



The Planning Inspectorate

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# **Report to Scarborough Borough Council & the North York Moors National Park Authority**

**by Patrick T Whitehead DipTP (Nott) MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Date: 17<sup>th</sup> September 2014**

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PLANNING AND COMPULSORY PURCHASE ACT 2004 (AS AMENDED)

SECTION 20

**REPORT ON THE EXAMINATION INTO THE WHITBY BUSINESS PARK AREA  
ACTION PLAN**

**LOCAL PLAN**

Document submitted for examination on 14 February 2014

Examination hearing held on 15 April 2014

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## Abbreviations Used in this Report

AA	Appropriate Assessment
AAP	Area Action Plan
CS	Core Strategy
DPD	Development Plan Document
DtC	Duty to Co-operate
LDS	Local Development Scheme
LP	Local Plan
MM	Main Modification
NPA	National Park Authority
NPPF	National Planning Policy Framework
NYM	North York Moors
PSED	Public Sector Equality Duty
RS	Regional Strategy
SA	Sustainability Appraisal
SBC	Scarborough Borough Council
SCI	Statement of Community Involvement
SCS	Sustainable Community Strategy
WBPAAP	Whitby Business Park Area Action Plan

## Non-Technical Summary

This report concludes that the Whitby Business Park Area Action Plan Local Plan provides an appropriate basis for the planning of the Whitby Business Park over the next 12 years providing a number of modifications are made to the Plan. Scarborough Borough Council and the North York Moors National Park Authority have specifically requested me to recommend any modifications necessary to enable the plan to be adopted. All of the modifications to address this were proposed by the authorities and I have recommended their inclusion after considering the representations from other parties on these issues.

The Main Modifications can be summarised as follows:

- Amendments to the text to ensure the document reflects the current situation (MM1-2);
- Changes to Appendix C: Implementation and Monitoring to provide a sound monitoring framework, including additional material to tables C1 – C5 (MMs 3-8);
- Amended text to Policy 6 to ensure its effectiveness (MM12); and
- Changes to Policy 3 and its supporting text at paras 6.5 and 6.7 to clarify the intent and ensure a 'town centre first' approach in accordance with national policy (MM13).

## Introduction

1. This report contains my assessment of the Whitby Business Park Area Action Plan Local Plan in terms of Section 20(5) of the Planning & Compulsory Purchase Act 2004 (as amended). It considers first whether the Plan's preparation has complied with the duty to co-operate, in recognition that there is no scope to remedy any failure in this regard. It then considers whether the Plan is sound and whether it is compliant with the legal requirements. The National Planning Policy Framework (paragraph 182) makes clear that to be sound a Local Plan should be positively prepared; justified; effective and consistent with national policy.
2. The starting point for the examination is the assumption that the local authorities have submitted what they consider to be a sound plan. The basis for my examination is the submitted draft plan (November 2013) which is the same as the document published for consultation in November and December 2013.
3. My report deals with the main modifications that are needed to make the Plan sound and legally compliant and they are identified in bold in the report **(MM)**. In accordance with section 20(7C) of the 2004 Act the authorities requested that I should make any modifications needed to rectify matters that make the Plan unsound/not legally compliant and thus incapable of being adopted. These main modifications are set out in the Appendix.
4. The Main Modifications that are necessary for soundness all relate to matters that were discussed at the Examination hearings. Following these discussions, the authorities prepared a schedule of proposed main modifications and carried out sustainability appraisal and this schedule has been subject to public consultation for six weeks. I have taken account of the consultation responses in coming to my conclusions in this report.
5. References in square brackets [ ] are to documents forming the supporting information to the submitted draft plan.

## Assessment of Duty to Co-operate

6. Section s20(5)(c) of the 2004 Act requires that I consider whether the authorities complied with any duty imposed on them by section 33A of the 2004 Act in relation to the Plan's preparation.
7. The WBPAAP was at an advanced stage in preparation when the DtC was introduced. Nevertheless, evidence presented [doc SD9] indicates that the authorities have met the requirement under the DtC. In particular, the document shows that all key authorities and organisations have been fully engaged in the process and have been given adequate opportunity to influence the plan. No cross-boundary issues have been identified and no neighbouring authorities have made representations objecting to the WBPAAP. It is also clear that there has been on-going liaison and co-operation with the nominated statutory bodies resulting in changes to the draft Plan prior to submission.

## Assessment of Soundness

### Preamble

8. The boundary between SBC and the NPA divides the Whitby Business Park leading to the authorities' decision to produce a joint plan so that planning applications are determined in a consistent manner. The site is also recognised as of strategic importance to Whitby so a purpose of the Plan is stated as *'to produce a comprehensive strategy'* for the Business Park. The AAP includes land for the expansion of the Business Park, with 2 land allocations in the NPA area, and a third allocation, plus a site for a hotel and public house, within SBC. The hotel and public house were granted planning permission subject to a number of conditions in April 2014. The application was supported by a Sequential Assessment of potential development sites in a defined area around Whitby town centre in accordance with the requirements of the NPPF.
9. The RS (The Yorkshire and Humber Plan), published in 2008, was formally revoked in February 2013. Whilst the NPA has a CS adopted in November 2008, the only plan in place for SBC is the Scarborough Local Plan adopted in 1999. Following publication of the NPPF, SBC suspended work on a CS and a Housing Allocations DPD and decided to go forward with a Local Plan combining those plans. The Draft Local Plan was recently out for Regulation 18 consultation albeit in a detailed format.
10. It is normal practice for the submitted plan to be accompanied by a map to show how the existing Policies Map accompanying the adopted Local Plan will be changed. However, in this instance, the adopted 1999 Local Plan shows only an extension to the then existing extent of the Business Park so the authorities have produced a complete submission version Policies Map to accompany the AAP.

### Main Issues

11. Taking account of all the representations, written evidence and the discussions that took place at the examination hearings I have identified 6 main issues upon which the soundness of the Plan depends.

#### Issue 1 – Is the Area Action Plan the most appropriate strategy?

12. In order to meet the requirement that the plan is justified, it should be shown to be clearly the most appropriate strategy. Initially, my concern was that there appears to be no recent evidence or strategic framework to support the plan as necessarily the most appropriate strategy, taking account of a possible future wider strategy for Whitby. Whilst the strategic framework would normally be provided by the Core Strategy/Strategies, there is no adopted CS for Scarborough and the CS for NYM simply refers to a separate DPD which will *"..take into account the wider strategy for Whitby which will be set out in Scarborough's Core Strategy"*. As already stated, the Yorkshire and Humber Plan has been formally revoked. From the evidence base, the Employment Land Study, dated 2006, [doc CSD3] concludes there is *"..no evident justification for significant release of employment land in the Borough other than on a selective site by site consideration basis.."*. Clearly this study is now

dated and cannot realistically be said to provide justification for a significant expansion of the Business Park. The Community, Environment & Economy DPD consultation [doc CD19] offers four business and industrial options in Whitby. Although the response to the consultation was limited, the majority indicated a preference for the Business Park to remain the focus for employment growth in Whitby.

13. The Draft Scarborough Borough Local Plan provides a Vision for the Borough for 2030 together with aims and objectives for achieving the vision, although its weight is limited because it is at an early stage, being recently out for consultation. It provides a Settlement Hierarchy Statement for Whitby which seeks to protect and enhance the role of the town centre, and enhance the town's role as a service and employment centre to its surrounding rural hinterland. The Plan includes policies identifying Whitby as a second level centre in the hierarchy of centres (Policy TC1) and for development of town centre uses, including the use of sequential testing for proposals not within the defined centre (Policy TC2). The Plan also identifies the provision of additional employment land at the Whitby Business Park through the AAP (Policy EG1).
14. In summary and taking account of this analysis, the Plan is justified as the most appropriate strategy for the development of the Business Park. The authorities have made a convincing case for producing a separate AAP in advance of the Scarborough Borough Local Plan given the perceived pressing need for a joint approach to the development of the site. No modifications are necessary in respect of this issue. However, for clarification, the authorities have proposed modifications adding text to para 1.8 (**MM1**) and deletion of paras 1.25-1.29 (**MM2**). These modifications are necessary for soundness.

## **Issue 2 – Is it appropriate to include a policy for retail development?**

15. The NPPF provides clear guidance for the consideration of proposals for retail developments that are not in an existing centre, and requires LPAs to apply a sequential test. It also indicates that LPAs should plan positively for the future of town centres. The '*town centre first*' approach is reinforced through the publication of the Government's Planning Practice Guidance – 'Ensuring the vitality of town centres'. It gives emphasis to the two key tests that should be applied when planning for town centre uses which are not in an existing town centre – the sequential test and the impact test.
16. Nevertheless, the authorities have made a case for a policy identifying a 'retail area' within the Business Park. They argue that, due to the topography and historic nature of the town centre of Whitby, there is limited scope for its expansion and therefore the emerging Scarborough Borough Local Plan does not look to allocate an extension of the town centre boundary, although the Scarborough Retail Study Update of 2012 [doc CSD5] shows evidence of some need for additional retail floorspace in the Whitby area. Additionally, past retail studies have concluded that the town centre displays strong indicators of vitality and viability, but that there are weaknesses in terms of lack of diversity, limited multiple representation exacerbated by a shortage of suitable units, congestion and limited parking facilities.
17. On the basis of this evidence a case can be made for some retailing activities, other than those ancillary to other business uses, to be located at the Business

Park. However, the authorities also noted that respondents to the Discussion Paper [doc PSD1] expressed concern that such uses should be 'zoned' rather than spread across the Park, resulting in a specific area being zoned for retail uses on the Policies Map.

18. The severe physical constraints to which Whitby Town Centre is subjected suggest that a policy and a retail allocation would be appropriate and the Town Council indicated support for its inclusion. The Area Action Plan does stress that the Town Centre remains the focus for retail development but also recognises that proposals for further development must be subject to the sequential test. However, to be found sound, the Policy must give greater emphasis to the national 'town centre first' approach, requiring a significant change to the Policy's text. The authorities have accepted this to be the case and have provided an appropriate modification, revising the Policy and its supporting text (**MM13**). This results in a sound Policy.

### **Issue 3 – Is the proposal to allocate land for a public house and hotel justified?**

19. Initially, there appeared to be little in the evidence base to support or provide reasoned justification for a hotel and public house in this location. The WBPAAP simply advises that "*..interest has been forthcoming..*" and that "*..it is increasingly common-place to see these types of uses alongside Business Park activity.*" (para 6.14). The authorities have advised that there is a lack of public house provision in the vicinity and the site is in a sustainable location in relation to the local population and to serve the Business Park. They have also indicated that hotel rooms are often at a premium in Whitby with no availability during summer months and on a number of themed weekends. The recent approval of planning permission for the erection of a public house/restaurant, 24-bed lodge/hotel, access, parking and associated works (application ref: 13/02711/FL) has shown clear evidence of interest and commitment by a major provider.
20. The remaining concern is that the land allocation proposed by Policy 4 is shown within a line on the Policies Map defining the Area Action Plan Boundary. This is different to and effectively re-draws the Development Limit to Whitby shown on the previous Local Plan Proposals Map. It is also not consistent with the Policies Map accompanying the Draft Scarborough Borough Local plan which is out for Regulation 19 consultation. The Policies Map indicates the allocation as being for Use Classes A4 and C3, but also includes a significant area of unallocated land to the rear, also within the proposed AAP Boundary. If for any reason - such as viability - the present proposal for which planning permission has been granted does not result in development occurring, any alternative, viable development – such as residential development – might be hard to resist. The authorities have accepted that a modification is necessary to address the conflict with the emerging Local Plan and ensure soundness. They have taken the opportunity to correct an inaccurate reference to Use Class C3 – rather than C1 referred to in the Policy - on the Policies Map. As a result Policy 4 is sound provided the Policies Map is amended in accordance with Appendix 1 to the Main Modifications.

#### **Issue 4 – Will the policy for a linked network of green infrastructure be effective?**

21. The AAP proposals for green infrastructure are based on a feasibility report [doc FS1] which shows existing and proposed green infrastructure, including structural planting (dwg 002), and outlines an ecology management plan, detailing post-construction fulfilment of objectives (para 8.1.5). The AAP includes a proposal for a longer term 'circular walk', diversion of a public right of way, and additional planting (paras 7.9 & 7.10) but the Plan does not suggest how these will be achieved. This indicates that the Policy will not be effective.
22. The authorities have accepted that the effectiveness of the Policy would be increased by changing the emphasis from an 'expectation' to a 'requirement', and by ensuring that the Policies Map includes reference to the proposal for a linked network of green infrastructure. There is a similar concern regarding effectiveness of the Policy in providing an appropriate level of protection for legally protected species. The authorities have proposed modifications to Policy 6 (**MM12**) and to include an indicative route for the proposed footpath network on the Policies Map. The modifications would result in a sound Policy provided the Policies Map is amended in accordance with Appendix 1 to the Main Modifications.

#### **Issue 5 – Are the intentions regarding improvements to highways and other infrastructure clear?**

23. Initial questions regarding responsibility for implementation and programming/funding of highways and other infrastructure were satisfactorily dealt with in the authorities' Response to Inspector's Questions (Matter 5). However, the notation on the Policies Map in the Submission Plan was not clear so far as new roads are concerned. It is necessary to address this matter for soundness and the authorities have proposed an amended notation. Provided the Policies Map is amended in accordance with Appendix 1 to the Main Modifications the Policy is sound.

#### **Issue 6 – Is the framework for implementation and monitoring clearly stated?**

24. The Submission document, Appendix C, provides little in the way of target dates or quantified targets to be achieved, and no baseline information against which to measure delivery. As a result there is no means of monitoring the achievement of the plan's objectives and so no means for determining its effectiveness. This was raised in the matters to be examined and the authorities have responded with additional information, significantly revising tables C1 – C4 to Appendix C. These modifications (**MM3 – MM8**) provide baseline information, together with sources where appropriate, target information and details of delivery mechanisms resulting in a sound Implementation and Monitoring Appendix.
25. In their response to the consultation on proposed Main Modifications, Natural England expressed disappointment at the deletion of the target to increase the percentage of development incorporating SuDs in their proposals. Whilst

their concern is understood, there are on-going discussions regarding the implementation requirements of North Yorkshire County Council as the approving body for SuDs schemes. Once resolved, monitoring and reporting arrangements for schemes will have to be developed by the approving body. In these circumstances there is nothing to be gained by reinstating the indicator.

26. The authorities have advised that some of the indicators have also been included in the monitoring framework for the Sustainability Appraisal. They have advised that the framework for the SA will be amended in the final Sustainability Report to reflect any changes.

### **Policies Map**

27. The authorities have provided a revised Policies Map incorporating the changes referred to in paras 20, 22 and 23, above, through Appendix 1 attached to the Main Modifications.

## **Assessment of Legal Compliance**

28. My examination of the compliance of the Plan with the legal requirements is summarised in the table below. I conclude that the Plan meets them all.

<b>LEGAL REQUIREMENTS</b>	
Local Development Scheme (LDS)	The Local Plan is identified within the approved Scarborough LDS November 2012 [CD21] and North York Moors LDS May 2013 [CD11] which set out an expected adoption date of Autumn 2014. The Local Plan's content and timing are compliant with those LDS.
Statement of Community Involvement (SCI) and relevant regulations	The SCIs were adopted in August 2006 (NYMNP) [CD12] and October 2013 (SBC)[CD22] and consultation has been compliant with the requirements therein, including the consultation on the post-submission proposed 'main modification' changes (MM). (A new SCI was adopted by NYMNP during the course of consultation on the Proposed Modifications. The consultation complied with the requirements of both the former and emerging SCIs).
Sustainability Appraisal (SA)	SA has been carried out and is adequate [SD2-4].
Appropriate Assessment (AA)	The Habitats Regulations AA Screening Report November 2013 [SD5] indicated the possibility of harm to the integrity of Natura 2000 sites could not be ruled out. A full assessment was undertaken November 2013 [SD6] and appropriate mitigation measures were incorporated in the Plan.

National Policy	The Local Plan complies with national policy except where indicated and modifications are recommended.
Sustainable Community Strategy (SCS)	Satisfactory regard has been paid to the Scarborough SCS [CD15] and the NPAs Management Plan [CD7].
Public Sector Equality Duty (PSED)	The Local Plan complies with the Duty and is adequate. The authorities have provided evidence of compliance.
2004 Act (as amended) and 2012 Regulations.	The Local Plan complies with the Act and the Regulations.

## Overall Conclusion and Recommendation

29. The Plan has a number of deficiencies in relation to soundness for the reasons set out above which mean that I recommend non-adoption of it as submitted, in accordance with Section 20(7A) of the Act. These deficiencies have been explored in the main issues set out above.
30. The authorities have requested that I recommend main modifications to make the Plan sound and/or legally compliant and capable of adoption. I conclude that with the recommended main modifications set out in the Appendix the Whitby Business Park Area Action Plan local plan satisfies the requirements of Section 20(5) of the 2004 Act and meets the criteria for soundness in the National Planning Policy Framework.

*Patrick T Whitehead*

Inspector

**This report is accompanied by the Appendix containing the Main Modifications**