

Estates and Facilities

30 November 2018

John Lowe
Secretary,
Durham City Neighbourhood Planning Forum

Via Email

Dear John

Durham City Neighbourhood Plan – LGS proposed amendments

I write further to your email on 31st October 2018 in relation to the potential additional sites for Local Green Space Designations. My comments on behalf of Durham University are set out below.

1. Introduction

Since the pre-submission consultation of the Durham City Neighbourhood Plan ('NP'), you are seeking a number of new locations to extend the current proposed boundaries of the Observatory Hill Local Green Space ('LGS'), that being:

- (a) Field at the bottom of Potters Bank North West of St Mary's College; and
- (b) Field down from Elvet Hill / St Aidan's College, South of Potters Bank.

I can confirm that Durham University are owners of the land in question and that the University wish to oppose its inclusion as Local Green Space in the Neighbourhood Plan.

The previous comments made in respect of the wider LGS at Observatory Hill (December 2017) were that part of that allocation proposed at pre-submission stage is owned by Durham University, that the University views this land as operational or with operational potential and do not wish it to be allocated as Local Green Space. A map accompanied the DU submission (Map 6 – DU representations) which identified the area for deletion in red. This remains DU's position.

Regardless of the previous submissions made by Durham University as landowner, the NP has gone further and identified potential additional DU land for inclusion with the LGS designation. In a subsequent email it was stated that the basis for this proposed change relates to an isolated comment made by Durham County Council (in its response to the Local Green Space designation at pre submission draft stage) which notes that: "we would recommend that, if it is considered appropriate to identify this area as LGS, the area should be enlarged to take in the field falling from Elvet Hill / St Aidan's south of Potter's Bank, St Cuthbert's Cemetery, and the field north-west of St Mary's...".

To clarify:

- i. Suggested additional area (a) north west of St Mary's College currently forms part of a Grazing/Mowing agreement with the farm at Houghall College, which is operated for its educational purposes. It is well related to a range of existing University facilities and buildings and with the exception of PROW no. 40, which runs through the centre of the site, there is no public access to the land. There have never been any public or University events held on the land. The site is adjacent to a small number (circa 15) of residential units along Quarryheads Lane but has a poor relationship with the rest of the community in Durham City as PROW no.40 does not form a useful link or short cut and

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- the field is separated from the main suggested allocation of LGS by Potters Bank and from the other extension site by Elvet Hill Road.
- ii. Suggested additional site (b) South of Potters Bank is private land in DU ownership and again subject to a Grazing/Mowing agreement with the farm at Houghall College. There is no public right of way or public access on the site. A permissive path runs along the far west boundary of the site (typically used by students taking a short cut to the Business School from Ustinov College) but there is nothing more than this. The site is pastoral land and well related to the adjacent University uses of St Aidan's College and the Al-Qasimi Building rather than the other areas to be allocated as LGS.

2. The view of Durham County Council

Having spoken with Durham County Council they have responded that to interpret and analyse the basis of their comments appropriately, it is necessary to consider the comment from DCC in its entirety; the starting point of which is that DCC are clear that they consider that both individually and collectively there are “a number of policies proposed that place unreasonable, unequitable, conflicting, and unjustified and/ or inadequately evidenced constraints on future development proposals for the area.” The County Council go on to state that: “The overall approach in the document is considered by the council to be one of imbalanced, inflexible control which is divergent from the approach advocated within the current City of Durham Local Plan and NPPF. It is also at odds with the county council's wider emerging policy approach regarding the potential of the city in contribution the wider economic prosperity of the county.”

The Council also comments that significant stakeholders, each with differing interests and requirements, have not been adequately engaged in the preparation of the draft plan and this raises question marks over the delivery of parts of the plan. DCC go on to state: “For example the DCNP proposes a number of land use allocations and restrictive Local Green Space designations and it has done so without prior engagement with land owners, including the council. As such the proposals may conflict with the intent of land owners, affect land values and/or result in the identification of sites that have no prospect of being delivered.”

The Council concludes that, as they have “not seen an evidence base which shows a wider set of possible Local Green Space sites that were systematically considered and the selection criteria (which should include that set out in paragraph 77 of NPPF) that led to sites being selected or discounted and boundaries being drawn has not been made available”, the Council are unable to determine whether the site selection and boundary extent is justified and robust.

In further support of this, I've have reviewed the original advice given by Ged Lawson (landscape officer at DCC) which clearly sets out:

If it is considered appropriate to identify the area as LGS – rather than in an open space policy similar to E5 which would be an alternative – then consideration should be given to identifying this wider area. Something like that shown below 'Observatory Hill and Elvet Hill' and “...our preferred approach would still be a protected open spaces policy like the existing DCLP E5...”

The view of the Council is clear, they are not in a position to give detailed comments on the LGS boundaries, that the plan needs to take a consistent approach to these green spaces and it is not advocating LGS as the best approach to these fields.

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3. Observatory Hill existing protective designations

(Relevant to DU land in existing proposed LGS designation and new potential LGS sites)

PPG advises that where land is already protected by a designation, such as Green Belt, Conservation Area, etc, consideration should be given as to whether any additional local benefit would be gained by designation as Local Green Space. The NP itself identifies the Observatory Hill site as being within both the inner bowl of the World Heritage Site and the City Conservation Area. Its elevated site makes it very visible from the centre, and it contributes to the green and rural landscape setting for the World Heritage site and the City centre and that it was included in the City of Durham Local Plan saved policy E5 on protecting open spaces within Durham City (City of Durham Council, 2004; Durham County Council, 2015a).

E5 recognises that open spaces within the settlement boundary of Durham city form a vital part of its character and setting will be protected by:

- “1. Not permitting any development at observatory hill or along the riverbanks except for minor development related to either the use of existing buildings or outdoor sport and recreational use;
2. Only permitting development within the mount Oswald-Elvet Hill parkland landscape area which:
 - a) does not exceed the height of surrounding trees and is sympathetic to its landscape setting; and
 - b) is of a low density and sets aside most of the site for Landscaping/open space.
3. Not permitting any development at St Margaret’s Church graveyard and the adjoining allotments except that related directly to use as a churchyard or as allotments.”

The land is therefore already afforded a suitable and appropriate level of protection by virtue of its setting within the WHS and Conservation Area which themselves contain significant and constraining policies. It also forms part of policy E5 which protects open spaces. When read in the context of the policy position and the NP’s stated purpose of designating LGS’s (see below) there is therefore no additional local community benefit to be gained from the inclusion of these two additional sites or any other DU land within the Observatory Hill LGS designation.

4. Policy Position

The process and framework for designation of land as Local Green Space through local and neighbourhood plans is set out in National Planning Guidance (Paragraphs 99 and 100 of the NPPF). LGS designations must be in accordance with the policy contained within the NPPF and, in this instance, the University consider that the identification of DU land within the Observatory Hill LGS is not consistent with policy and should be excluded on this basis.

The NPF’s allocation of LGS is inconsistent with local planning of sustainable development and complement investment in sufficient homes, jobs and other essential services.

Firstly, whilst the guidance allows communities to identify and protect green areas of importance to them, the same guidance goes on to clarify that designating land as Local Green Space should be consistent with the local planning of sustainable development and complement investment in sufficient homes, jobs and other essential services.

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This is a key point. LGS can be designated only where a determination has been made in respect of the sufficiency of the provision of sufficient, homes, jobs and other essential services - including education.

This is part of the wider question over the robustness of the NP and the issues highlighted by Durham County Council in its pre-submission draft response:

“in its current form the draft plan reads as an overly restrictive policy document which poses the prospect of future stagnation to the area, which includes the city centre, a significant valuable heritage and economic asset.”

It goes on:

“The relationship of the draft plan to strategic policies is a significant area of concern for the council. The resulting repetition in covering these strategic matters not only conflicts with the existing planning policy framework to differing degrees but does so in the absence of clear and evidenced justification or mitigation for the adverse implications that could result.”

It appears to be clearly premature to prescribe areas of LGS when there are still several outstanding matters relating to homes, jobs and essential services.

The NP should recognise that Durham University and its operations are a central and integral part of Durham City as well as being a major economic driver and job creator. Its short, medium and longer-term growth ambitions are essential to the long term sustainable development and continued growth of the City and beyond, into the wider North East region. DU must be allowed to strengthen its future offer and services in a sustainable and considered way. The allocation of DU land as LGS without our express consent essentially amounts to a preventive designation and is entirely inconsistent with sustainable development policies and economic growth ambitions of the City.

There is already a suitable and appropriate level of protection in place by virtue of the sites' setting within the WHS and Conservation Area which themselves contain significant and constraining policies. Allocation as LGS for the sole purpose of stifling or constraining essential development unnecessarily, will conflict directly with the aims of national guidance to ensure consistency with local planning of sustainable development and complement investment in sufficient homes, jobs and other important and essential services (such as the University) and, consequently, such a designation is unlikely to endure beyond the plan period; again, in direct conflict with policy (NPPF para 99).

The NPF's designation of LGS is inconsistent with the purpose of LGS designations

I understand that Local Green Space is not intended to be a broad brush or widespread designation and will not be appropriate for most green areas or open space. NPPF makes clear that: “the Local Green Space designation should only be used where the green space is:

- a) in reasonably close proximity to the community it serves;
- b) demonstrably special to a local community and holds a particular local significance, for example because of its beauty, historic significance, recreational value (including as a playing field), tranquillity or richness of its wildlife; and
- c) local in character and is not an extensive tract of land.”

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As the NPPF makes clear local policy for managing development within a Local Green Space should be consistent with policy for Green Belts, LGS is therefore an exceptional designation and not appropriate for most green or open spaces on the basis that LGS designation is equivalent to Green Belt. The imposition of a “very special circumstances” approach inevitably carries with it the same exceptionality requirement for designation at the plan-making stage to be applied in the Green Belt context.

The stated reasons for inclusion of the LGS designations within the submission draft NP are:

- i) Importance of the sites to the local community; and
- ii) To ensure that the sites are protected from development. (NB. The NP document states: “these areas are not as secure as their existing protections would imply. The development pressure in a small constrained area such as Our Neighbourhood is high. There is recent history of planning approvals for large scale developments in the Green Belt with predicted future plans for much more development in the Green Belt.”).

In relation to:

i) the importance of the DU land at Observatory Hill LGS to the community, this is set out below in the context of the NPPF and demonstrates why the land is not demonstrably special to a local community and that there is no particular local significance of the sites to the community.

ii) to protect sites from development, as stated above there is already suitable and appropriate protection in place for the sites and that the imposition of LGS designations will be inconsistent with the aims of national guidance to ensure consistency with local planning of sustainable development and complement investment in sufficient homes, jobs and other important and essential services (such as the University). It is also worth noting that the planning guidance is explicit in its position that blanket designation of open countryside adjacent to settlements will not be appropriate. It continues: “In particular, designation should not be proposed as a ‘back door’ way to try to achieve what would amount to a new area of Green Belt by another name”.

There is no reasonable justification for an LGS in the locations identified.

Having reviewed the key policy terms, below on the basis that the NPPF requires Local Green Space designations only to be used where the green space is:

a) in reasonably close proximity to the community it serves;

Both sites have clear spatial and visual relationships with University buildings and facilities and a limited relationship with any main centres of residential population in Durham City. Site (a) is particularly detached from the community; it is adjacent to a limited number (circa 15) houses and not well used. Site (b) is also not in particularly close proximity to the centre of the Durham City residential community and does not serve as public open space. The westernmost edge has a permissive path, used predominantly by students between University facilities.

b) demonstrably special to a local community and holds a particular local significance, for example because of its beauty, historic significance, recreational value (including as a playing field), tranquillity or richness of its wildlife;

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LGS must also be special to the local community and hold a particular local significance to them. As set out above, there is no public access other than a PROW through site (a), the land is privately owned operational land by DU.

Recreational value of the land

Both additional sites are agricultural fields; one of which allows formal public access across it for walks. The other has no public access excepting its western perimeter. However, the sites are not dissimilar in this respect to many other areas of greenspace adjoining residential areas and they are no different to any other fields around the city.

Over the last 15 years, reflecting the changing nature of agriculture, regulation & subsidy, the fields have gone from being actively cultivated, to set-aside, to being used as pasture for sheep & horses and now cropped for feed.

There is limited public access with some occasional recreational walking and no particular features of this land that would distinguish it from the vast majority of other land surrounding Durham City. The site has no 'demonstrably special' recreational value for the local community.

Beauty

The site is in a suburban location on the outskirts of Durham but closely related to the University facilities and operations. As such, the character of the site is as part of the setting of the university, rather than residential; in character. Whilst there is public access along one footpath, these footpaths are not well used by the local community and there are many areas of countryside where footpaths allow public access, and this is no different or demonstrably special.

It is also not the purpose of the Local Green Space designations to include countryside land that provides wider views of the countryside, to be LGS, the site itself must be prized for its amenity value and have 'particular local significance'. Given the fields have been in use for agricultural purposes and are not in any active use, there is no local significance or amenity value to the land.

Historical significance

The Observatory is the first building the University built in the 1830s. The surrounding site has been used by the University since as a location for research and experimentation; there remains on site an underground bunker which was used to house seismological equipment, a compound that contained the first prototype gamma ray telescope made in about 1981 & used until the early 2000's when the University joined an EU collaboration and until recently the student Astronomical Society had standard reflecting telescopes permanently located in the grounds.

The additional proposed sites (a) and (b) are agricultural fields with no historic significance. The University will undertake detailed analysis of this matter to fully inform the next formal consultation process of the NP.

Ecological importance

The sites are largely actively managed and mown by Houghall College so the land is predominantly grassland with little ecological value. If required during the course of the next stage

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in the preparation of the NP, the University will undertake detailed analysis of the matter to fully inform the next formal consultation of the NP.

Tranquillity

The sites are operational land owned by the university and in close proximity to university teaching facilities. The land is bound on all sides by offices, university buildings, houses and the expanded area actually has two roads running through it with Potters Bank in particular being a well-used rat-run to avoid Neville's Cross. The adjacent fields offer limited tranquillity and are not demonstrably special in this respect.

In balance, the land cannot be demonstrated to be more special to the community than many other areas of open green space on the edge of the city and as such has no particular merit for special designation.

c) local in character and is not an extensive tract of land."

If required during the course of the next stage in the preparation of the NP, the University will undertake detailed analysis of landscape character to fully inform the next formal consultation of the NP but at this stage, I note that although the NPPG sets out that "there are no hard and fast rules about how big a Local Green Space can be" on the basis that places are different and a degree of judgment will inevitably be needed, paragraph 77 of the NPPF is clear that Local Green Space designation should only be used where the green area concerned is not an extensive tract of land and that as a result of this "blanket designation of open countryside adjacent to settlements will not be appropriate".

Given the size of the proposed LGS Observatory Hill designation (including the three DU sites discussed above) totals 16 hectares it does appear to be an extensive tract of land and will be a significant portion of the green space in the plan area.

I understand that there are a number of recent Inspector's reports which address Neighbourhood Plans and specifically in relation to the definition of an 'extensive tract of land'. A range of Inspectors Reports are confirming that potential LGS designations extending to as small as around 2.5 hectares are regarded as being 'extensive tracts of land' and are concluding that such designations are in conflict with the provisions of the NPPF.

A recent example (September 2018) is the 'Cuddington' NP that identified a 12.9ha tract of land for designation as Local Green Space, however the examiner deemed this proposal to constitute an extensive tract of land and therefore contrary to the guidance set out in paragraph 77 of the NPPF. It was removed from the NP on this basis.

Another recent examination (August 2017) of the 'Davenham and Whatcroft' NP ruled that a 6.2ha piece of land represents an extensive tract of land. Furthermore, there have been various other examiner's reports that have stated even smaller tracts of land to be too excessive in area for Local Green Space designation, including; 'Alrewas' (August 2015) approximately 2.5ha and 3.9ha, 'Sedlescombe' (January 2015) approximately 4.6ha, 'Tatenhill' (November 2015) approximately 9.2ha and 4.3ha and 'Oakley and Deane' (December 2015) just over 5ha; all were recommended for removal from their respective NPs.

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All the aforementioned examples highlight significantly smaller tracts of land - than the proposed site at Observatory Hill – and confirmed as being 'excessive'.

Therefore, the suggested LGS designation of DU land at Observatory Hill is not appropriate in the context of the NPPF; it is an extensive tract of land, the sites only serve a limited population either by proximity or use, are not demonstrably special to the community and have no particular local significance. In the context of the NP, stated reasons for inclusion the sites are not deemed to be more important to the local community than many other sites around Durham City and there are adequate protections already in place on the land in the form of WHS and CA setting and protective policy E5. To impose a Green Belt policy (to all intents and purposes) on the land in addition appears to be a 'back door' way to try to achieve what would amount to a new area of Green Belt by another name.

Such an approach is not appropriate, and therefore request that the DU land is removed from the LGS designation.

Conclusions

The University consider that the inclusion of additional land at sites (a) and (b) as well as the Durham University land at Observatory Hill in the existing proposed LGS designation is not appropriate on the basis that:

- DCC's isolated comment is immaterial and made in the acknowledgement that DCC cannot determine whether site boundaries for LGS are robust and justified. DCC's position is that the existing designation is a more appropriate approach to protect the site.
- When assessed against the stated purposes from the NP for the LGS – the LGS designation is not necessary. These being:
 - i. To 'protect the site from development':
 - The whole of Observatory Hill LGS adequately and suitably protected by its existing designations and there is no additional local benefit to including the land as LGS.
 - The site area represents an 'extensive tract of land' in direct conflict with the provisions of the NPPF.
 - LGS is an 'exceptional' designation and should not be used as a broad brush approach or a back door way of securing Green Belt protection status on sites. In this instance, the imposition of LGS will conflict directly with the aims of national guidance and unnecessarily restrain sustainable development and economic investment; such a designation is unlikely to endure beyond the plan period in direct conflict with policy.
 - The extent of the site, as now proposed, is 'extensive' and contrary to the NPPF.
 - ii. For its 'importance to the community':
 - The sites are already adequately and suitably protected and that its importance to the community is not demonstrably more important to the community than other areas of open space around the city. In addition they are not demonstrably special or of particular local significance.

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The case for designation as Local Green Space in the context of the NP purposes for inclusion as well as the NPPF and PPG has not been sufficiently made and the proposed designation should be withdrawn.

Yours sincerely

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