



**HALLAM LAND MANAGEMENT LTD**

**FYLDE COUNCIL LOCAL PLAN**

**EXAMINATION HEARING STATEMENT**

**COMPLIANCE WITH STATUTORY PROCEDURES AND LEGAL MATTERS (MATTER 1)**

**ISSUES 1 AND 2**

**Date:** March 2017

**Pegasus Ref:** ST/GL/MAN.0145/R010v2

**Your Refs:** Representor No. 19

## **Pegasus Group**

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## 1. MATTER 1 – Compliance with statutory procedures and legal matters

### Issue 1 - Has the Council met the statutory duty to cooperate as set out under Sections 20(5) c and 33A of the Planning and Compulsory Purchase Act 2004?

#### Question 1: What are the relevant strategic matters in relation to this duty?

1.1 Paragraph 156 of the NPPF sets out the strategic priorities that need to be considered in preparing a local plan and paragraph 178 goes on to confirm that it is these strategic issues that need to be considered under the duty to cooperate. Of those issues, we make specific reference to the need for the Fylde Local Plan to consider the following in the context of the duty to cooperate:

- the need to provide the homes needed for the housing market area which Fylde sites within;
- the need to provide the jobs required in the area including the need to facilitate and encourage the growth of Enterprise Zones that contribute to Fylde and the sub-region's economy; and
- the need to positively plan for/accommodate transport infrastructure that will facilitate economic growth.

#### Housing

1.2 Paragraph 159 of the NPPF confirms that local authorities should "...prepare a Strategic Housing Market Assessment to assess their full housing needs, working with neighbouring authorities where housing market areas cross administrative boundaries...". We note that such an assessment has been undertaken by Turley and this forms part of the key evidence base for the Local Plan (document refs: ED021, ED022, ED023).

1.3 We agree with the Council and this evidence base in that Fylde is part of the wider Fylde Coast Housing Market Area (Fylde Coast HMA), comprising of Fylde, Blackpool and Wyre Local Planning Authorities. Notably paragraphs 3.28 and 3.30 of ED021 state the following:

*'The analysis presented in this section highlights firstly that the three authorities making up the Fylde Coast area operate as a relatively strong and distinct housing market area. There is a high level of self-containment with regards flows of commuters and the movement of people shows relatively limited flows with surrounding authorities.'*

*'The high levels of containment in the Fylde Coast do however support the consideration of objectively assessed needs and demands for housing within this geography, recognising the evidenced linkages with a number of surrounding authorities.'*

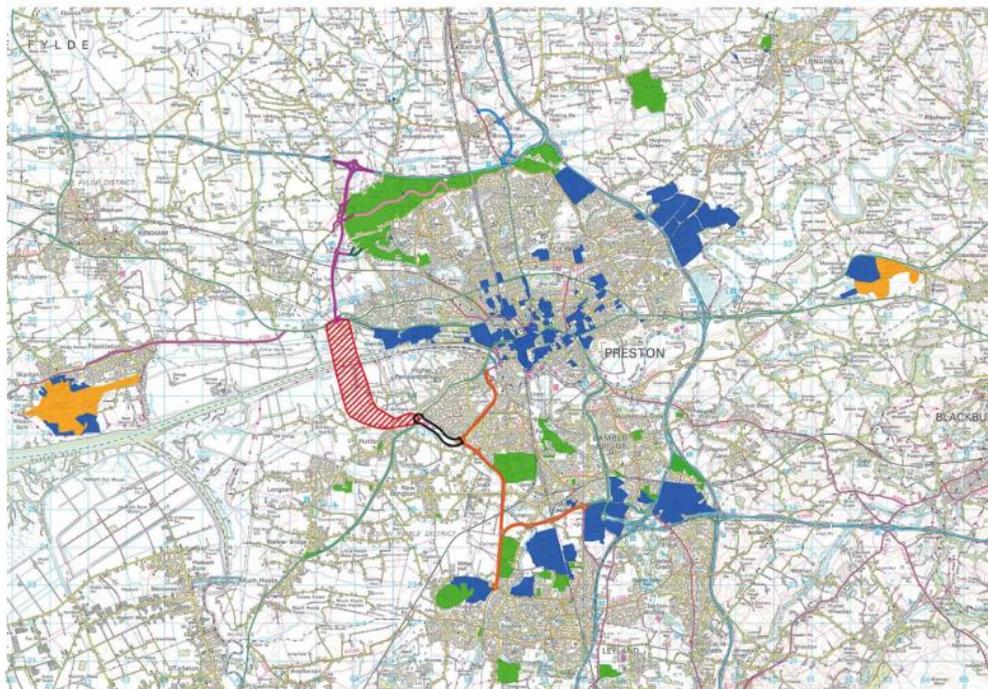
1.4 Paragraph 47 of the NPPF confirms that local planning authorities must **"...use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area..."**. It is therefore clear that housing needs and delivery are key issues to examine under the duty to co-operate requirements for the three Fylde Coast authorities.

## **Enterprise Zones and Key Infrastructure Delivery**

- 1.5 Whilst Enterprise Zones are not specifically referred to in the NPPF, they are a national planning designation that clearly seeks to complement the NPPF's aspirations to create jobs, achieve economic growth, and meet the development needs of business and support an economy fit for the 21st century (see paragraph 20 of the NPPF).
- 1.6 Enterprise Zones are clearly an important consideration in the preparation of any Local Plan. Indeed, Section 28(5) of the Planning and Compulsory Purchase Act goes as far as confirming that a LPA must review every local development document in the light of an enterprise zone scheme and modify/revise Local Plans accordingly, highlighting their importance.
- 1.7 In this instance, the Enterprise Zones that need to be considered as part of the Fylde Local Plan (particularly in terms of marrying housing needs with jobs growth across the wider housing market area) include:
- Lancashire Enterprise Zone (comprising of sites at Warton in Fylde and Samlesbury in Preston)
  - Blackpool Airport Enterprise Zone (located on the boundary of Blackpool and Fylde); and
  - Hillhouse International Enterprise Zone (located at Thornton-Cleveleys, Wyre).
- 1.8 What is clear is that central government are willing to put strong measures in place to stimulate the Fylde Coast economy in order to create jobs and investment.
- 1.9 On the back of this and other programmes such as the Preston, South Ribble and Lancashire City Deal, the Lancashire Enterprise Partnership (LEP) seeks to create 50,000 new jobs over the period 2015 to 2025, as set out in LEP's Strategic Economic Plan (SEP) (ED039). These above measures are being further supported by secured funding for key highway infrastructure, which form part of the Preston, South Ribble and Lancashire City Deal, including the Preston Western Distributor Road and the creation of a new Junction on the M52 (see plan below). Such investment needs to be considered in the context of other development requirements, including objectively assessed housing requirements and the spatial distribution of development. However, the Council appear to be distancing themselves from this investment and growth potential when considering the wider housing requirements for the HMA (we address this in more detail under Matter 2).



Lancashire  
Enterprise Partnership



**Question 2: Has the Council maximised the effectiveness of plan-making activities by engaging constructively, actively and on an on-going basis with the prescribed bodies, in the preparation of the Plan in the context of these relevant strategic matters? In particular:**

**- What has been the nature of any cooperation and have any mechanisms or formal agreements been established? Is the Memorandum of Understanding by authorities within the Fylde Coast Housing Market Area (HMA) up to date and effective in this regard?**

**- Has the Council tried to resolve any issues through cooperation and what have been the outcomes?**

**- Is there robust evidence to support the cooperation activities that have taken place?**

1.10 We welcome the fact that Blackpool, Fylde and Wyre have signed a memorandum of understanding (MoU) to indicate how they will continue work together on strategic issues. This has resulted in Fylde agreeing to accommodate 14 Ha of employment land to meet Blackpool's requirements (noted in para 9.11), which is evidence that the plan has been positively prepared in respect of employment land.

1.11 However, the MoU states that that the authorities must "...reach a consensus on housing provision across the Fylde Coast sub-region..." (page 29, SD007). This does not appear to have been achieved despite the fact the Council's must also provide evidence of joint working in respect of housing delivery, in accordance with paragraph 178 of the NPPF.

- 1.12 We are most concerned by the comment in the final column of Table A, page 14 of the Statement of Compliance for DtC dated August 2016 (doc ref: SD007), which states:

*"In meeting its own housing requirement figure, Fylde is not able to accommodate any unmet need of neighbouring authorities if such a request is made."*

**Question 3: In light of the Wyre Borough Council's Statement that they will be unable to meet their own objectively assessed housing need (OAN):**

**(a) What has been the nature of any cooperation in this regard?**

**(b) Has cooperation led to an agreed mechanism for the delivery of unmet housing needs with the HMA?**

**(c) In what way has this influenced the Plan?**

**(d) Is there an obligation for Fylde Council to ensure that the objectively assessed need for the HMA as a whole is met?**

- 1.13 Regarding question (d) the short answer is yes, albeit in combination with the other Fylde Coast authorities. This is a requirement of the NPPF. Furthermore, and as noted above, the MoU states that that the authorities must "...reach a consensus on housing provision across the Fylde Coast sub-region..." (page 29, SD007). However, as noted above, Fylde appear to have adopted a position whereby they are unable to assist in meeting any of the surrounding authority's needs. This position is reached without any corroborating evidence.
- 1.14 Blackpool acknowledge this on-going duty in their Core Strategy, which was adopted in January 2016, with paragraph 5.23 confirming they will *"continue to work with the neighbouring authorities of Fylde and Wyre through the Duty to Co-operate to ensure the overall housing needs of the housing market area are met in full."* This is particularly relevant as Blackpool is a physically constrained area due to its coastal location, with limited land for growth and history of under delivery, therefore there is a good possibility that Fylde may have to accommodate some of Blackpool's future need if this trend of under delivery continues.
- 1.15 Wyre Council also wrote to Fylde in May 2016 and requested Fylde's assistance in meeting their OAN as they have major deliverability concerns due to highway capacity, flood risk and green belt constraints. Wyre have identified an OAN figure of 479 dpa based on the findings of the Fylde Coast SHMA, but they have yet to confirm the precise level of unmet need that will need to be delivered outside Wyre as a result of these constraints.
- 1.16 Having discussed the matter with Wyre more recently, our understanding is that the evidence they require on highways and flood risk won't be made available before the examination hearings. As such, Wyre still don't have a figure for unmet need that they are asking Fylde to take. Fylde acknowledge that this issue is important, but note that they cannot afford it to delay their plan, so they propose to address this at a later date through joint-working, once Wyre have completed the relevant evidence to confirm the level and apportionment of unmet need. This is contrary to the position set out in the Statement of Compliance (SD007).

- 1.17 We raise serious concerns with this approach. Fylde's role in meeting the needs of neighbouring authorities in the HMA is a highly pertinent issue, particularly considering Blackpool is very constrained by its location by the sea and a relatively tight administrative boundary around the urban area of Blackpool. Indeed, Blackpool is unlikely to be able to any assist further than what is currently plan for in the adopted Blackpool. Whilst we note the evidence is not complete at this stage, Wyre also clearly have grave concerns about not being able to meet their own needs, hence the call for assistance.
- 1.18 In light of this, Fylde will have to accommodate the majority if not all of the unmet need arising from the wider HMA, which will have a major bearing on the housing strategy in the Fylde Local Plan, and therefore we do not consider that the plan has been positively prepared in this respect or meets the duty to cooperate requirement.
- 1.19 This is further compounded by the approach Fylde have used to reach their suggested OAHN figure of 370 dpa because the Council have assumed a net increase in commuting into the Borough to meet the expected jobs growth within the Borough. This implies the neighbouring authorities will need to meet additional housing growth to fill these jobs (see our response to Matter 2 -issue 3).

***(e) Should the Plan include a commitment to help meet any unmet housing needs or to review the Plan?***

- 1.20 Without a commitment, there is no guarantee that the long-term housing needs of the Fylde Coast will be met in full. As such, it is important that this is secured as part of this Local Plan.
- 1.21 In considering this position, we refer to the Inspectors Preliminary Findings (Part 1) from the West Oxfordshire Local Plan, dated 15<sup>th</sup> December 2015 (Ref: IN-015), and attached at Appendix 6 of our representations to the Fylde Submission Local Plan. In section 7 of this document, the Inspector discusses the apportionment of Oxford City's unmet need to the four remaining authorities in the Oxfordshire HMA, and asserts (at para 7.7) that if a plan were to proceed to adoption without having regard to any apportionment that had been made, it would immediately be out of date. This suggests that if Fylde's apportionment of Wyre's unmet need is confirmed before the Plan is adopted, which seems likely, then it should include provision for this now.
- 1.22 The Local Plan should, therefore, address this matter as soon as possible, ideally by incorporating Wyre's unmet need into the submitted plan, either by adopting a working estimate or by waiting for the precise level of need to be confirmed, which is likely to be early 2017 (the two key pieces of evidence base work are due to be complete in November 2016 and January 2017 respectively).
- 1.23 If this is not considered practical, then it is suggested that, at the very least, Fylde Council provide a detailed statement of co-operation on this matter with a clear timetable and mechanism for early review of the Fylde Local Plan.

**Issue 2 - Has the Plan been positively prepared in accordance with other legal and procedural requirements?**

1.24 We consider there are serious issues with the SA that need to be addressed (see response to questions 7 and 9).

**Question 4: Has the Plan been prepared in accordance with the Local Development Scheme, including in terms of timing and content?**

1.25 No comment.

**Question 5: Has consultation been carried out in accordance with the Statement of Community Involvement and the relevant Regulations?**

1.26 No comment.

**Question 6: Is the plan period of 2011 to 2032 justified? Is the plan period set out with sufficient clarity in the Plan?**

1.27 We note that the plan period is set out at paragraph 1.1 of the submission Local Plan and elsewhere throughout the plan including Policy H1, which provides clarity.

1.28 We do consider the 21-year period to be appropriate, although we also note that the plan should provide a 15-year time horizon post adoption, in conformity with NPPF paragraph 157, and this will be achievable if the plan is adopted in 2017 as scheduled, but is at risk if there is any slippage.

**Question 7: Does the sustainability appraisal (SA) adequately assess the environmental, social and economic effects of the plan? In particular:**

**(a) Has the SA followed the correct processes in terms of consultation and content?**

**(b) Does the SA adequately consider the likely significant effects of reasonable alternatives where these exist, including in respect of the scale of housing and employment provision and the balance between them?**

**(c) Have any unreasonable alternatives been noted and if so have reasons been given as to why these have not been selected?**

**(d) Does the SA adequately assess the likely significant effects of policies and proposals?**

**(e) Is it clear how the SA has influenced the Plan? Is there anything in the SA which indicates that changes should be made to the Plan?**

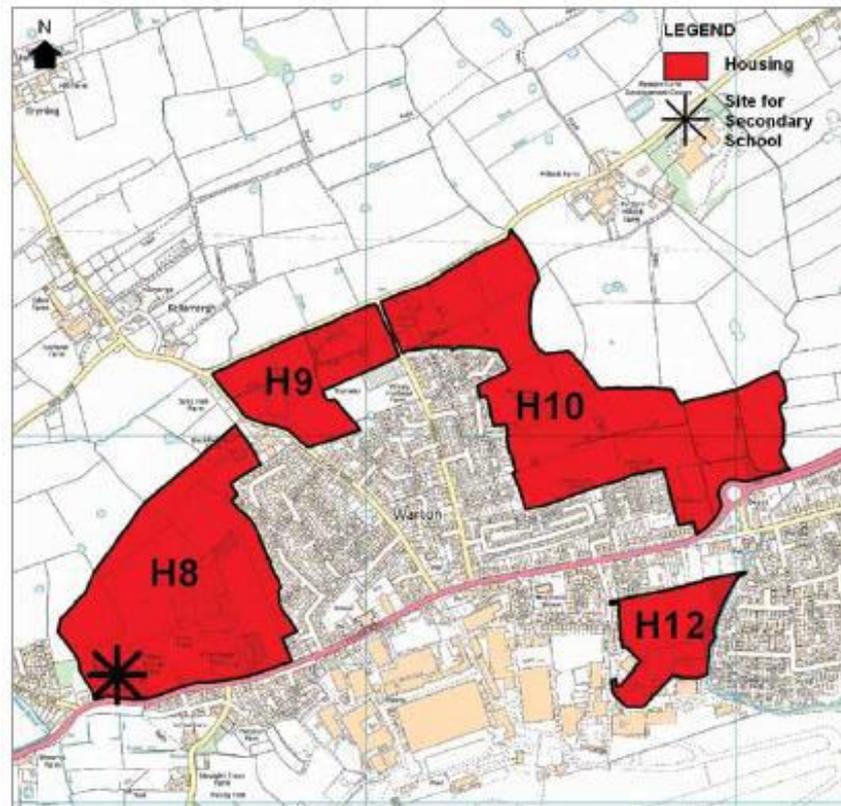
1.29 Regarding Question 7(a), we recognise that the SA process is an iterative one but we have noted some issues within which the Council have carried out SA in relation to previous versions of the plan, which raise doubt as to whether the process has been undertaken in a fair and transparent manner.

1.30 For instance, the Sustainability Appraisal that supported the 'Revised Preferred Options' consultation (which ran between 15<sup>th</sup> October and 3<sup>rd</sup> December 2015) is dated 19<sup>th</sup> November 2015, and was therefore published 5 weeks into the 7 weeks of consultation period. The timing of

the SA's publication, therefore, raises questions over the soundness of the plan, as this process is supposed to:

*"feed into the plan making process. This involves the ongoing appraisal of the plan and makes recommendations to steer its direction to avoid potentially adverse consequences. This is particularly important when considering alternative strategy options."*

- 1.31 It is unclear how a document published 5 weeks into the consultation period on a Local Plan document can have informed the options chosen in the plan.
- 1.32 The Local Plan Responses Report (July 2014) and at least two draft versions of the current Revised Preferred Option Local Plan (June 2015 and September 2015) have been through the Council's Committee process, but none of these were supported by an SA document at the time. Therefore, even if the consultants preparing the SA had made recommendations to Officers, this information was clearly not made available to Committee members when they approved it for consultation.
- 1.33 Accordingly, the publication of this document at this stage suggests that it has been produced after the fact to support an already agreed strategy which seriously undermines whether the plan is positively prepared and justified, two of the key tests of soundness.
- 1.34 Regarding questions 7 (b, c and d), the most recent SA issued alongside the Submission Local Plan (SD004 a-c) (dated August 2016) is critically flawed on at two interconnected grounds.
- 1.35 Firstly, Section 4 and Appendix D of the SA helpfully provide a summary of the development options that were assessed in 2012 as part of the Council's Issues and Options consultation. However, it fails to highlight the findings of the development options that were assessed as part of the Preferred Options Local Plan.
- 1.36 The Preferred Options Local Plan was available for consultation between 27<sup>th</sup> June 2013 and 22<sup>nd</sup> August 2013. Warton was identified on pages 40 and 44 as a 'Strategic Location for Development' and four strategic housing sites were identified to accommodate 1,160 dwellings as follows and as identified on the plan below:
  - H8 – Land West of Warton for 360 dwellings to commence in 2021
  - H9 – Land North of Warton for 180 dwellings to commence in 2017
  - H10 – Land West of Warton for 380 dwellings to commence in 2015; and
  - H12 – Former GEC Marconi Factory Site to commence in 2014.



- 1.37 For completeness and to set out the correct chronology of events, we consider the SA should summarise the findings of those development scenarios, which are different to the options currently presented in the Local Plan / SA. We would like to particularly refer to the fact that these development option scored favourably in the SA supporting that version of the plan. No consideration of this as a reasonable development option/alternative is set out within the Submitted SA.
- 1.38 Secondly, but also interrelated with the above point, we note that the Appendix K of the SA refers to a large number of sites in and around Warton, some of which relate to the sites above. These sites have been dismissed as development options on the basis that they should/will be assessed as part of the Bryning with Warton Neighbourhood Plan. Indeed, no assessment of the sites is provided within the SA. We do not consider that this is a satisfactory response because the SA supporting the Submitted Local Plan should assess all reasonable development options. Indeed, it is a development plan document that seeks to allocate housing sites and it should assess all reasonable options irrespective of what is taking place in relation to a Neighbourhood Plan.
- 1.39 The omission is also particularly worrying because the Bryning with Warton Neighbourhood Plan Examiner found serious misgivings to the way in which the Neighbourhood Plan had considered site options in the context of SA and European regulations. The resultant recommendations were that the housing chapter of the NP should effectively be removed (see examiners report dated April 2016 at **Appendix 1**). Those recommendations have now been put into place and the neighbourhood Plan is to go to referendum on 4th May 2017 without any housing allocations identified (see **Appendix 2**).

1.40 As such, the current position is one where there are a large number of sites around Warton (and possibly elsewhere) are not subject to an SA that has been formally issued as part of the Submitted Local Plan. Bearing in mind Warton is identified as a Strategic Development Location and accommodates an Enterprise Zone, this is not considered to be acceptable and renders the plan as submitted as being unsound as it is not “justified” (i.e. *‘the plan should be the most appropriate strategy, when considered against the reasonable alternatives, based on proportionate evidence’*).

**Question 8: Has the requirement for appropriate assessment under the Habitats Regulation Assessment (HRA) been met? Is it clear how the HRA screening report has influenced the Plan?**

1.41 No comment.

**Question 9: Has the Plan been prepared in accordance with the relevant legislation and regulations?**

1.42 Further to our response to question 7, we simply wish to highlight that Article 5(1) of the SEA Directive states:

*‘Where an environmental assessment is required under Article 3(1), an environmental report shall be prepared in which the likely significant effects on the environment of implementing the plan or programme, and **reasonable alternatives** taking into account the objectives and the geographical scope of the plan or programme, are identified, described and evaluated.*

1.43 Given the first Preferred Options draft of the Local plan included development to the west of Warton (site H8), that site, along with others identified around Warton, must be regarded as a reasonable alternative to assess as part of the SA process. This has not taken place in the context of the Submitted Local Plan, which is a serious omission that needs to be rectified.

**Question 10: Are there are any significant departures from national policy in the Plan? If so, have these been justified?**

1.44 No comment.

**Appendices to this Statement include:**

1. Bryning with Warton Neighbourhood Plan Examiners Report
2. Bryning with Warton Neighbourhood Plan (referendum version)