

East Riding of Yorkshire Council Bridlington Town Centre Area Action Plan

PINS FRONTLOADING VISIT 9/2/2010

Attendance

R Punshon – Planning Inspectorate

J Lister – Bridlington Renaissance, East Riding of Yorkshire Council

N Galley – Roger Tym and Partners

S Hunt – Forward Planning, East Riding of Yorkshire Council

Purpose of visit

The purpose of Frontloading visits is to consider what has been done so far in preparation of the Development Plan Document (DPD) and to identify those issues and questions which, at this stage, appear potentially problematic in terms of soundness.

No attempt has been made by PINS to reach any conclusions on the material submitted, to confirm the adequacy of the work done so far or to endorse any part of the DPD as sound. In any event, this would not have been possible in the time available. This note should not therefore be taken as pre-judging the likely outcome of the Examination of the DPD.

Any guidance provided by this Note will be specific to the East Riding of Yorkshire. It should not be assumed that it is necessarily applicable to other authorities in other circumstances.

The Note

Current practise is that the Note will become a Public Document and will appear on the Core Document list. The Examining Inspector will be provided with a copy. It is stressed that the Note is advisory only and does not constitute a formal part of the Examination process. The Council should make the status of the Note clear to those persons to whom copies are provided.

Examination

The Examining Inspector may seek an Exploratory Meeting or a Procedural Meeting with the Council, the relevant Government Office and other parties ahead of the Pre-Hearing Meeting and Hearing Sessions. The Inspector advised that the Council should take this as an early opportunity to identify areas where the Examining Inspector may require additional information or an explanation of various matters which he/she feels will need to be addressed. The Council is advised to make full use of the potential of such Meetings.

General Points

The Council explained that the AAP had reached the 2nd Preferred Options stage. This had been consulted on and about 50 representations had been received. It was now intended to move forward to preparing a Publication version of the AAP. Representations made in respect of the Publication version should represent the outstanding matters in dispute between the Council and representors.

The intention is that there should be no major change to the DPD required between the Publication and Submission stage as any objections to the

DPD which were capable of resolution should have been resolved at earlier stages of the process. However, it is often the case that representations made in respect of the Publication version can lead the Council to wish to make some additional changes to the DPD to resolve outstanding issues. It is common practise that Councils will put forward these forward as a list of suggested amendments to the Examining Inspector. The Examining Inspector will examine the Publication/Submission DPD but will take the suggested amendments into account. Where these amendments are very minor, it is not normally necessary for there to be another consultation/sustainability appraisal exercise. Where they clarify matters or correct minor errors, he/she may simply endorse the amendments. However, where the suggested amendments are more significant and are necessary to make the DPD sound, the Examining Inspector may take the view that additional consultation/sustainability appraisal will be necessary before he/she can take the amendments into account. Following this he/she may direct that the amendments are incorporated into the DPD

Size of DPD

The Inspector was of the view that, whilst the 2nd Preferred Options document is very long, it was a very useful document in that it fully explained the Council's decision making process and the route by which the Preferred Option had been arrived at. He advised that, at Publication stage, the document should be 'slimmed down' and reduced to its essential elements – Main Issues, Vision, Objectives, Policies and necessary Supporting Text. Paragraph 8 of the Council's 2nd note sets out some intended changes to the format and layout of the AAP. The Inspector considered that these would go some considerable way to achieving a more readily understood document.

Policy Drafting

With regard to the drafting of policies, the Inspector advised that objectives should be removed from policies. The policies should provide clear tests against which development proposals could be assessed. Objectives or policy provisions which were vague in setting out what it is that the developer is required to do should be avoided. The policies should give a clear 'steer' on what is and what is not likely to be acceptable to the Council. The inclusion of provisions which would prevent any development which would be a risk to the Council's strategy are, in the Inspector's opinion, too vague and do not provide sufficient guidance to developers. The thrust of those provisions should be replaced by clear tests which can be applied in a transparent and consistent manner. Paragraph 8 iv) of the Council's 2nd note deals with this point and suggests the replacement of this type of provision in individual policies by a single policy (Policy TC X). This policy gives as examples some of the potential 'risks to the strategy'. In the Inspector's view, rather than giving examples, the policy should clearly and comprehensively specify what developments are likely to be considered to be potential 'risks' thereby providing a clear set of tests which could be applied.

Implementation Strategy

In the Inspector's view the AAP should contain a much clearer Implementation Strategy. This should set out clear targets and trajectories for development, monitoring regimes, key triggers and dates

against which progress can be assessed and contingencies which will come into play if there is any deviation from or shortfall against the targets and trajectories. Given that the AAP contains a number of detailed development provisions, the Inspector suggested that a number of 'interim' targets should be included, such as 'development brief completed by X', 'planning application received by Y'. This would enable the Council to monitor more closely the progression towards delivery of development, to identify potential for non-delivery at an early stage and to put in place contingencies.

Timetables

It is not uncommon for urgently needed AAPs to be prepared ahead of the Core Strategy (CS). The Council indicated that it was ensuring that nothing in the AAP was in conflict with the principles of the emerging CS and that it was employing a shared evidence base to ensure consistency.

The AAP has been in the process of preparation for some considerable time. However, the Inspector was of the view that this was unlikely, in itself, to lead to difficulties provided that the evidence base which informs it had been kept up-to-date and that any changes to the RSS and new national guidance had been accommodated.

Emerging DPD as a Material Consideration

In terms of the weight which can be given to emerging policies in DPDs, useful advice is given in paragraphs 14, 17, 18 and 19 of The Planning System: General Principles which is attached to PPS1.

Flooding Issues

It is important that flood risk should be fully factored into the Council's decision making. PPS25 was published at the end of 2006 and the Examining Inspector will expect that the AAP should be in-line with this guidance. If it is not (the Council say that it has not been followed 'to the letter'), the Examining Inspector will expect to see evidence to justify any departure. The Council needs to show that the Sequential test has been properly applied before the Exception test is applied. Whilst, in this case, an argument could be made in respect of there being no 'appropriate' sites for retail/commercial development other than Town Centre sites which are at risk of flooding, it may not be possible to make the same argument in respect of, for instance, housing. It is only where *'it is not possible, consistent with wider sustainability objectives, for development to be located in zones of lower probability of flooding'* that the Exception Test should be applied.

The support of the Environment Agency (EA) for the Council's approach is vital. Whilst an objection to the AAP by the EA would not necessarily be fatal to a finding of soundness, it would be a serious matter for consideration by the Examining Inspector. The Inspector urged the Council to seek resolution of the issue of flooding with the EA. The Council had a number of infrastructure projects, both minor and major, which are likely to have mitigating effects on flooding and development proposals could be required to include flood mitigation measures. Programming of these works may have an influence on the EA's response to consultation.

The Council should maintain a dialogue with the EA (outside of any wider issues affecting the district) in an effort to resolve these local issues.

Paragraph 4.38 of the PPS25 Practise Guidance gives advice on circumstances where there is an existing regeneration strategy in place.

Appropriate Assessment

The Council indicated that it was working with English Nature (EN) to resolve nature conservation issues. The Inspector was of the view that, given the level of detail regarding development proposals which is contained in the AAP, it should be possible to undertake an appropriate assessment which reflects that level of detail. Whilst EN may not be able to give a definitive answer on whether there would be any 'likely significant effects' at this stage (such an answer could only be given when a detailed scheme comes forward), it should be able to make an 'interim' assessment based on the details available. From this EN should be able to give a view on whether adequate mitigation (if any is required) is realistically capable of being incorporated in the final scheme. The Council indicated that this is the outcome it was seeking to secure through its discussions with NE.

The Inspector did not consider that it would be appropriate to have an AAP strategy which was based on the premise that a major element of proposed development would be 'dropped' if adequate mitigation could not be provided. The question of whether there was a realistic prospect of any necessary mitigation being provided should be answered before the development was proposed in the DPD.

Marina

The proposed Marina is obviously a major element of the AAP proposals. The Council is working with the Harbour Commissioners to reach an agreed position. An objection to the AAP by the Harbour Commissioners in respect of the proposed marina would not necessarily lead to a finding of unsoundness. However, the Examining Inspector will be looking for evidence that the major elements of the AAP will be delivered and this would normally involve co-operation with, and willingness of, the development partners. In the absence of this the Council should be able to show that there are other practicable means of delivering the development.

The Examining Inspector would want to see evidence to show that funding was realistically available to finance the marina improvements. However, this would not necessarily involve a 'business plan' showing commercial viability unless particular issues arise which indicate that a proposal may not be deliverable because success depends on commercial viability.
(NB see 'Viability Appraisals' below)

Town Centre and Primary Shopping Area (PSA)

PPS4 sets out how the PSA should be defined. However, in this case the PSA and Town Centre are being re-configured with some areas being taken out of the Town Centre/PSA and others parts added in an effort to successfully deliver regeneration. In these particular circumstances, the Inspector was of the view that the Council's general approach was

reasonable. In his view there was a clear argument for defining the Town Centre and PSA boundaries in a way which was different to that set out in PPS4.

The Inspector was of the view that the Council's proposal to limit the extent of the PSA until such time as necessary redevelopments were committed was reasonable if the circumstances are that the area of extension would not reasonably be included in the PSA without redevelopment. The Inspector warned that this would need careful wording in the AAP and should be clearly shown on the Proposals Map.

The AAP area is small and the DPD is very detailed in terms of the distribution of land uses. In the Council's view, the proposals shown in the AAP represent the 'best alternative' for the centre. DPDs should be sufficiently flexible to take into account changing circumstances. However, in the Inspector's opinion, when the distribution of land uses shown in the DPD is very detailed, it would be difficult to make the DPD so flexible that it could properly allow for a different distribution. In effect this could lead to 2 different plans in the same document. In these circumstances flexibility could be achieved in other ways. The Inspector suggested that one alternative could be that there would be a contingency in the DPD that, if the 'best alternative' distribution of development showed no sign of being progressed within a reasonable time frame, this would trigger an early review of the AAP with a view to seeking a more deliverable alternative distribution. (see 'General Points' – Implementation Strategy above)

The Examining Inspector will want to see evidence that there is a realistic prospect of the development being delivered. It is important, therefore, that the Council should have commitment from major investors in the Town Centre and should have a 'strategy' for action if commitment is not realised.

In terms of the evidence base, the evidence on retailing appears to be relatively up-to-date. Whilst the recession may have impacted on forecasts, it would be wrong, in the Inspector's view, to base predictions on what could well be the bottom of the market. In his view, there may be scope for a very brief up-dating paper which gives an informed opinion on likely timetables for recovery.

As required by PPS4, the evidence base should show the predicted demand for retail and other floorspace. It would not normally be necessary for the Examining Inspector to require evidence on commercial deliverability or business plans which may be confidential. The Inspector suggested that the Council keep this as confidential information which can be released if cases are put before the Examining Inspector which requires release of the information.

Policy TC7 – in the Inspector's view the policy should be re-written to properly reflect the sequential approach to Town Centre development set out in PPS4. Some of the terminology used in the policy and text should be rationalised to coincide with the terms employed in PPS4.

Framing of Policies

The Council is in the process of preparing a Development Management (DM) Policies which it intends will form part of the CS and will be supplemented by SPDs as appropriate.

The Inspector was of the view that, in these circumstances, the only DM policies which needed to appear in the AAP were those which had a specific bearing on the particular circumstances of this centre e.g. sequential Town Centre uses policies or specific design issues.

The Inspector advised that matters which were adequately covered by national guidance e.g. conservation issues, need not be the subject of DM policies. The Council should rely on national guidance. However, it may be appropriate to include a reference in the text to indicate that certain matters will be dealt with in line with national guidance.

(NB The CS should contain a 'hook' on which to hang any policies coming forward through lower order DPDs. The Council is required to include a policy requiring good design. It is common for Councils to include a very general policy in the CS which covers design and similar issues which will form the basis for DM DPDs.)

With regard to Site Allocation policies in the AAP, those which are included are very detailed. However, this reflects the amount and detail of the work which has already been done. The result is that it could be argued that the policies are quite inflexible. In these circumstances it is important that the Council can demonstrate that it has a clear and detailed strategy for delivery. This will include commitment from development partners or a contingency strategy to secure delivery.

Viability Appraisals

The financial viability of requirements made of developers through the AAP policies needs to be properly considered. However, the commercial viability of proposals will not normally be examined unless particular issues arise which indicate that a proposal may not be deliverable because the financial assumptions which led to its adoption are flawed.

Affordable Housing

A viability study is underway which will inform an up-to-date affordable housing policy in the CS. In advance of this policy being formulated the Council intends to rely on its current Interim Affordable Housing Policy. In the Inspector's opinion this should be made clear in the AAP and the Council should also make clear that, in employing this policy on a temporary basis, full account will taken of viability issues in negotiations.

Climate Change

National guidance requires that the viability of 'climate change' requirements should be established. The Council will need to demonstrate that any requirements for the use of low or zero carbon energy sources and the implementation of energy efficiency measures ahead of the national timetable should be shown to be economically viable.

Any such requirements which are included should be set out in a DPD.

(NB Policy TC3 – this mentions ‘on-site’ energy sources. However, the most practicable solutions can involve ‘off-site’ sources. In addition Policy TC3 is poorly worded in that in 2. it contains requirements which, in the later part of the plan period, would fall short of the national timetable.)

Public Realm Contributions

The Council needs to demonstrate that the requirements made by Policies TC16 and TC19 are viable. In addition the Council needs to ensure that the requirements fully comply with the advice set out Circular 05/2005 and particularly the advice set out in Annex B.