

# THE CITY OF DURHAM TRUST

Response to the County Durham Plan Pre-Submission Draft

## COUNTY DURHAM PLAN PRE-SUBMISSION DRAFT - Consultation October 2013

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Consultee ID:

Received:

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Preferred method of contact (please tick):      Email          Letter

To which part of the County Durham Plan does your representation relate?  
**POLICY 25 Retail allocations and town centre regeneration areas**

### Q1

**Do you consider that this policy/proposal of the Pre-Submission Draft Local Plan to be Legally & Procedurally Compliant and Sound?**

**Legally and Procedurally Compliant** No (Go to Q3)

**Sound** No (Go to Q3)

**Q2** – not relevant.

### Q3

**Why do you consider that this Policy/Proposal of the Pre-Submission Draft Local Plan is not Legally & Procedurally Compliant or sound? Is it:**

**Positively Prepared?**      No

**Justified?**      No

**Effective?**      No

**Consistent?**      No

### Q4

If you do not consider this policy/proposal of the Pre-Submission Draft Local Plan to be Legally & Procedurally Compliant or Sound please use this box to explain why.

#### Legal and procedural compliance

1. The Trust's response to Policy 25 relates ONLY to three elements within that policy, which affect the City of Durham. These are: the proposed retail allocation north of Arnison (paragraphs 6.28-9 of the Pre-Submission Draft); the proposals for North Road (paragraph 6.31); and the proposals for Claypath (paragraph 6.32). The Trust has no adverse comments on the content of the Claypath proposals, and indeed welcomes them in principle, but subject to the comment in paragraph 2 below.

#### Legal and procedural compliance

2. However, because the Claypath proposals were not identified within the Council's 2012 Preferred Options Draft options, they have not been included in previous public consultation as part of the development of the Local Plan. The site assembly which is described in paragraph 6.32 has the potential to create a strategically-significant development opportunity within the city centre, in close proximity to the retail hub provided by the Market Place, and inside the boundaries of the Durham Business Improvement District. The Trust considers that this introduction of a significant new element into this part of the Local Plan at such a late stage in the consultation process has the effect of making Policy 25 **non-compliant in procedural terms**. This policy is also unsound for the reasons detailed below.

#### Soundness

3. The Trust's comments on the soundness of Policy 25 deal 3. separately with the north of Arnison and North Road elements in turn.

#### North of Arnison

4. The Trust considers the proposal in the Pre-Submission Draft for a significant retail allocation north of Arnison to be fundamentally **unsound** against all the relevant tests. It is **not based on a strategy which has been positively prepared which seeks to meet objectively assessed development requirements**; it is **not justified**, since it **cannot be shown to be the most appropriate strategy, considered against reasonable alternatives and based on proportionate evidence**; it is **not effective**, since it **cannot be shown to be deliverable over the plan period**; and it is **non-compliant with national policy as set out in NPPF**.
5. In terms of the requirement for **objective assessment** and **proportionate evidence**, the north of Arnison element of Policy 25 fails at both the general and specific level. Firstly, as the Trust's response to other policies in the Pre-Submission Draft has already shown,<sup>1</sup> the underlying evidence that the Council has used to derive its population, employment and housing forecasts is seriously flawed. As a consequence, development proposals that are based on these forecasts (including the entire north of Arnison Green Belt Release) are unsound.

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1 See especially the Trust responses to Policies 3,4, and 8.

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6. Secondly, the evidence that the Council uses to claim a requirement for a 3.48 hectare retail allocation and specifically for a large convenience foodstore on the north of Arnison site is **a complete subversion of the professional advice** it received at an earlier stage of the development of the Local Plan. Moreover, as will be discussed in paragraphs 10-11 below, the process which the Council has followed in seeking to justify the reallocation of this provision to a Green Belt out-of-town location has ignored or misrepresented the requirements set out within NPPF.
7. The earlier advice that the Council received about the deficiency of convenience foodstore provision in the city was evidence-based, and related **very specifically** to a need for **city centre provision**. GVA Grimley's report stated:

...we consider that there is a quantitative and particularly a qualitative need for a new mainstream foodstore in the city to alleviate the overtrading of the Sainsbury's store.

**Consistent with our advice elsewhere, any provision should be centrally located so as not to diminish the potential qualitative benefits arising..**<sup>2</sup> [Emphasis added.]
8. It is interesting that the shortfall in provision which the consultants identified is very close to the floorspace formerly occupied by Waitrose in The Gates centre.<sup>3</sup> It is also extremely revealing that GVA Grimley's survey of city centre shoppers found that, for needs that could not be satisfied in Durham's central area, respondents were more likely to travel to Newcastle, the Metro Centre or Sunderland than to the Arnison Centre or other local out-of-town retail parks.<sup>4</sup>
9. While GVA's latest report updates the quantitative information provided in the 2009 report, and refers to the draft Plan's inclusion of the north of Arnison allocation, it provides no evidence which could be taken as providing reasons for withdrawing the firm's previous recommendation that the additional convenience shopping floorspace should be located in the city centre. The report repeats GVA's advice that it is important for the Council's policies to drive footfall in town centres to ensure their vitality, and reiterates GVA's earlier recommendation that the qualitative offer in Durham City centre should be improved, for example by redevelopment of The Gates.<sup>5</sup> Indeed, the report stresses that the Council should have a commercially-informed masterplan for Durham city centre, and (unusually for a consultants' report of this nature) **goes so far as to criticise its client, the Council, for its lack of pro-activity in planning for the needs of the city centre**. It suggests that this is one of the reasons for the relative decline of city centre retailing compared with the Arnison Centre since the material in the 2009 report was gathered, and strongly cautions against the development of further out-of-centre sites.<sup>6</sup>

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2 GVA Grimley, *Durham County Council: retail and town centre uses study* (2009), Vol 2, paras 11.91; 11.94

3 Too much should not be made of Waitrose's withdrawal from the city in 2008: this site in The Gates previously traded successfully as a Safeway store, but that company's decision to sell its UK operation led to regulatory intervention in the sector and considerable churn of individual sites between operators. Waitrose acquired this site from Morrison, but it is arguable with hindsight that Waitrose's then business model was inappropriate to the size of the site and to trading conditions in Durham. The subsequent success of the firm's smaller site at Eldon Square in Newcastle demonstrates that its current business model enables it to sustain town-centre operations in competition with the larger supermarket chains, and indeed this outcome corresponds with the sector trends identified in GVA's latest report for the Council, referenced in footnote 7 below.

4 *Durham County Council: retail and town centre uses study*, Vol 2, para 3.102.

5 GVA, *Durham County Council: retail and town centre uses study: quantitative retail study update*, April 2013, paras 2.35, 12.44

6 *Ibid*, paras 12.44, 12.49-51.

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10. As is to be expected from a firm of GVA's standing, its 2013 advice is heavily informed by NPPF, so it is all the more surprising that the Council's north of Arnison and other Durham City elements of Policy 25 continue to demonstrate **non-compliance with NPPF**. Section 3 of the Council's latest iteration of its retail site selection paper,<sup>7</sup> perpetuates both the internal inconsistency and the failure to comply with the NPPF site selection hierarchy shown by its predecessor in attempting to justify an evident in-built bias in favour of the north of Arnison site. Most blatantly, this is shown by the description of a site at University Hospital as "out of centre – approximately 1.75 km from city centre" (paragraphs 3.16-17), in comparison with north of Arnison, described as "Edge of Centre – within 300m of the defined District Centre at the Arnison Centre" (paragraphs 3.14-16). This bias, besides illustrating the lack of objectivity displayed in the Council's site selection processes which is to be found elsewhere in Section 3, also amounts to a complete misapplication of the sequential tests described in paragraphs 23-4 of NPPF. The context of those paragraphs makes it unambiguous that "edge of centre" is a definition that can only be applied in relation to a town centre – not to a lower-hierarchy district centre, as the Council has attempted to do. NPPF provides no justification at all for even attempting to consider an out-of-town Green Belt site as a substitute location for a town-centre use.
11. This is just one example of the north of Arnison site's non-compliance with NPPF. Quite apart from its Green Belt location, it would clearly conflict with the Section 2 objective of ensuring the vitality of Durham's town centre, while its accessibility, especially by sustainable transport, does not meet the requirements of paragraphs 23-4 and Section 4 of NPPF. An out-of-town superstore development on the scale proposed would require to attract most of its business from beyond the immediate local catchment, and would therefore inevitably generate a substantial number of car trips, many of them cross-city if the new provision purports to address a city-wide deficiency. The attempt of the site selection paper to describe non-car access as "potentially good" because of its relative closeness to public transport at the Arnison Centre is ludicrous – pedestrian access from and to the Arnison Centre bus stops would be beyond the recommended walking distance, and particularly unattractive for those burdened with heavy shopping. It would entail crossing Rotary Way, already a busy traffic route but which would become even more of an obstacle to safe and convenient pedestrian movement if the Northern Relief Road were to be built. Even in terms of its local accessibility to projected housing releases, the site's location would make it sub-optimal for walk-in access.
12. The north of Arnison proposal is not therefore supported by the evidence available to the Council, and it is apparent that the Council has not used this evidence objectively and proportionately. In addition, the site is entirely non-compliant with Government policy as expressed in NPPF. As the Council's own site selection paper notes, its deliverability is contingent on Green Belt release. Even then, its provision would depend on the availability of a developer and operator prepared to assume the commercial risk of competing with the existing convenience offer within the Arnison Centre. The most recent advice from GVA points up the move away from large-scale convenience stores by major operators.<sup>8</sup>

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<sup>7</sup> *Retail site selection assessment paper*, October 2013.

<sup>8</sup> GVA, *Durham County Council: retail and town centre uses study: quantitative retail study update*, April 2013, para 2.12

In terms of **reasonable alternatives**, the Council's most recent retail site selection exercise seems to have continued the practice of unreasonably excluding other relevant sites from further consideration that was evident in previous versions.<sup>9</sup> Most notably in terms of Policy 25, it completely fails to acknowledge the potential introduction of a site at Lower Claypath into the options for development in the city centre. A convenience store here would directly address the city-centre deficit identified in GVA Grimley's 2009 report. It would be close to existing bus stops, off-street parking, offices, and the heavy footfall around the Market Place, and could well provide a suitable commercial anchor for the redevelopment of the entire Claypath site.

### North Road regeneration

13. The Trust strongly agrees for the need for reinvigoration of North Road and its retail offer, not least because of its importance as the main gateway to the city for visitors arriving by train, scheduled coach and bus, and because of the importance of its streetscape in framing the unfolding prospect of the World Heritage Site from the north west. The Trust acknowledges the diminishing quality and extent of the retail offer in this formerly important shopping street, and agrees that this commercial underperformance contributes to the run-down appearance of the built environment of North Road and its connecting streets.
14. However, the Council itself has played a significant part in undermining the appearance and role of North Road. It has failed to maintain the footways to the standards to which they were designed: a high proportion of the paving slabs are now replaced by tarmac, and no attempt appears to have been made to address the aesthetic and hygiene problems caused by gum on the street surface. In addition, by closing the Parking Shop it has directly contributed to the withdrawal of activities from the street and to the number of empty frontages. The County Council's lack of enforcement of existing road traffic orders and the apparent absence of any effective oversight of taxi operations along the south side of North Road have also contributed to the degradation of the pedestrian shopping experience in the area.
15. The Council's preferred strategy does not provide any evidence that it has sought to understand the fundamental issues facing North Road, and contains a number of significant weaknesses which are likely in themselves to further diminish, rather than enhance, the functioning and appearance of North Road. Its proposal for developer-led implementation is unlikely to offer prospects of an early reversal of the area's decline. Consequently, its strategy is **not positively prepared, not justified as the most appropriate strategy**. The strategy also **fails to demonstrate effectiveness and deliverability**.
16. Among the weaknesses in the Council's analysis and proposed solutions are the following:
  - By limiting its consideration of North Road to the section of the street south-east of the railway viaduct, the strategy reinforces the severance created by the construction of the realigned A690 and excludes the existing retail uses beyond the viaduct, which extend into Sutton Street. This section continues the C19th streetscape, and has always

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<sup>9</sup> See paragraph 10 above.

formed part of North Road's commercial area. As well as forming part of the step-free route from the railway station, this stretch of North Road, together with Sutton Street, will also gain added importance in linking new development on the Waddington Street/County Hospital sites with the city centre. The exclusion of this functionally-linked contiguous area undermines the strategy's coherence and limits its effectiveness in improving the perception of North Road as a key gateway to the city.

- By rezoning the entire bus station as part of the proposed retail allocation without making any committed provision for its replacement, the Council's strategy risks undermining one of the important factors that could contribute to improving North Road's commercial performance: its ready access by public transport from the whole of the surrounding area<sup>10</sup>. The Council continued to propose moving bus facilities closer towards the A690 roundabout, and the map on page 127 of the 2012 *Preferred options Appendices* volume extends the zoning to include the soft and hard landscaping along the A690 on both sides of the roundabout, and the roundabout itself.
- The reality is that these areas, even with the inclusion of the Hopper House site, could not provide an effective substitute for the present bus station. The bus station is well integrated into the topography on the southern side of North Road while being largely screened from the street itself by its frontage. Its operational area provides eleven boarding stands and two further setting-down stands, together with designated parking bays for four buses. At peak times it is also necessary for parts of the entrance and exit roads to be used as holding space for buses, and Sutton Street is also used for this purpose. For large parts of the day all stand are in use, with some being reoccupied at 5-10 minute intervals. Although the bus station could benefit from improvements to the layout and management of the passenger waiting facilities, the operational area is probably optimal for the throughput of services which it is required to handle, and its overall layout facilitates easy passenger interchange between bus routes. It is also close enough to the railway station for reasonable inter-modal connections on foot, and a direct link between bus and rail stations is provided by the Cathedral bus service.
- No other single space within the designated North Road redevelopment area could accommodate the existing functions of the bus station, and on-street provision is not a feasible or acceptable substitute. Modern buses are around 11-12 metres in length, and a ready appreciation of the amount of frontage that would be required to replace the saw-tooth layout of the eleven existing main stands is provided by the two on-street stands on the opposite side of North Road. The kerb-side space required for these two stands is not far short of the length of the street frontage of the entire bus station, while the damage to the road surface and the interruption to pedestrian flow caused by on-street bus activities at these stances is also readily apparent. A similar effect has now resulted from the transfer of the taxi rank to the south side of the main length of North Road.
- To move existing stands within the bus station to other lateral frontages in North Road and along the roundabout approaches would probably take up all of the available kerb space. Such a layout would significantly detract from the appearance and amenity of

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<sup>10</sup> A survey carried out by the Council's consultants found that a higher proportion of shoppers in the central area of Durham arrived by bus than at other comparable centres in the county. See GVA Grimley, Durham County Council: retail and town centre uses study (2009), Vol 2, para 3.101.

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the whole of the North Road area, and would be significantly less efficient both for bus operators and for users. Passengers would no longer be able to interchange quickly and safely within a compact and dedicated area and would not have the shelter from the elements and the other facilities which the present bus station provides.

- Concentrating bus operations around the present A690 roundabout, even if it were feasible, would also detract significantly from the landscaping of this area, which softens the intrusion caused by the inner relief road and complements the way in which the railway viaduct frames the views in both directions along North Road. Any loss or reduction of the soft landscaping (including the now-mature planting on the roundabout itself and alongside St Godric's Road) would be a serious diminution in the quality of the existing streetscape, while the extension of hard landscaping to create on-street bus stances and layover area would create swathes of sterile and unwelcoming space at this key entrance to the city, and would be inconsistent with its Conservation Area status.
- Changes to the layout of the existing roundabout and the traffic management on its approaches to accommodate new bus stops would also add to the severance which is currently created by the A690. Signalisation of the junctions will reduce, rather than increase, the opportunity for pedestrian movement, which will increase significantly if buses pick up and set down on the north side of the layout.
- In terms of commercial development requirements, no evidential justification for converting the bus station to retail uses has been provided. The latest GVA advice to the Council does not provide any evidence to support the need for additional non-food retail on this scale, but rather argues the contrary, by stating that

The quantitative capacity assessment identifies no immediate need for the Council to proactively plan for new comparison provision in the city centre in the early phase of the emerging Local Plan (i.e. to 2018). There are modern vacant units within the city centre primary shopping areas which would meet any short term needs or indeed commercial demand for representation in the city in the first instance.<sup>11</sup>

Instead, as already mentioned, GVA identifies improvements to the existing provision at The Gates as a priority.<sup>12</sup>

- The Council's own site selection report dismisses North Road as not providing a sufficiently large site to address the city centre's identified deficiency in food retailing space.<sup>13</sup> Since all of the existing street frontage of the bus station apart from the pedestrian access and the bus exit space is already dedicated to retail use, it is hard to understand the basis of the claim in paragraph 6.31 of the Pre-Submission Draft that relocation of the bus station is necessary for its site to be utilised for retail frontage. In view of the current number of voids in The Gates shopping centre and in North Road itself, and the advice from GVA already quoted, there is no commercial evidence of any pressing requirement for adding to the current supply of retail sites in the area at the cost of relocating the existing convenient and effective bus facilities. Indeed,

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11 GVA, *Durham County Council: retail and town centre uses study: quantitative retail study update*, April 2013, para 12.37.

12 Ibid, para 12.12.

13 Durham County Council, *The County Durham Plan: Retail Site Assessment Selection Paper* (2012), paras 3.11; 3.25.

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redevelopment on the scale that the Council appears to propose could well displace specialist small businesses that are trading successfully on North Road and which provide valued services that contribute to the entirety of the city centre retail offer.

17. While the Council's strategy may be influenced by its ownership of the bus station and the possibility of capital receipts, this cannot be an acceptable basis for plan and policy making – the Council also has other responsibilities as public transport and planning authority, and it would be a dereliction of these duties for the Council to pursue an asset-realisation approach which compromised other outcomes. In the current depressed state of the commercial property market, it would also be an extremely short-sighted approach and would amount to poor stewardship of operational assets which the Council holds in trust for Durham's residents.
18. Consequently, while agreeing with a high-level objective to regenerate North Road, the Trust considers that the strategy which the Council proposes in Policy 25 to achieve this is **unsound**. The Council has provided **no objective evidence** in support of its proposed strategy: in particular, the commercial property advisers who have provided the bulk of the quantitative and qualitative evidence for the Council's retail strategy have identified no urgent need that would justify converting the bus station site to retail use.
19. In addition, a number of elements in this part of Policy 25 also appear to work directly against the outcomes that it purports to facilitate, and indeed appear to be **inconsistent with Government policies set out in NPPF**. The adverse effects on streetscape that would result would damage, rather than improve, the vitality of this part of the town centre, while the proposals for relocating the bus station (and presumably the associated on-street stops) further north within North Road would materially worsen bus passengers' access to shopping and other facilities in the centre of Durham – the bus station provides the closest access to the whole of the city centre for passengers from the north, west and south-west of the county. This again would be contrary to NPPF, and would be a particularly retrograde step in terms of the Council's sustainable transport objectives because of the relatively high proportion of bus access to retail opportunities in the city that is reported by its advisers.
20. The **effectiveness** and **deliverability** of the North Road proposals also appear highly **questionable**, not only because of the inherent tensions within them and because of the Council's failure to bring forward proposals for elements which it directly controls (such as pavement maintenance and traffic management) but also because of its apparent reliance on commercial partners to implement the main elements. When the Council's own commercial property advisers go so far as to criticise the lack of a pro-active, commercially-informed masterplan for the city centre, it is evident that Policy 25 cannot on any robust assessment of development need, nor of the way that improvements in the retail experience in the North Road area can be implemented either over time or across the spatial extent of even the restricted plan area that the Council proposes.
21. Finally, and especially in view of the lack of operational and commercial detail within the proposals for North Road, it is clear that the Council has not objectively assessed **reasonable alternatives**, such as the retention of the bus station in its present location, and the gradual roll-out of retail and streetscape enhancements from the southern end of

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the area (including The Gates, as recommended by its advisers) towards the viaduct and railway station. Such a programme is probably more likely to conform to the existing rental gradient within North Road and to be more deliverable within both commercial and Council budgets than proposals for early high-cost, high-risk construction interventions in the section of North Road that is most distant from the existing retail core represented by Silver Street and the Market Place.

### Q5

**What change(s) do you consider necessary to make this policy/proposal of the Pre-Submission Draft Plan Legally & Procedurally Compliant and Sound?**

The Durham City elements of Policy 25 require to be entirely recast to remove their significant non-compliances with national policy as expressed in NPPF and bring any proposals into accordance with the evidence base provided by its advisers. The necessary changes include deleting the north of Arnison retail allocation; giving due weight to the Claypath site and other city centre sites as potential means of addressing the identified city-centre convenience foodstore deficiency, thereby increasing the vitality of the whole city centre retail offer as national policy directs; and completely re-drawing the North Road regeneration proposals in a manner that respects the commercial evidence, recognises the strategic contribution of the bus station on its present location and layout, seeks to improve the area's gateway function (especially in view of the new development sites immediately to the north), reflects North Road's Conservation Area status, and commits the Council to early and pro-active discharge of its existing streetscape maintenance and traffic management duties as well as of its own property ownership responsibilities in the area.

### Q6

**Do you wish to participate in the Examination in Public? (Please note that the Planning Inspector will make the final decision on who will be invited to attend individual sessions at the Examination).**

Yes

### Q7

**Do you want to be informed of the following:**

**The submission of the Local Plan to the Secretary of State? Yes**

**The publication the Inspector report? Yes**

**The adoption of the County Durham Plan? Yes**