

## DURHAM CITY NEIGHBOURHOOD PLANNING FORUM



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17<sup>th</sup> July 2017

Mr Henry Jones  
Development Management Team  
Room 4/86-102  
Planning Department  
County Hall  
Durham City  
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Dear Mr Jones

### **Planning application DM/17/01929/FPA**

#### **Extension and refurbishment of the existing sports centre and the construction of a new tennis centre with associated car parking, landscaping and infrastructure, Maiden Castle, Durham City**

1. The Durham City Neighbourhood Planning Forum has prepared a Draft Neighbourhood Plan which recognises the great significance of the University of Durham's Masterplan proposals for growth. As the overall Masterplan has not been submitted for formal evaluation by the Local Planning Authority, we are of necessity required to make representations to the County Council on a case by case basis; St Mary's Field was the first such case and the Maiden Castle Sports Park application is the second.
2. The Draft Durham City Neighbourhood Plan confirms the existing statutory Green Belt within the area covered by the Plan, including the Maiden Castle grounds. Accordingly, the Plan is fully aligned with the Green Belt safeguards set out in the National Planning Policy Framework and relevant Saved Policies of the City of Durham Local Plan 2004.
3. We object to the Maiden Castle planning application on the grounds that it represents inappropriate development which, by definition, is harmful to the Green Belt and that there are not the very special circumstances to warrant approving it, contrary to NPPF

Paragraphs 87 – 89 and Saved Policy E1 of the City of Durham Local Plan 2004. These policies are set out in the Appendix.

4. The application is accompanied by a substantial number of documents; we have examined all of them, particularly Design and Access, Planning, Community Engagement, Green Belt Justification, Heritage, Landscape, Transport, and Sequential Leisure Statements. The key points they make on behalf of the applicant are repeated across most of them; we can therefore group our observations under generic headings as set out below.

#### **Inappropriate development by definition harmful to the Green Belt**

5. It is common ground with the Statements submitted on behalf of the applicant that the proposed development is inappropriate and by definition harmful to the Green Belt. The 'Green Belt Justification' document accepts this and says in paragraph 5.3 that "*substantial weight must be accorded to this*". Similarly, the Community Engagement document concedes in paragraph 5.28 that the proposed development is inappropriate and by definition harmful to the Green Belt and considerable weight attaches to this.

#### **Harm to openness**

6. The Statements accept that there is harm to the openness of the Green Belt but seek to argue that the degree of loss of openness is "limited". That assertion is of no assistance in overcoming the fundamental objection set by the NPPF. Case law has determined otherwise, for example the High Court ruling on January 16th 2017 by Mr Justice Supperstone in which he held that limited adverse impact on openness of the Green Belt was not a finding that there had been compliance with the policy that required openness to be preserved. It was not acceptable for the purposes of paragraph 89 of the NPPF. He pointed out that *West Lancashire Borough Council v SSCLG* [2009] EWHC 3631 established that if a proposal has an adverse impact on openness, the inevitable conclusion is that it does not comply with a policy that requires openness to be maintained. A decision maker does not have any latitude to find otherwise.
7. Paragraph 89 of the NPPF allows exceptions for "*provision of appropriate facilities for outdoor sport, outdoor recreation and for cemeteries, as long as it preserves the openness of the Green Belt.*" The proposal includes very substantial buildings for indoor recreation and by admission fails to preserve the openness of the Green Belt. The proposal cannot satisfy these terms of the NPPF.

#### **Limited extensions and infilling to major existing development in the Green Belt**

8. Paragraph 89 of the NPPF goes on to allow *“the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building; or the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces.”* At Maiden Castle the existing buildings amount to 4,772 square metres floorspace. The proposal is to add an “extension” of 7,948 square metres and a new building of 3,678 square metres, bringing the total area up to 16,398 square metres or more than trebling what is there now. In building volume terms, which is what the NPPF is concerned with, the proposal amounts to four times the existing volume. The proposal is neither a proportionate addition nor materially of similar size to the existing building; it cannot satisfy these terms of the NPPF.

### **Impact on landscape and the setting of the World Heritage Site**

9. The proposed development site lies on the main A177 road which is one of the principal approaches to the historic city. The experience as one approaches the city on this road is of a very attractive flat flood plain green landscape and the looming high barrier of the heavily wooded hill of Maiden Castle Iron Age fort itself. Houghall Agricultural College to the left is practically invisible behind a thick belt of trees. The Graham Sports centre to the right contains a sports hall building that sits low in the landscape and well back from the main road. There are outdoor sports pitches which are acceptable in principle in a Green Belt, although the floodlighting is a damaging feature.
10. The proposed huge new buildings would be much closer to the main road and in part would be three storeys high. The illustrations accompanying the application show just how unavoidably visible and obtrusive they would be. The proposed “hedgerow enhancement” would be incapable of screening the new buildings. The existing iconic approach and experience would become more like driving past a warehousing complex. This is significantly harmful to the landscape setting and historic approach to the city.

### **Very special circumstances?**

11. There is no dispute that the proposed developments could only be approved if there are very special circumstances. NPPF paragraph 88 makes clear that *“When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. ‘Very special circumstances’ will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.”*
12. There are numerous documents accompanying the application that seek to assert very special circumstances to justify this “harmful” development in the Green Belt. Most of

the documents are testimonies of support for the enhanced sports facilities from national, regional, local and community sports bodies. This is entirely to be understood; of course they all wish to see enhanced sports provision. Not one of them mentions the Green Belt. These are not endorsement for development in the Green Belt; their enthusiasm would equally apply for development that is not in the Green Belt. The so-called justification does not exist.

13. The submitted Justification document prays in aid two legal rulings as illustrating that development in the Green Belt can meet the terms of “very special circumstances”. Upon examination, neither of these two cases apply. The first is Queens Park Rangers Football Ground success against a Judicial Review. The judgement is on a legal point about whether “other harm” in the NPPF policy is about harm to the Green Belt or is a non-Green Belt harm. The High Court of Justice ruled that any harm is harm to the Green Belt. There is no expression of opinion as to whether very special circumstances existed; that aspect had been decided by Ealing Borough Council and was not before the Court. The second case is of a school development in the Green Belt; here the ruling is that the need for a rural setting is the “compelling” consideration. Clearly this does not apply to the Sports Park being proposed at Maiden Castle.
14. The Justification claims that other aspects of the NPPF policy for protecting the Green Belt are not harmed. In fact, the proposal, by definition “encroaches on the countryside” contrary to point (c) of Paragraph 80; does not “preserve the setting and special character of historic towns” as required by point (d); and fails to “recycle derelict and other urban land” as sought by point (e).
15. A further justification is offered on the grounds that it is a requirement of the University that all the sports facilities must be on a single site. Neither Cambridge University nor Oxford University have their sports facilities on a single site. This is also the case with many other prestigious Universities in the UK. Durham University student places are heavily over-subscribed so the current situation is evidently not a deterrent.
16. As to being a requirement that all sports need to be on a single site, one major sport -swimming - notes in the ‘Community Engagement’ report that there are no proposals for including their sport in the proposals for Maiden Castle. It is a matter of record that when the Police Headquarters swimming pool was available to the University swimming club they were glad to take up all the available capacity they could be offered - its location was acceptable. Now they use Freeman’s Quay, in the town centre.
17. The Sequential Leisure Assessment document is key to determining whether there could be alternative sites for the Maiden Castle proposals. It concludes that there are no alternatives, and this is then included in the grounds of very special circumstances. The

Assessment rejects not just ridiculous 'alternatives' such as Back Silver Street but also big sites such as Lower Claypath and Dragonville Retail Park. The Lower Claypath site would be big enough (accommodating more than three storeys) but is rejected as it has planning permission for accommodation for 473 students. This does not prevent an alternative planning permission being granted - only demolition and ground clearance has taken place. The Dragonville Retail Park site is rejected on the same grounds, that it has permission for retail development. This was granted many years ago for an Asda superstore, and the site continues to be a wasteland, just the kind of site envisaged by NPPF paragraph 80(d). Indeed, this site is very well served by public transport and is on the designated National Cycle Network. Moreover, it would be a superb additional asset to the communities of Belmont and Gilesgate/Pelaw. Strikingly, the assessment makes no mention or consideration of the vacant site that was Gilesgate Sports College, on the face of it a serious omission.

18. The Sequential Assessment document aims to justify very special circumstances on the basis of there being no alternative to Maiden Castle. It attempts to serve the purpose for which it was commissioned but falls well short as explained above.

### **Sustainability**

19. Many of the documents emphasise the aspect of sustainability as being the bedrock of the NPPF. They stress that in effect sustainable development must be approved. The Planning Statement (paragraph 5.5) concludes that *"The proposal is fully in accordance with the general principles of chapter 8 of the NPPF and this should be given great weight in the determination of the application"*.
20. This is to misrepresent the NPPF: Paragraph 14 sets out how to apply the 'golden thread' of sustainability. It says that for decision-taking this means granting permission unless specific policies in this Framework indicate development should be restricted, and gives for example those policies relating to sites protected under the Birds and Habitats Directives and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, an Area of Outstanding Natural Beauty, Heritage Coast or within a National Park (or the Broads Authority); designated heritage assets; and locations at risk of flooding or coastal erosion. The Maiden Castle site is in the Green Belt, and this over-rides any weight for approving sustainable development.

### **Pedestrian access**

21. The Planning Statement suggests that concentrating development in one place eases pedestrian congestion and reduces travel distances and frequency of transit. Common sense suggests that having everything in one place guarantees the maximum pedestrian

congestion. The notion of frequency of transit implies that sportspeople go from one sport to another and so find it convenient for all sports to be on a single site. The greater probability is that tennis players do not then play a rugby match or a game of cricket or a boxing match or basketball. It is neither common sense nor factually true that facilities have all to be on a single site.

22. The Transport Statement declares that the site has good links to existing pedestrian links external to the site, noting the footways along the A177. It then records that Durham County Council officers report that the pedestrian footpath on the A177 is not suitable for increased demand and that making it adequate would be too onerous. Thus an alternative route along the riverbank and into Green Lane is proposed. This is a much longer route and does not link directly to the South Road Campus and Hill Colleges. No explanation is offered as to how students will be persuaded to take the longer route away from where they need to be.
23. Even without the proposed intensive development at Maiden Castle, the University should be required to provide a lit pedestrian (and possibly cycle) route from Hollingside Lane, adjacent to Fountains Hall, direct to the foot of Shincliffe Peth via Great High Wood. This would alleviate some of the existing problems by providing an alternative route to the Hill Colleges and Mount Oswald.

### **Cycling access**

24. The current arrangements are unsatisfactory for cycling, and there have been issues with cyclists trying to use the existing cycle lane the wrong way (i.e. downhill) and with groups of pedestrians walking up/down the road in the cycle lane. Transport Statement paragraph 2.6 states that Stockton Road has a 30mph limit past the site. In fact it is 40mph, which would automatically require cycle segregation from motor traffic according to current Highways England guidance (IAN 195/16 Table 2.2.2). While this standard is only mandatory for the Strategic Road Network it is usual for local authorities to observe SRN standards on major A-roads in their care. Fully worked through arrangements for pedestrians and cyclists for the whole Masterplan scheme need to be produced before individual major developments can be properly assessed.

### **Events**

25. High profile events are part of the purpose of the development and the reason for providing for 2,000 spectators in the Sports Hall. The Transport Statement downplays the traffic consequences of this, by saying that these are expected to occur only a few

times a year. It proposes to manage the demand for parking by having two types of ticket for events: tickets with parking and tickets without parking. The first type would consist of tickets with parking permits for parking on-site. There would be no more than 200 such tickets, thus catering for participants, disabled attendees, and support staff. The tickets without parking would provide information on public transport and pedestrian routes. Experience suggests that in reality people will park cars along the A177 all the way to Shincliffe Village. Newcastle United FC used to train at Maiden Castle and spectators' cars caused major difficulties from Whinney Hill through to and into Shincliffe. Less indifference on the part of the applicant to the problem is required.

### **Community involvement**

26. The County Council's Model Statement of Community Involvement includes the key principles of:
- Ensuring that as wide an audience as possible is consulted
  - Considering comments thoroughly and providing feedback in a balanced and open manner
  - Providing a Statement assessing the inclusiveness of the approach
  - A description of how the proposal has changed as a result of public consultation where applicable
  - An appendix providing copies of all written comments
27. The Statement of Community Involvement provided with this planning application does not record the derision and anger caused amongst the local community in Durham by the locations and times of the Masterplan 'community consultation' events held in October 2016. The Statement does give an account of the public exhibition in the Palatine Centre in the afternoon of 16<sup>th</sup> March 2017. The staff at the exhibition were hesitant about Green Belt questions, and on the specific issue of needing very exceptional circumstances responded that this would not be revealed until the planning application was submitted.
28. The Statement includes a schedule summarising the 41 comments from the Palatine Centre event - 3 in support; 26 neutral; and 12 objections. The response column indicates no recognition of the issues raised and no changes are offered. The tone is dismissive. Indeed, in the case of the inadequacy of the pedestrian footpath along the A177 the response column says that widening has been agreed with DCC, ignoring the Transport Statement's agreement with DCC that this would be too onerous an undertaking.
29. The Statement shows that the 'community engagement' neither ensured that as wide an audience as possible was consulted, nor that the comments were considered thoroughly

and feedback provided in a balanced and open manner, nor offers an assessment of the inclusiveness of the approach, nor a description of how the proposal has changed as a result of the public consultation where applicable, nor an appendix providing copies of all written comments. It clearly fails the County Council's model.

## **Conclusions**

30. The Durham City Neighbourhood Planning Forum formally objects to the development proposed in this planning application on the grounds that it represents inappropriate development which, by definition, is harmful to the Green Belt and that there are not the very special circumstances to warrant approving it, contrary to NPPF Paragraphs 87 – 89 and Saved Policy E1 of the City of Durham Local Plan 2004. The University's desire for enhanced sports facilities should be achieved at several locations, thereby also providing positive benefits by spreading opportunities to a wider section of the community, sharing facilities with schools, colleges and sports clubs, instead of insisting on what it acknowledges to be harmful development in the Green Belt.

Roger Cornwell  
Chair, Durham City Neighbourhood Planning Forum



## APPENDIX

### The National Planning Policy Framework (NPPF)

1. Paragraph 79 states that *“The Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence”*.
2. Paragraph 80 goes on to say that *“Green Belt serves five purposes:*
  - a. *to check the unrestricted sprawl of large built-up areas;*
  - b. *to prevent neighbouring towns merging into one another;*
  - c. *to assist in safeguarding the countryside from encroachment;*
  - d. *to preserve the setting and special character of historic towns; and*
  - e. *to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.”*
3. Paragraph 87 emphasises that *“As with previous Green Belt policy, inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.”*
4. Paragraph 88 requires that *“When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. ‘Very special circumstances’ will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.”*
9. Paragraph 89 makes clear that *“A local planning authority should regard the construction of new buildings as inappropriate in Green Belt. Exceptions to this are:*
  - *buildings for agriculture and forestry;*
  - *provision of appropriate facilities for outdoor sport, outdoor recreation and for cemeteries, as long as it preserves the openness of the Green Belt and does not conflict with the purposes of including land within it;*
  - *the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building;*
  - *the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces;*
  - *limited infilling in villages, and limited affordable housing for local community needs under policies set out in the Local Plan;*
  - *or limited infilling or the partial or complete redevelopment of previously developed sites (brownfield land), whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development.”*

## **The Saved Policies of the City of Durham Local Plan 2004**

10. Saved Policies E1, E2 and E2A of the City of Durham Local Plan 2004 designate the Green Belt around Durham City and protect it from inappropriate development in terms that are very similar but subordinate to the NPPF's safeguards.
  
11. Saved Policy E3 requires the World Heritage Site and its setting will be protected by restricting development to safeguard local and long distance views to and from the Cathedral and Castle and Peninsula.