

THE CITY OF DURHAM TRUST

Response to the County Durham Plan Pre-Submission Draft

COUNTY DURHAM PLAN PRE-SUBMISSION DRAFT - Consultation October 2013

For Office Use Only

Consultee ID:

Received:

Acknowledged:

Processed:

Please use a separate form for each representation.

NAME & ADDRESS The City of Durham Trust Registered Office Quality Solicitors BHP Law Kepier House Belmont Business Park Belmont Durham DH1 1TW Email Address trust@durhamcity.org	NAME & ADDRESS (AGENT)(IF APPLICABLE) ROGER CORNWELL (CHAIR) OTHER DETAILS AS AT LEFT
---	--

Preferred method of contact (please tick): Email Letter

To which part of the County Durham Plan does your representation relate?
POLICY 7 Aykley Heads

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

- The Council describes this proposal as a “strategic employment site” on pages 59 and 78 in the Pre-Submission Draft and in paragraph 1.2 of the related Aykley Heads supplementary planning document. These documents also refer to the site’s being aimed at “national and international employers”. However, it provides no evidence that this proposal has been agreed with neighbouring local authorities, even though the NPPF identifies the provision of jobs within an area as one of the strategic requirements to which the Duty to Cooperate expressly extends (paragraph 156). These neighbouring authorities are also the Council’s intended partners in the proposed Joint Authority for the north-east, which would encompass economic development within its functions.
- As noted in paragraphs 26-27 below, there is also a significant inconsistency between the drafting of paragraph 4.104 of the Pre-Submission Draft and the extent of the proposed Green Belt release sought in Policy 7 and shown in the accompanying proposals maps. This lack of clarity of intent is a clear breach of legal and procedural compliance.

Soundness

(a) Failures in terms of justification, positive preparation and effectiveness

1. As the Trust’s response to Policy 3 has indicated, there are significant defects in the evidence base that the Council has used to derive the population, employment and household projections underlying the Pre-Submission Draft. Consequently, Policy 7 (which is based upon the requirement to provide additional employment sites to deliver the Council’s strategy) **does not reflect objectively assessed development requirements. Likewise, it cannot be demonstrated to be the most appropriate strategy, when considered against reasonable alternatives, based on proportionate evidence.**
2. In terms of **reasonable alternatives**, the Trust, in common with many other respondents at previous stages of the Plan’s formulation, has put forward alternatives for less concentrated development which would not necessitate the land release in the city of Durham that is proposed in Policy 7. **The Council has consistently failed to give proper consideration to these alternatives**, or (as noted in the Trust’s response to Policy 10) has applied its own interpretation of them in order to justify their removal from further consideration.
3. Paragraph 12 in this response points out that the Council’s own documentation acknowledges the conditionality of parts of its Policy 7 proposals. These are touched upon further in paragraphs 4.168-9 of the Pre-Submission Draft. If these conditions cannot be met, particularly the requirement to fund the demolition costs of County Hall and other site preparation charges from future business rates, then **the effective delivery of Policy 7 cannot be assured**. Furthermore, council tax payers within the county will face a possible financial exposure because of Policy 7’s dependence on these future but conditional revenue streams to offset the Council’s start-up costs.

(b) Lack of consistency with national policy: NPPF provisions on town centre development and sustainable transport access.

4. The Council has removed from the Pre-Submission Draft the inaccurate and misleading description of the Aykley Heads site as a “Central Business District” for Durham City which characterised its previous promotion of this concept at Preferred Options and the earlier plan development stages.¹ Nevertheless, this previous misrepresentation has been perpetuated with only a slight amendment of nomenclature in paragraph 4.90 of the Pre-Submission Draft which refers to Aykley Head’s providing “a Central Business quarter” and through its description as a “core business quarter” in paragraph 4.92. Paragraph 4.48 adds to this mid-description by referring to Aykley Heads as “in particular... a significant opportunity to bring more workers into the **city centre**” (emphasis added).
5. It appears that, from its elevated vantage point at Aykley Heads, the County Council has developed a view of what constitutes the centre of Durham City which differs significantly from that which would meet the functional definition of a town centre in most urban planning text books. The area of operation of the recently-established Business Improvement District [BID] for Durham shows that the business community within the city has a different perception of the city centre, and is moreover prepared to make a real financial commitment to this area. The BID extends from the railway viaduct along North Road to the river, then includes the whole of the peninsula; the lower parts of New and Old Elvet and Claypath; the area west of Providence Row; Milburngate; the riverside as far as the Sidegate roundabout; and the area between Sidegate and the railway.²
6. The BID’s broad delineation of the city centre would probably be accepted as appropriate by most Durham citizens and would correspond with the definition suggested by most planning text books. The Market Place provides the historic secular core of this area, and is the long-standing focus of city centre retail, financial and professional services. Despite the overlay of the new road system, the Market Place remains the area closest to the main convergence of the radial routes linking the city with its wider hinterland. This is reflected in the concentration of off-street parking in close proximity to the Market Place.
7. Aykley Heads is about 1.4 km from the Market Place, and because of its out-of-centre location³ is less accessible to the bulk of the population of the city and county, with the exception of the immediately adjacent housing areas, Framwellgate Moor, Newton Hall and those settlements to the west and north that are reached via the A691 or A167 – even Neville’s Cross is closer to the Market Place than to County Hall. There is no continuous built-up linkage between Aykley Heads and the commercial and residential core of the city apart from the detour via Western Hill, and the shortest pedestrian access to or from the Market Place entails a walk alongside fast-moving traffic on the A691 on a footway that has to be shared with cyclists.
8. This locational and topographical detail is important, because it clearly identifies Aykley Head’s non-compliance with national policy in terms of the development hierarchy very specifically set out within NPPF. Section 2 of that document emphasises the priority that the Government attaches to preserving the vitality of town centres, and enjoins local

1 See, for example, *Local Plan Preferred Options* (2012), paras 4.52 and 4.93, and *Aykley Heads draft supplementary planning document* (2012), para 1.8.

2 *Durham BID business plan* (2012), page 28. <http://www.durhambid.co.uk/media/downloads/Durham-BID-business-plan.pdf>

3 See footnote 4

THE CITY OF DURHAM TRUST

Response to the County Durham Plan Pre-Submission Draft

planning authorities to recognise town centres as the heart of their communities and pursue policies to support their viability and vitality (para 23). Subsequent indents in the same paragraph require authorities

- to allocate a range of suitable sites to meet **in full** the scale and type of (*inter alia*) commercial and office development needed in town centres, and
 - **only where** suitable and viable town centre sites are not available, to allocate appropriate edge of centre sites for main town centre uses that are well connected to the town centre.
9. The Council's repeated use of the word "Central" in its descriptions of the Aykley Heads site demonstrates its awareness of the underlying intention of this section of NPPF. However, misleading categorisation cannot substitute for substantive evidence of compliance with this guidance⁴, and it is very clear that the Council has not followed the exhaustive sequence required by paragraph 23 of NPPF in selecting this site as its preferred "Central Business quarter" for the city. Indeed, the Council's process appears to have been driven more by its own property ownership interests in the site than by regard to sound planning principles.
10. Any suggestion that suitable and viable town centre sites have not been available in the city is disproved by examining the recent history of the property market in Durham City, which has seen the emergence of a critical mass of prime town centre development opportunities. Some of these sites are referred to in paragraph 4.48 of the Pre-Submission Draft, but others, such as Old Shire Hall, the County Hospital site, and the Arriva bus depot, are not mentioned. These opportunities have mainly arisen since the establishment of the new unitary authority, but, because of the present Council's neglect of its duty to plan positively for the future of Durham city centre, some of these key sites have already been lost to speculative and arguably inappropriate development. However, significant opportunities still remain, and these could be secured if the Council undertook the master-planning of the city centre with the same enthusiasm that it has shown for exploiting Green Belt sites. Indeed, in a report that forms part of the Pre-Submission Draft evidence base, the Council's property advisers have stressed the need for a "commercially-informed" masterplan for the city centre.⁵
11. The fact that the only substantial commercial office development currently taking place in the city (apart from the replacement for the Police headquarters close to its previous site) is located at the former Ice Rink suggests that the view expressed in paragraph 3.1 of the supplementary planning document that Aykley Heads represents the "best location for office development in the County" is not universally shared within the business community. Similarly, the issue of flood risk on sites adjoining the River Wear cannot be the major constraint that is implied by paragraph 4.160 of the Pre-Submission Draft when a private sector developer has evidently been able to satisfy its investors and the Environment Agency as to the viability of the Ice Rink site mentioned above.

4 It is interesting to note that one of the Council's own evidence papers explicitly describes a site about 200 metres north of the County Hall roundabout and 1.75 km from the city centre as "out of centre." (Retail site selection assessment paper, Oct 2013, paras 3.16-17). This site abuts the Aykley Heads Masterplan area across the B6532, and is more directly accessible from the city centre than the interior of the Aykley Heads site.

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

THE CITY OF DURHAM TRUST

Response to the County Durham Plan Pre-Submission Draft

12. The Council's own evidence base acknowledges that demand for commercial office sites at Aykley Heads would, if it materialises, be such that only 25% of the site would be developed by the mid-point of the plan period, 2021.⁶ The Aykley Heads supplementary planning document also recognises the conditionality of successful development of the site (paragraph 3.3). Consequently, the demand, and therefore the need, for the Aykley Heads proposition has yet to be established, nor can its deliverability be assured. Given the continuing availability of significant city centre sites, it is difficult to see how the Council can claim that its promotion of Policy 7 is compliant with the relevant provisions of paragraph 23 of NPPF.
13. Even if, as required by NPPF's sequential tests, a lack of city centre sites could be demonstrated, Aykley Heads does not meet the accessibility requirements that paragraph 23 places on edge-of centre sites and the sustainable travel criteria set out in Section 4 of the same document. The poor and unwelcoming pedestrian access to the site from the city centre has already been touched on at paragraph 7 of this response, and, despite the Council's claims, bus connectivity is little better. The town services and the relatively few through routes that operate across the city via the bus station do provide direct linkages, but most bus journeys to Aykley Heads from the east and south of the county, and from the area west of Bishop Auckland and south of the A691, entail either a change of services at the bus station – with consequent transfer time, fare, and journey time penalties – or a walk of about 1 km from the bus station to the County Hall entrance, well in excess of the best-practice 400m walking distances recommended for pedestrian access by the Chartered Institution of Highways & Transportation. Though the Aykley Heads supplementary planning document refers to the Council's park-and-ride bus services, and to a recent s.106 agreement to improve the frequency of the Howlands service (paragraph 2.11), it is difficult to see the relevance of this comment. The Howlands route does not serve Aykley Heads, and in any case the use of Council-subsidised Park & Ride services to offer general public transport on routes which are served by commercial bus operators could well be challenged under current legislation.
14. Despite the repeated references in the Council's submission to Aykley Head's bus accessibility, this is therefore only true for those who live on the more frequent direct routes which pass the main frontage of the site. County Hall itself is indeed located close to bus stops on those routes, but the plan for the site proposes extending development significantly further to the north-east, beyond convenient walking distance from these stops. Paragraph 4.19 of the supplementary planning document effectively admits this defect, by recommending that higher-density employment should be located to the west of the site, and therefore closer to bus routes.
15. When juxtaposed with paragraph (h) on page 60 of the Pre-Submission Draft, and the acknowledgement in para 4.103 of the same document that "access by car and car parking are attractive to private sector employers", it appears that in reality Policy 7 pays only lip-service to the Council's own sustainable transport policies and to the guidance on this subject in NPPF. Instead, the Aykley Heads plans appear to envisage a two-tier approach to employment uses on the site: those towards the western edge, which will be at least nominally accessible by public transport, and those further from the A691, which will provide "sufficient parking for major investors and prestige businesses". (Pre-

6 Jacobs, *Durham Local Plan Option Appraisal: Final Report* (2013), p 15

THE CITY OF DURHAM TRUST

Response to the County Durham Plan Pre-Submission Draft

Submission Draft, page 60.) This is not a distinction which is recognised within NPPF guidance about sustainable transport provision and principles.

16. As the Council notes, there is relatively good public transport access to Aykley Heads by train, but in the context of the County Council's overarching objective of improving the employment levels of **county** residents, rail access is only really relevant for people from Chester-le-Street. Those from, say, Seaham or Bishop Auckland are unlikely to contemplate commuting to Aykley Heads by train via Darlington. The relative closeness of Durham railway station would of course contribute to the site's accessibility for business travel, but the same is true of most existing and potential office locations in the city centre. In comparison with the latter, Aykley Heads would be at a clear **disadvantage** for business travel by air or motorway, factors that are specifically claimed in favour of Aykley Heads in paragraph 2.2 of the supplementary planning document and mentioned more generally on page 21 of the Pre-Submission Draft. Sites in the city centre will have closer access to the A1(M) north and south, and also therefore to either Newcastle or Tees Valley airports by road.
17. There is also a specific conflict within the Council's proposals. The Masterplan for the site appears to designate the area which currently contains the park & ride facilities for Durham railway station as Development Area D, for development with buildings of up to three storeys in height.⁷ This site's current use is essential in supporting the role of Durham station (currently the third busiest in the region, but likely shortly to overtake Darlington) as the railhead for most of the county and for adjacent parts of Tyne & Wear. Its car park should be protected in this use rather than compromised by inclusion in a speculative development brief.
18. In terms of its accessibility to the city centre, Aykley Heads does not therefore satisfy the requirements of NPPF for further expansion, even as an edge-of-centre site. Its accessibility more generally is sub-optimal when considered in relation to its city and county catchment, and does not meet the guidance set out in Section 4 of NPPF that development should maximise the opportunities for sustainable travel. Finally, as noted above, the plan for Development Area D is clearly inconsistent with the Council's transport policies, since it would remove Durham station's park-and-ride provision.

(c) Lack of consistency with national policy: NPPF Green Belt provisions and related designation issues

19. The wider Aykley Heads area is recognised in current planning documents as a vital component of the so-called 'inner bowl' around Durham City, the higher land acting as a backdrop to the World Heritage Site. Aykley Heads is also an important presence in many other Durham city townscapes outside the World Heritage Site. To give one example, the steep slope of its eastern side is prominent from the bottom of Hallgarth Street, where its skyline helps create the effect of a city open to green spaces beyond. To close off such a space with new building would replace this openness with a sense of urban claustrophobia.
20. Proposals to extend development at Aykley Heads into the areas of the site now put forward by the Council for Green Belt release in Policy 7 have already been considered at the public inquiry into the Durham City Local Plan in 2001-02. The Planning Inspector who

⁷ Durham County Council, *Aykley Heads draft supplementary planning document* (2012), p 24

THE CITY OF DURHAM TRUST

Response to the County Durham Plan Pre-Submission Draft

conducted that inquiry established the Green Belt's current boundaries, and specifically rejected building on the eastern part of the Aykley Heads site, stating that the "harm would be unacceptable," and that he was "not convinced that adequate mitigation could satisfactorily be achieved on this part of the site."⁸

21. As noted above, and discussed more fully in the Council's response to Policy 14, the 2001-02 Local Plan public inquiry established the current extent of the Green Belt, and the Inspector's report gave very cogent reasons for his recommendations, both in respect of the Green Belt as a whole and as it related to Aykley Heads. The guidance in paragraph 83 of NPPF emphasises the "intended permanence" of Green Belt boundaries "in the long term" and that they should be capable of extending beyond the plan period. The extent of the Durham City Green Belt was the subject of exhaustive consideration just over a decade ago, and this consideration included specific consideration of the Aykley Heads site. For the Council to seek to reopen this issue only 11 years after the last public inquiry is a negation of the principles that are built into NPPF guidance about Green Belt policy.
22. City centre development sites, and other strategic employment sites in the wider city and county catchment, remain available. Given these circumstances, and the underlying weaknesses in the Council's employment forecasts that are described in the Trust's response to Policy 3, the Pre-Submission Draft has entirely failed to prove the "exceptional circumstances" that NPPF requires for release of Green Belt land. Paragraph 14, footnote 9, of NPPF also makes it clear that **Green Belt sites are excluded from the presumption in favour of sustainable development**, on which the Council seeks to found
23. Even if the Council's evidence base for requiring further development land and for this to be provided at Aykley Heads were stronger, **Policy 7 is in clear breach of national Green Belt policy as expressed in NPPF.**
24. Additionally in terms of policy compliance, it must be noted that the grassland at Aykley Heads forms a habitat where great crested newts are known to hibernate. This species is fully protected under the Wildlife and Countryside Act 1981, as amended by the Countryside and Rights of Way (CROW) Act 2000, and also under EU legislation, being listed on Schedule 2 of The Conservation of Habitats and Species Regulations 2010 (the Habitats Regulations). As well as the important questions of environmental ethics reflected in this legislation (its challenge to the widespread presumption that human interests must always override the basic needs of other species) the presence of the newts at Aykley Head forms a potential source of expense and costly delay for any proposed development, and therefore to the scheme's **deliverability**.
25. The latter is a well-known scenario often repeated across the country, sometimes costing hundreds of thousands of pounds. At Aykley Head itself the construction of a new police headquarters was held up in 2012-13, at an estimated cost of a quarter of a million pounds, by the need to satisfy Natural England on measures to safeguard the newts.
26. Finally, the Council itself proposes the retention of a significant swathe of parkland along the south-eastern side of the site, and the additional investment in improving this existing resource is of course to be welcomed. Paragraph 4.104 of the Pre-Submission Draft states that "the vast majority of the land that is currently within the Green Belt at Aykley Heads will form part of the Green Belt **so there is no need to change the status of this area.**" (Emphasis added.)

⁸ *City of Durham Local Plan: Inspector's report* [2002], para 122.

THE CITY OF DURHAM TRUST

Response to the County Durham Plan Pre-Submission Draft

27. But the Council's Policy 7, and the accompanying Proposals Maps, do not appear to deliver this stated intention, since they retain the proposal to delete the *whole* of the Aykley Heads site from the Green Belt. **This lack of clarity is itself an important defect in Policy 7**, and provides further evidence of its lack of Soundness.

Q5

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

Policy 7 so comprehensively fails these tests that it cannot be made compliant. The proposal clearly breaches of national policy as expressed in NPPF. Consequently, it should be withdrawn completely from the County Plan and replaced by an alternative that respects national planning guidance on promoting the vitality of town centres and which does not depend on Green Belt release.

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