic's holding.
- 29 D&J Leitherd state that they are unwilling for any of their land to be developed for waste management purposes. This would seem to be exactly the same situation as was revealed at the hearing session into the Omega Atlantic land and Heysham Port as a site under WM2. That is, with a land owner who is hostile to the principle of waste development on their land, this must undermine the deliverability of this aspect of the Plan² – and hence whether the allocation meets the "effective" test in PPS12. D&J Leitherd also say that a waste development here could be contrary to the Hyndburn Core Strategy in that it may not generate sufficient jobs and therefore not contribute positively to the regeneration of the area. I have not had a submission from Hyndburn Borough Council on this point.
- 30 I would be grateful for a firm indication that this land has been properly identified for waste management purposes, and that there is a reasonable likelihood of it being developed as such and making a contribution under Policy WM2 during the Plan period. Such a statement would need to be corroborated by the landowners and, ideally, Hyndburn Borough Council.
- 31 In the absence of such corroboration I would need confirmation that, with the deletion of D&J Leitherd's and Omega Atlantic's land, there is sufficient opportunity in the remainder of BWF8 to meet the expected requirements under Policy WM2 in this part of Lancashire. Alternatively, it may be necessary to identify an alternative or additional site to meet the needs of the Minerals and Waste Core Strategy.

² See third bullet point under paragraph 18 of PPS10.

32 I appreciate that formulating a response to the above points may take some time. However, I have already acknowledged the JAs' request for the examination to be suspended and I will take no further action (other than carrying out site visits) on writing my report and recommendations until such time as the JA's consider it appropriate for me to resume the examination.

Yours sincerely

Geoffrey Hill

INSPECTOR