

Delegated Decision

26th June 2019

**Response to Pre-submission public consult:
Durham City Neighbourhood Plan**



Ordinary Decision.

Report of Regeneration & Local Services

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Electoral division(s) affected:

Durham South
Nevilles Cross
Elvet & Gilesgate
Belmont

Purpose of the Report

1. The purpose of this report is two-fold:
 - To advise of the issues posed by the latest draft Durham City Neighbourhood Plan (DCNP) which the Durham City Parish Council (DCPC) are currently consulting upon; and
 - To consider the council's response as Local Planning Authority and holder of assets within the designated Neighbourhood Plan Area.

Executive summary

2. Durham City Parish Council are undertaking their first formal public consultation on their neighbourhood plan and the county council has been invited to make comment. County council officers have sought to support the Parish Council in preparing the plan and have undertaken a series of health checks during the process so far. This report seeks to set out the scope of the plan, the key matters for consideration and any issues arising that should form part of the county council's formal response.
3. The following matters have been considered:
 - a) **Scope of the plan.**

The scope of the plan is comprehensive and is set out in the report. A number of concerns about this scope have been identified within this report. The neighbourhood plan continues to seek to address a number

of strategic matters which are considered to be matters for a local plan to address, including student accommodation and strategic employment allocations. Furthermore, it tends to repeat or reinterpret national and local plan policies. As such it continues to miss the opportunity to provide finer grained, locally distinctive policies which would supplement and add value to the national and local plan policy context. These concerns are set out in Appendix 2.

b) Robustness of the DCNP for future decision taking:

- **Whether the draft Plan has been adequately informed by SA/SEA:** No issues have been identified.
- **The appropriateness of the evidence base:** No issues have been identified with the parts of the evidence base which have been shared with the county council
- **The Clarity of policies:** A number of amendments to the wording of policies have previously been suggested to the working group in order to improve clarity. Whilst some of these have been addressed there are still some outstanding or new matters. With this in mind it is proposed that a detailed account of these matters on a policy by policy basis is submitted as part of the council's formal response to this consultation. Please refer to Appendix 2 of this report.

c) The Effectiveness of engagement.

The consultation strategy adopted by the parish council is considered to be fit for purpose. The consultation period has been extended at the request of some consultees. No issues have been identified.

d) Implications upon the future sustainability of the area.

A number of concerns remain regarding the wording or scope of policies, in particularly in relation to the heritage section of the neighbourhood plan. These are set out in Appendix 2. The draft plan continues to represent an unjustified challenge to the balance that is currently carefully struck in decision taking between competing development and conservation requirements through the application of the existing national and local policy context.

This plan also continues to miss the opportunity to provide finer grained, locally distinctive policies which would supplement and add value to the national and local plan policy context.

e) Implications on existing and emerging policy

The neighbourhood plan seeks to address a number of strategic policy areas which are considered to be matters for a local plan to address, including student accommodation and strategic employment allocations. Furthermore, it tends to repeat or reinterpret national and local plan policies. This results in unnecessary repetition contrary to the intent of the plan making system.

The degree to which the Inspector for the County Durham Plan will have regard to this neighbourhood plan will be dependent upon the stage it has reached by the time the CDP examination in public is held.

f) Implications for council held assets

The neighbourhood plan identifies the DLI grounds as a local green space. It also identifies Fowlers Yard for particular land uses and Aykley Heads as a smaller strategic employment site. The concerns relating to the restrictions that would be placed upon each are set out in Appendix 2.

Recommendation

4. It is recommended that:

- i) The content of this report is considered and the proposed response to the current consultation on the draft DCNP set out in Appendix 2 is accepted.
- ii) That the proposed response is submitted formally to the Durham City Parish Council.
- iii) Officers continue to offer support to the Durham City Parish Council to address the matters raised within this report and any other appropriate matters arising from this consultation.

For the following reasons:

- i) Upon adoption, a neighbourhood plan becomes part of the statutory development plan for the area that it covers and will form part of the starting point upon which future planning decisions are reached. It may also influence the content of the emerging CDP. Its purpose should be to provide a more area specific focused and relevant suite of policies and proposals. These should accord with national policy and supplement by providing further detail to the existing local plan for the area. In its current form it fails to meet these purposes.
- ii) It is essential that the county council as local planning authority exercises its right to make representations to strive to ensure that the resulting plan is procedurally compliant, robust, credible and clear for so that it can be effectively implemented by the council,

as decision taker, provide certainty to developers, stakeholders and residents as well as being defensible at appeal.

- iii) The council has a public duty to seek to protect its assets where it is considered that these would be adversely impacted upon.

Background

5. The DCPC have taken on the role of neighbourhood planning from the Durham City Neighbourhood Forum. The DCPC has delegated the preparation of the plan to a smaller working group which includes parish councillors and residents. The Forum had undertaken the first formal public consultation prior to the inauguration of the new parish council. The DCPC have taken on board the county councils' advice that the first formal consultation needed to be repeated so that it is legally compliant. That consultation which has been extended from six to seven weeks in duration ends on 5th July 2019.
6. The county council has sought to continue to exercise its 'duty to support' the neighbourhood planning group and its predecessor in its plan making activity over several years. This support is an advisory role and it is not mandatory for a neighbourhood planning group to draw upon it. The county council also has a role to play as 'gate keeper' from a procedural perspective. This involves checking at particular stages that all four specific criteria known as 'Basic Conditions' have been met, namely having had regard to national policies and advice contained in guidance issued by the Secretary of State:
 - *The making of the neighbourhood plan contributes to the achievement of sustainable development.*
 - *The making of the neighbourhood plan is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area).*
 - *The making of the neighbourhood plan does not breach, and is otherwise compatible with, EU obligations; and*
 - *Prescribed conditions are met in relation to the plan and prescribed matters have been complied with in connection with the proposal for the neighbourhood plan.*
7. This 'gate keeper' role does not extend to rejecting a plan because of contention between parties about policy approach and/or content of the plan, unless it is contrary to strategic policies in the adopted local plan for the area. It is the role of the independent examination for areas of dispute

over content to be considered in the context of the above Basic Conditions.

8. In preparing the current consultation draft plan a series of public consultations have been undertaken by the former Forum. The county council is satisfied that activity and subsequent outcomes can be relied upon providing that the first formal consultation is repeated by the new Qualifying Body (DCPC).
9. The county council has undertaken three 'health checks' on the successive versions of the plan itself but still has not been given the opportunity to extend this to the whole of the evidence base. The health checks were based upon the advice of the council's multi-disciplinary team of relevant specialists and have consistently raised a concern regarding the scope, content and policy approaches proposed in the context of the existing national and local planning policy.
10. Despite numerous follow up meetings and workshops with the working group to discuss the county councils concerns and consultation findings overall, they still have not addressed some of the matters raised to date. Officers have continued to emphasise to the group that these concerns will continue to be reiterated through the formal consultation process, should they not be addressed.
11. The county council is however pleased that DCPC has sought to address the county councils' previous significant concerns regarding Sustainability Appraisal (SA) (including Strategic Environmental Assessment) which had been prepared through consultancy support. The council is also aware that the DCPC have also sought to remedy previous concerns about the level of engagements with land owners and stakeholders that has taken place.

Proposed response to submitted plan consultation

12. The proposed consultation response has been co-ordinated by the Spatial Policy Team and builds upon the previous health check findings derived from the relevant specialist and legal officers within the council. As the consultation draft plan is very much unchanged from the earlier version in terms of its scope the previous observations have been reconsidered, refined and where necessary supplemented. Input has previously been secured from asset management and council regeneration officers to identify the council's views as asset holder and deliverer of projects within the neighbourhood plan area. Issues relating to these matters remain unchanged by enlarge.

13. The issues identified as a consequence of this review relate to the following matters:

- Scope of the draft Plan;
- Robustness of the draft Plan for future decision taking;
- Implications upon the future sustainability of the area;
- Implications on emerging policy and other council strategies; and
- Implications for council held assets.

14. A summary of these key issues is set out below and further detail is set out in Appendix 2 (proposed covering letter to DCNF, summary of concerns and suggested solutions).

Scope of the draft Plan

15. This plan still represents an extremely comprehensive document which seeks to cover the vast majority of planning topics expected to be covered by a full Local Plan. This in itself is not an issue to object to. However, in doing so the draft Plan continues to stray into numerous planning matters, including strategic policy which are already adequately covered by the local policy framework and/ or National Planning Policy Framework (NPPF). This is a significant concern and relates to:

- Allocation of 'strategic' employment sites at Aykley Heads and University land at Mount Joy;
- An alternative approach to the council's interim policy regarding student accommodation;
- Reduction in the level of affordable housing to be sought below that justified by the council's evidence;
- Introduction of heritage policies which have higher tests than that required by NPPF and the draft Plan; and
- Criteria for controlling development which impacts upon the World Heritage Site which does not align with existing national policy on this matter.

16. This scope results in conflicts with the existing planning policy framework on these matters in the absence of any clear and evidenced justification or mitigation for the adverse implications that would result therefore. Furthermore, in concentrating on these higher-level issues the opportunity to provide detail and local distinctiveness that a finer grain neighbourhood plan can contribute to the local policy context continues

to be missed. Therefore, in its current state the plan regrettably does not add value.

17. Furthermore, it is considered that both individually and collectively these proposed policies continue to serve to place some unreasonable, conflicting, unjustified and/or inadequately evidenced constraints on future development proposals for the area. The overall approach in the document is still divergent from the approach advocated within the current CDLP, the emerging CDP, more recent NPPF and the council's corporate objective regarding the potential of the city to contribute to the wider economic prosperity of the county.
18. It is considered that the county council should continue to formally relay its concerns about the scope of the draft Plan in these respects as they are matters for the local plan, the emerging CDP and or can be supplemented by the more recent NPPF.

Robustness of the DCNP for future decision taking

19. Upon adoption, a neighbourhood plan becomes part of the statutory development plan for the area that it covers and will form part of the starting point for taking future planning decisions. The Durham City Neighbourhood Plan will therefore be a significant planning policy document. This section of the report sets out the key issues for consideration to inform the county council's response to this consultation:

- **Whether the draft Plan has been adequately informed by SA/SEA**

Specialist officers previously had fundamental concerns about the way in which the group have undertaken the Sustainability Appraisal and Strategic Environmental Assessment required because of the environmental/ heritage sensitivities relating to the plan area. This posed significant procedural issues and affected the appropriateness of the content of the plan and put into question the ability of the draft Plan to meet the Basic Condition relating to compatibility with, EU legislation. The county council is now satisfied procedurally, subject to the ratification of Natural England, Historic England and the Environment Agency through this consultation, that a proportionate and adequate SA/SEA has informed this version of the DCNP.

In terms of the work which has been undertaken so far it is considered that the DCNP should not breach and is otherwise compatible with all other relevant EU obligations.

- **Effectiveness of pre- consultation engagement**

The draft Plan continues to propose land use allocations and restrictive Local Green Space designations. There is real potential that these proposals conflict with the intent of land owners, affect land values and/or result in the identification of sites that have no prospect of being delivered. The DCPC have sought to address the county council's previous concerns regarding such engagement. However, it remains to be seen the extent to which the owner's views are taken on board. The county council continues to have concerns about how the DCNP proposes to deal with some of its own land holdings in respect to Aykley Heads and DLI areas.

20. The following concerns have been identified through the consideration of the draft plan:

- **Evidence base**

To date the council has only been privy to the evidence that it has shared with the group. Further additional evidence bases to support the draft plan have not been made available to the county council. There also remain instances where the proposed policy approach is insufficiently justified through evidence, e.g. the reduction in affordable housing requirements. These instances are set out within Appendix 2.

- **Clarity of policies**

The content of this plan will impact upon the council as decision maker, asset holder and stakeholder in matters including regeneration and long- term sustainability of the city. It will also impact upon the future decisions of existing and potential businesses and developers as well as residents. Therefore, it is critical that all policies, regardless of their approach are written in a clear, concise manner which will not give rise to unintended negative consequences. Furthermore, the policies should not give rise to ambiguity. All of these deficiencies have the potential impact upon effectiveness of the plan and making it the source of much otherwise avoidable debate at appeal.

21. As numerous concerns in these respects still exist it is proposed that a detailed account of these matters and potential solutions on a policy by policy basis is submitted as part of the county council's formal response to this consultation. Examples of this are set out in Appendix 2 of this report.

22. Considering the above, it is considered that the county council's concerns regarding these issues should be conveyed through this public consultation as the existing deficiencies in the proposed policies will impact upon the ability of the council to make effective planning decisions in the future.

Implications upon the future sustainability of the area

23. The draft Plan continues to miss an important opportunity to provide a suite of more focused policies that are locally specific to the neighbourhood area that would have provided greater depth and opportunity for managing the continued sustainability of the area.

24. Additionally, given deficiencies of policies (including an outdated, more inflexible approach to heritage matters and intent to set a higher bar than the existing adopted local and national policy on these important matters) the draft Plan continues to represent an unjustified challenge to the balance that is currently carefully struck in decision taking between competing development and conservation requirements through the application of the existing national and local policy context.

25. Because of the above, the draft Plan is too restrictive a policy document which poses the prospect of future stagnation to the area, which includes the city centre, a significant valuable heritage and economic asset. This is by no means a positive contribution to the overall sustainability of the area in its current form.

26. Considering the above the county council's concerns regarding these issues should continue to be conveyed through this public consultation.

Implications on existing and emerging policy and other council strategies

27. Appendix 2 sets out the aspects of the draft Plan which are repetitive or in conflict with policies which include approach to:

- Student accommodation;
- Affordable housing;
- Heritage matters;
- Site allocations;
- Town centre uses;

- Transport strategy/ policy; and
- Tourism.

28. Currently the timescales for the preparation of the County Durham Plan (CDP) are ahead of the advancement of the Neighbourhood Plan. Therefore, the Basic Condition regarding conformity with strategic policies in the adopted Local Plan is likely to relate to an assessment of conformity with the CDP. It is therefore important that this issue is raised in order that it is addressed by the DCPC or where contention continues it is fully considered through the examination of the DCNP. Considering the above, the county council's concerns regarding these issues should continue to be conveyed through this public consultation.

29. Furthermore, once adopted the DCNP would be the most up to date development plan for the area and would supersede any parts of the local plan which do not align with it (regardless of whether they are strategic or non-strategic matters). There are aspects of the DCNP that merely repeat NPPF and/ or the existing and emerging local plan. This goes against the very principle of streamlining the planning policy framework. It results in a longer document which is not helpful from a user perspective. By merely repeating national policy the plan will not be future proofed should policy change.

30. Experience of neighbourhood plan examinations that have taken place within the county has demonstrated that such repetition is not normally tolerated by examiners for this reason, particularly where the county council has raised this as an issue through the consultation process. In light of the above it is considered that the county council's concerns regarding these issues should be conveyed through this public consultation as a cautionary note to the DCNF.

Implications for council held assets

31. The DCNF have contacted land owners following on from the county councils' earlier concerns about this matter. The following council owned sites have been identified as being specifically referenced:

- The Aykley Heads site

The county council continues to firmly consider that Aykley Heads is a 'strategic' employment site and therefore should not be included in the Neighbourhood Plan in any form as it is a matter for the Local Plan. Furthermore, the policy proposed does not add any value and conflicts as it excludes part of the site allocation in the CDP.

- **Fowlers Yard**
This site is allocated by DCNP Policy E2 (Other Employment Sites) for office and business enterprises (Use Class B1). The site is currently occupied, and this policy still deviates from the scope of uses that exist and would be permitted within it. From a land owner perspective such restrictions could impact upon the future ability for the council to secure full occupancy of the units concerned.
- **DLI**
This site is still designated as a Local Green Space as part of the proposed 'Emerald Network'. In doing so this protected status would be the equivalent of Greenbelt. However, the site is already afforded Greenbelt protection and therefore the proposal seems superfluous. This is an issue that a neighbourhood plan examiner has recently raised elsewhere in the county.

32. It is considered that the council's ongoing concerns regarding these sites should be conveyed through this public consultation.

33. Other sites which could be affected by generic policies relating to preserving and enhancing green infrastructure (Policy G1) and/ or Conservation Areas (Policy H2) in terms of raising the bar relating to heritage tests and green infrastructure provision have been identified as:

- The Sands;
- Durham Johnson School;
- Aykley Heads;
- Frankland Farm;
- Aykley Wood; and
- Bowling Green Elvet Waterside.

34. However, a number of technical concerns have already identified about these policies which if addressed would not give rise to any change in the existing policy context to these sites.

Next steps

35. The county council, along with other consultees will need to submit their representations to the DCPC by no later than the close of Friday 5th July 2019.
36. The findings of this consultation should be used by the DCPC to refine the draft plan. The plan will then advance to submission stage, whereby upon formal submission to the county council, specific procedural checks will be made. Regardless of the county council's views on the plan at that stage it will then have to host a 6- week public consultation and then arrange the independent examination thereafter. As part of that consultation the county council will have the opportunity to submit any outstanding concerns as both Local Planning Authority and asset holder. It is the representations made at that stage that will be considered through an independent examination.
37. In the interests of futureproofing a neighbourhood plan it would be prudent for a neighbourhood planning group to have regard to emerging local plan policy, in this case the County Durham Plan (CDP). This approach is clearly advocated in PPG. However, there is a circular issue in that a neighbourhood plan which is at an advanced stage will undoubtedly be a consideration for the planning inspector when they examine the CDP. As such the council will need to continue to be mindful of this as the CDP advances through examination.
38. Upon adoption, a neighbourhood plan becomes part of the statutory development plan for the area that it covers. Its purpose should be to supplement the existing local plan for the area. As it will form part of the starting point upon which planning decisions are reached it is critical that the county council seeks to continue to offer its support to the DCPC but at the same time clearly convey any issues of concern through the formal public consultation process.

Options

39. Given the county councils statutory role in respect to neighbourhood planning no alternative options have been identified in respect to this matter.

Main implications

40. The remaining matters of concern are set out in Appendix 2.

Conclusion

41. Given the significance of a neighbourhood plan on future decision making and in its 'duty to support' it is considered essential that the representations set out in Appendix 2 are submitted to the DCPC and that county council officers continue to offer their support to the DCPC in finalising the next draft of their neighbourhood plan for further public consultation.

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Appendix 1: Implications

Legal Implications

Legal opinion and advice have been provided throughout the preparation of the plan. No issues have been identified at this stage.

Finance

This report has identified a number of council owned sites affected by the DCNP and has considered the potential implications on the council as landowner.

Consultation

This consultation has been undertaken by DCPC. As part of compiling this report the Spatial Policy Team has sought the advice of relevant disciplines within the council.

Equality and Diversity / Public Sector Equality Duty

The implications of the DCNP on all sectors of the community have been considered, including full time residents and businesses.

Human Rights

The implications of the DCNP on all sectors of the community have been considered, including full time residents and businesses.

Crime and Disorder

None.

Staffing

The council will need to continue to provide support to the Parish Council as the plan proceeds to examination and adoption.

Accommodation

None.

Risk

The potential implications of the DCNP in its current form on future decision taking, capital receipts and emerging CDP have been identified.

Procurement

None at this stage of the process.

