

Comment

Consultee Mr John Atkinson (1175431)

Email Address [REDACTED]

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Event Name Darlington Local Plan 2016-2036 (Regulation 19)

Comment by Mr John Atkinson (1175431)

Comment ID DBLPPS153

Response Date 14/09/20 13:22

Consultation Point Policy H 2 Housing Allocations (Strategic Policy)
([View](#))

Status Processed

Submission Type Email

Version 0.8

Files [Comments on 392 Elm Tree Farm.pdf](#)

Question 1b

Do you consider that the Local Plan sound? No

Question 2

Do you consider that this part of the Local Plan is unsound because it is not: (tick all that apply)

- . Positively prepared
- . Justified
- . Consistent with national policy

Question 3a

Your Comments

Please give details of why you consider that this part of the Local Plan is not legally compliant or unsound or fails to comply with the Duty to Cooperate.

The creation and processing of Site 392 Elm Tree Farm in the Local Plan is not sound.

This has consequences for other sites and parts of the plan.

The evidence presented in the attached document outlines a number of issues that individually and collectively show the Local Plan has not been positively prepared, is not justified, and contravenes the NPPF.

The document is entitled Comments on 392 Elm Tree Farm. Please ensure it is attached to the consultation portal.

Question 4

Changes Sought

Please Note your representation should cover succinctly all the information, evidence and supporting information necessary to support/justify the representation and the suggested change, as there will not normally be a subsequent opportunity to make further representations based on the original representation at publication stage. There is the opportunity to attach Word or PDF files before submitting your comment.

After this stage, further submissions will only be at the request of the Inspector, based on the matters and issues identified for examination.

Please set out what change(s) to the Local Plan you consider necessary to make it legally compliant or sound. You will need to say why this change will make the Plan legally compliant or sound. It will be helpful if you are able to put forward your suggested revised wording for any policy or text.

Site 392 Elm Tree Farm should not be allocated for housing.

The evidence is in the attached document.

Question 5

Attendance at Examination Hearings

If your representation is seeking a change, do you consider it necessary to participate in the examination hearings? Yes, I wish to participate at the examination hearings

Question 5a

Participation at Examination Hearings

Please note the inspector will determine the most appropriate procedure to adopt to hear those who have indicated that they wish to participate at the examination hearings.

If you wish to participate at the examination hearings, please outline why you consider it to be necessary?

Opportunity to clarify and address complex issues.

Question 6

Do you request to be notified that the Local Plan has been submitted to the Secretary of State for independent examination under section 22(3) of the regulations and to be notified of the adoption of the Local Plan? Yes, I request to be notified

Comment

Consultee Mr John Atkinson (1175431)

Email Address [REDACTED]

Address [REDACTED]
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Event Name Darlington Local Plan 2016-2036 (Regulation 19)

Comment by Mr John Atkinson (1175431)

Comment ID DBLPPS178

Response Date 14/09/20 08:36

Consultation Point Policy ENV 6 Local Green Space ([View](#))

Status Processed

Submission Type Email

Version 0.4

Files [Comment on designation of local green spaces.pdf](#)

Question 1b

Do you consider that the Local Plan sound? No

Question 2

Do you consider that this part of the Local Plan is unsound because it is not: (tick all that apply)

- Positively prepared
- Effective
- Justified

Question 3a

Your Comments

Please give details of why you consider that this part of the Local Plan is not legally compliant or unsound or fails to comply with the Duty to Cooperate.

The Local Green Space Designation process for Sparrowhall Drive green space was not sound.

The evidence presented in the attached document shows the Local Plan has not been positively prepared, is not justified, and contravenes the NPPF.

The evidence is presented in the attached document entitled "Comment on designation of local green spaces".

Please ensure it is attached to the comment on the consultation portal.

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Sparrowhall Drive green space is designated green space.

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Email Address [REDACTED]

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Event Name Darlington Local Plan 2016-2036 (Regulation 19)

Comment by Mr John Atkinson (1175431)

Comment ID DBLPPS179

Response Date 14/09/20 13:22

Consultation Point Site 392 - Elm Tree Farm ([View](#))

Status Processed

Submission Type Email

Version 0.3

Files [Comments on 392 Elm Tree Farm.pdf](#)

Question 1b

Do you consider that the Local Plan sound? No

Question 2

Do you consider that this part of the Local Plan is unsound because it is not: (tick all that apply)

- Positively prepared
- Justified
- Consistent with national policy

Question 3a

Your Comments

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This has consequences for other sites and parts of the plan.

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Site 392 Elm Tree Farm should not be allocated for housing.

The evidence is in the attached document.

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Email Address [REDACTED]

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Event Name Darlington Local Plan 2016-2036 (Regulation 19)

Comment by Mr John Atkinson (1175431)

Comment ID DBLPPS347

Response Date 16/09/20 12:29

Consultation Point Policy H 10 Skertingham - Strategic Site Allocation (Strategic Policy) ([View](#))

Status Processed

Submission Type Email

Version 0.3

Question 1b

Do you consider that the Local Plan sound? No

Question 2

Do you consider that this part of the Local Plan is unsound because it is not: (tick all that apply)

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Please give details of why you consider that this part of the Local Plan is not legally compliant or unsound or fails to comply with the Duty to Cooperate.

The Skertingham area disproportionately negatively impacts on the existing Whinfield area.

The indicative road access through the ward is via residential streets that eventually lead to the already congested A1150.

Green spaces will be developed for housing with no consideration for the existing use by residents of the ward and by others, rambles, who come to enjoy the walks.

The loss of green space on Sparrowhall Drive is one example, it has an unspoilt public right of way that is highly valued.

The relationship of Site 392 Elm Tree Farm with the Skerningham Strategic area and Masterplan has been deliberately made ambiguous. The change was made as a result of a comment from the developer Bellway, DBDLP1170. Contrast with the response to comment DBDLP868 that states "...it has been emphasised with the landowners/developers that any development proposal at Elm Tree Farm would have to be well integrated with the masterplan area..."

The Masterplan has also been changed as a result of a pending planning application made in October 2018 for land covered by the masterplan. (Response to comment DBDLP1170).

Site 392 Elm Tree Farm has access via Sparrowhall Drive. The planning application (18/00988/FUL) provides road access to the golf club. Access is currently via a separate route to the west. The Masterplan indicates the golf club will relocate.

This one example shows the interface between Skerningham development and existing Whinfield has not been properly considered and used to inform the approach.

There is no detailed delivery programme which sets out phasing information and timings of key stages.

There is no detail of preparatory work, marketing/appointment of housebuilders/developers, EIA work.

There is no detail of Section 106 work.

There is no detail of other legal/contract work.

There is no detail of planning application preparation, planning application determination.

There is no detail of discharge of conditions, site preparation, commencement of development.

There are no anticipated timings of key infrastructure delivery provided.

The Local Plan has not been positively prepared, is not justified and contravenes the NPPF.

Question 4

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Details are required to allow a better informed plan.

The details would prevent ambiguity making the decision process and decisions made clearer.

Better understanding by the public would allow more informed comment.

Reverse the decisions taken as a result of pending planning applications.

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If you wish to participate at the examination hearings, please outline why you consider it to be necessary?

To clarify and expand on complex issues.

Question 6

Do you request to be notified that the Local Plan has been submitted to the Secretary of State for independent examination under section 22(3) of the regulations and to be notified of the adoption of the Local Plan?

Yes, I request to be notified

Comments on Site 392 Elm Tree Farm Mr Atkinson

The creation and processing of Site 392 Elm Tree Farm in the Local Plan is not sound.

Evidence will be presented that the creation of a site by Cabinet on 12/09/17, of what would eventually become Site 392 Elm Tree Farm, was flawed.

The site was created to allow a road from the congested A1150, across Springfield Park through Elm Tree Farm to join with Skerningham to the North. Later analysis disproved the rationale for the road and it was removed from the plan. However, Site 392 is still included.

The site did not undergo the HELAA 2017 process.

The inclusion of the site has had adverse consequences with other aspects of the plan. These problems have been compounded as the process has continued.

Other sites involved include Site 21 Elm Tree Farm and Site 126 Sparrowhall Drive green space and Site 251 Skerningham. Details of how and to what extent will be given.

The Council refer to a pending planning application involving Elm Tree Farm (18/00988/FUL) and they use it to justify amendments to the plan.

It should be noted that some of the Council information referred to was obtained at different times via contested Freedom of Information (FOI) requests, with the intervention of the Information Commissioners' Office (ICO).

I have at least one relevant request outstanding because the Council have appealed the ICO ruling, as they are entitled to do. If the appeal fails then it is requested of the Planning Inspector that any information impacting on the local plan resulting from disclosure is allowed outside of the consultation period. That is notwithstanding any enquires the Planning Inspector pursues independently as part of the process whilst respecting the appropriate norms.

1. The Evidence.

1.1 Factors in the Creation of Site 392 Elm Tree Farm

1.1.1 On 23rd Sept. 2016 the Council received a Bellway pre-application advice request, Ref 16/00097/PREAPP. A copy was obtained via FOI request.

The proposed site was named Elm Tree Farm and it consisted of a proposed housing development on what would become Site 21 Elm Tree Farm in the Local Plan process.

1.1.2. The official Council pre-application advice, dated 07/11/16, made clear the application would be refused in the submitted form because it did not provide provision for a potential road connecting the A1150 to land to the north of the site, which would become Site 251.

The advice referred to the masterplan and stated:- "Elm Tree Farm site should form a pivotal part of such a masterplan and during pre application discussions requests were made to keep part of the site free to allow for options of potential future access however this has not been reflected in the submission and the proposal as it stands would be considered to prejudice the future good planning of this key strategic area."

1.1.3. A drawing showing the potential road was created by the Council in May 2017, obtained via FOI request. It shows it crossing Springfield Park from the A1150 and entering the property known as Elm Tree Farm and continuing along the western edge. It was not included for Cabinet.

Comments on Site 392 Elm Tree Farm Mr Atkinson

1.1.4. A secret report was prepared for the Cabinet and discussed at the Cabinet meeting on 12th Sept. 2017, and obtained via a FOI request. The meeting was held whilst the extended call for sites for the Local Plan was still open and 5 months before it closed.

The report recommended the transfer of land between the Council and the developer Bellway to create a parcel of land on the western boundary of Elm Tree Farm to allow for a future road as described above. The Cabinet approved.

1.1.5. The agreement shows Bellway would receive Site 126 and it would be combined with the majority of Site 21 for which Bellway were the proposed developer. This newly created site would eventually become Site 392 Elm Tree Farm in the Local Plan.

The Council would receive a strip of land along the remaining western part of Site 21 for the potential road. Thus the land for the potential road would lie outside the new site (392) and adjoin the western boundary.

1.1.6. The Cabinet report describes the road as "strategic" and states that internal consultations with Highways and Development Management took place.

There is no reference in the report to evidence of traffic modelling, impact or alternative options considered to support the assertion and recommendation.

When analysis was finally done by the Council in 2019, due to the intervention of the newly elected Councillors and controlling group, the conclusion was that the road "has **NOT** been found to be critical". The bold emphasis and uppercase are in the update itself.

The rationale put to the Cabinet in the secret report for strategic road access was wrong.

The decision taken by the Cabinet is without merit and no weight can be attached to it. The subsequent actions based on this decision, and their consequences, should be considered similarly affected.

1.1.7 The Local Plan extended 'call for sites' was open at that time.

However, the report focussed on the use of the Planning System, as the agreement depended on planning permission being granted, and how the Council could achieve the aim stated. This even extended to the legal advice that any comments from a mandatory public consultation could be ignored.

1.1.8 Under "Planning Comment" item 15 the report states that "*Whilst some initial discussions have taken place with Bellway, prior to any application being submitted the matter would have to be considered formally through the pre application process to ensure that a satisfactory form of development is secured..*".

The wording makes a distinction between discussions and the formal pre application process and that the latter would be a future pre-requisite of a planning application.

The NPPF 2012 states (item 189) that developers cannot be required to engage in the process prior to an application.

At the time of the meeting, a pre application submission from Bellway had been received by the Council a year earlier on 26 Sept. 2016 and advice given, 16/00097/PREAPP. It was not included.

Comments on Site 392 Elm Tree Farm Mr Atkinson

1.1.9. A relevant pending planning application was submitted in Oct. 2018 , 18/00988/FUL, but it only references 16/00097/PREAPP on the formal submission form.

The pre application submission and advice are not on the planning portal because the Council stated they are confidential in an email 19/08/19. The email was in response to asking for the pre application to be included on the planning portal.

1.1.10. A second drawing modifying the potential road was created by the Council in Nov. 2017, obtained via a FOI request. It shows it crossing Springfield Park from the A1150 and entering the property known as Elm Tree Farm and continuing along the western edge. This drawing was not used in the Local Plan.

1.1.11. As a result of the 2019 traffic modelling work and the conclusion drawn this road has been removed from the submission version of the Local Plan.

The rationale for the creation of Site 392 was not sound and has been thus been removed.

1.2. The Removal of the Rationale for Site 392 Elm Tree Farm

1.2.1. Following local elections in May 2019 the control of the Council changed. The new local Councillors for the Whinfield Ward challenged the need for the road across Springfield Park via the Place Scrutiny Committee. The matter was referred to the new Cabinet ahead of their meeting in July 2019 to consider passing the plan.

The Cabinet paused the Local Plan process to allow further consideration.

This included the preparation of a document entitled "An Update Briefing Local Plan Skerningham Garden Village Springfield Link Road". It was created by Dave Winstanley of Darlington Borough Council on 31/10/19 and last modified on 12/12/19. The analysis considered scenarios with and without the Springfield Park Road.

It is stated in two separate places that the road "has **NOT** been found to be critical". The bold emphasis and uppercase for the word "not" are in the update itself.

This completely contradicts the report of the 12 Sept. 2017 for Cabinet describing the road as "strategic".

Thus the rationale to create Site 392 was later proved to be not sound by the Council themselves.

1.2.2. Council officers arranged two "non-consultation" drop in events for the public in Jan. 2020 showing details of the Springfield Park Road. Council officers and representatives of developers were present and there were numerous information boards. The public were asked to respond formally to set questions on whether they agreed with the road or not, and submit answers by 16th Jan. 2020.

The poll result was overwhelmingly against the road.

1.2.3. The evidence proved the inclusion of the Springfield Park road in the Local Plan was not sound. Following consideration by the new Cabinet and full Council the Springfield Park Road has now been removed from the Local Plan.

Comments on Site 392 Elm Tree Farm
Mr Atkinson

The recommended wording to comment DBDLP1170 in the preparation documents for the Cabinet meeting of 09/07/19 that Site 392 must enable a suitable access to Skerningham has been retracted.

However, Site 392 remains.

1.2.4. At the public Cabinet meeting on 11/02/20 Councillor Marshall outlined the state of the plan and proposed that due to the difficulties encountered to date that were proving difficult to gain agreement on, the time taken and the change of Council control that the plan (no Springfield Park road) be submitted for formal approval by the full Council with the recommendation to allow an independent assessment by the Planning Inspector to resolve the issues.

I was invited to speak ahead of the Cabinet vote. Without knowledge of the content of the Cabinet report of 12/09/17 at that time, I made the case for the removal of Site 392 Elm Tree Farm because the Springfield Park road had been removed from the plan. Councillor Marshall invited Mr Hand, Head of Planning Policy, Economic Strategy and Environment, to respond on behalf of the Council. An exchange followed between myself and Mr Hand but no common ground was found.

The Chair eventually brought the exchange to a close and highlighted the lack of agreement. She pointed out that if I brought the matter to the attention of the independent Planning Inspector during consultation then they would consider the matter and decide. This was consistent with the motion under consideration.

The motion proposed by Councillor Marshall was approved.

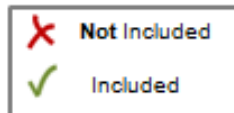
The meeting was video recorded by a third party and posted on the intranet.

Comments on Site 392 Elm Tree Farm
Mr Atkinson

1.3. Comparison and Contrast of Site 392 Elm Tree Farm and Site 21 Elm Tree Farm and Site 126 Sparrowhall Drive Green Space in the Local Plan Process

1.3.1 Table showing inclusion of the relevant sites in key documents.

Date Created	Document	Site 392	Site 21	Site 126
23 rd Sept 2016	Pre-Application Advice 16/00097/PREAPP	✗	✓	✗
31 st Jan. 2018	Helaa-sites-2018-final-3	✗	✓	✓
26 th Feb. 2018	Darlington Borough Council Five Year Housing Land Supply Position Statement February 2018	✗	✓	✗ <small>Not Suitable From HELAA</small>
27 th Feb. 2018	Appendix 5: All HELAA Sites: Summary of Assessment Maps	✗	✓	✓
28 th Mar. 2018	Darlington Borough Council Housing and Employment Land Availability Assessment MAP2	✗	✓	✓ <small>Not Suitable</small>
28 th Mar. 2018	Darlington Housing and Employment Land Availability Assessment (HELAA 2017) March 2018	✗	✓	✓
17 th May 2018 Last Modified 20/6/18	Policies Map Consultation Draft June 2018	✓	✗	✗
20 th June 2018	Housing Development in Darlington Borough Draft Local Plan June 2018 on consultation portal	✓	✗	✗
21 st June 2018	Darlington draft Sustainability Appraisal on consultation portal	✗	✓	✓ <small>Not Suitable</small>
28 th June 2018	Local Green Space Designation Report	✗	✗	✓
Submission Consultation	Policies Map	✓	✗	✗
Submission Consultation	Sustainability Appraisal on consultation portal	✓	✓	✓ <small>Not Suitable</small>
Submission Consultation	Housing Development in Local Plan Submission on consultation portal	✓	✗	✗



1.3.2 The HELAA process call for sites was extended between May 2016 and Feb. 2018 according to cross referencing of the various documents.

1.3.3 Site 21 Elm Tree Farm was included in the HELAA. It was assessed as suitable, achievable and available for housing development.

Comments on Site 392 Elm Tree Farm Mr Atkinson

The site was included in the 5 year land availability document Feb. 2018 and the later draft Sustainability Appraisal (SA) for housing.

1.3.4. Site 126 is Council owned green space and it was included in the HELAA. It was assessed as not suitable, not achievable and not available for development.

The site was included in the draft SA and shown as not for development.

However, from the moment when the Cabinet agreed to sell this site on 12/09/17 it became available for development. The Cabinet report states "It is considered that in principle the development of the land to the North of Sparrowhall Drive is acceptable for housing".

If the true position had been made public in the draft Local Plan processes it is highly probable that focussed comments about the loss of a valued green space would have been made at that stage. The residents were misled and denied this opportunity.

1.3.5. Site 392 was not included in the "HELAA 2017".

In addition to the extended call for sites there was also a HELAA Steering group, including land owners and developers, involved in overseeing the process.

The site was not included in the 5 year land availability assessment in Feb. 2018 nor the draft SA, both of which require a previous HELAA.

1.3.6. According to the flowchart in Figure 1.2 of the final HELAA 2017 report it is the Final Evidence Base that informs the Local Plan and the 5 year land availability assessment. The Final Evidence Base is the HELAA 2017 report published March 2018.

The flowchart shows there is no mechanism to add sites to the "Final Evidence Base" once this had been created.

It cannot be argued that the housing yield from the site was critical to meeting the housing target, even the disputed inflated target as there was more than enough housing identified to meet needs without it.

1.3.7. The submission SA states in item 8.5 that a number of additional sites were submitted during the summer of 2018 and these were assessed through the HELAA process.

The reference to "summer of 2018" is vague and open to inconsistent interpretation but it cannot be stretched to include Site 392.

1.3.8. The sites in the Policies Map Draft Consultation June 2018 document are not named, only numbered. There are no other maps of Site 392 in any other draft documentation. This makes it difficult to visually cross reference sites between documents, especially if they have the same name but a different number to a previously published site.

The appearance of Site 392 in this document is the first time it has been directly and publically connected to something in the Local Plan process.

The NPPF states that land-use delegations and allocations should be identified in a policies map.

The allocation of the site must be based on something and someone has made the decision.

Comments on Site 392 Elm Tree Farm Mr Atkinson

It cannot be based upon the HELAA 2017 report or the draft SA because the site is not included in those documents.

It cannot be based upon the Local Green Space Designation report June 2018 because it is not included.

1.3.9. Site 392 appears in the draft Local Plan under Housing Allocation. It is referred to as Elm Tree Farm, the same name as Site 21. The two Elm Tree Farm sites were confused as being one and the same, especially given the published process history for Site 21 Elm Tree Farm and no published history for Site 392 Elm Tree Farm.

1.3.10. The fact that Elm Tree Farm had two different site numbers, 392 in the draft Local Plan and 21 in the draft Sustainability Appraisal, even confused the professional Highways England statutory consultee enough for them to object, reference DBDLP910. No public record can be found of this concern being addressed and put before any of the committees of elected Councillors.

1.3.11. Both Site 21 Elm Tree Farm and Site 392 Elm Tree Farm are included in the submission SA.

Site 21 has been publically processed through the HELAA stages whereas Site 392 has not.

Site 126 is included in the SA and shown as red on the Figure 7.3 map as not suitable for development. This map also shows Site 21 but not Site 392.

1.3.12. The Local Green Space Designation report, created 28/06/18, states that a site cannot be considered (assessment 1) if it is likely to be allocated for an incompatible alternative use in the emerging plan. The method for checking is stated as the HELAA and thus all relevant HELAA impacting on the green space would be included.

For the Sparrowhall Drive green space the HELAA for Site 126 and 251 were checked but not Site 392.

It shows not only that Site 392 had no HELAA at this point but that it did not exist in the Local Plan process. Site 126 was assessed as an independent site that was only connected with Site 251. There was no connection identified with Site 392, which actually includes Site 126.

1.4. Bellway Event and the Email Exchange with Head of Planning Policy, Economic Strategy and Environment.

1.4.1. Bellway held an event on the afternoon and early evening on the final day of consultation for the draft Local Plan (2nd Aug.2018, closing at 17:00) for a proposed development.

The development was for housing on land that was a combination of Elm Tree Farm (Site 21) and the green space on Sparrowhall Drive (Site 126). Due to the timing of the event even residents who attended were denied the opportunity to make comment in the draft Local Plan process.

1.4.2. Residents were concerned as the Bellway proposal did not fit with what was understood at that time from the HELAA, local green space designation and other draft Local Plan documentation. Whinfield Residents Association was asked to seek clarification on issues from the Head of Planning Policy, Economic Strategy and Environment. An email exchange occurred

Comments on Site 392 Elm Tree Farm Mr Atkinson

between 17/8/18 and 11/10/18 and are available if required. The responses were not clear and often delayed. He got himself confused over whether the site was inside Skerningham Masterplan area or not. He even had to retract previous statements.

It was not satisfactory. If such a senior official can be confused given his role in the processes the ordinary public had little to no chance of understanding the draft plan to make meaningful comments.

1.4.3. In one email dated 6th Sept. 2018 he stated "*In respect of Sparrowhall Drive Local Green Space I note you have made representation as part of the Local Plan and it will be reconsidered as part of that process*". No formal reconsideration has been published to date.

This item is covered in more detail in a separate document on Local Green Space Designation.

1.4.4. Continued attempts to seek further clarification were prematurely curtailed because Bellway submitted the planning application 18/00988/FUL, for their proposal, on 23/10/18. Not surprisingly to all involved this necessitated a change of focus for the residents. The scheduled determination was Feb. 2019.

The comments submitted for the planning application give a flavour of what comments would have been made at the draft Local Plan stage if residents had not been misled.

The application is still awaiting determination.

1.5. The Skerningham Masterplan and the Pending Planning Application Involving Elm Tree Farm

1.5.1. The Council have made the planning application a material matter in the Local Plan process and have given it considerable weight because it has been used to amend the submitted plan, as per the response to Comment reference DBDLP1170 in preparation documents for the Cabinet meetings of 09/07/19 and 11/02/20.

The validity of the pending planning submission, 18/00988/FUL, is extremely doubtful.

Under the current adopted Local Plan the site is outside the development boundary. Previous applications for Elm Tree Farm in 1997 had been refused, including in court after the developer had appealed.

This pending application was submitted after the closure of consultation on the draft Local Plan but before Council approval for this submitted plan. Thus the draft plan becomes a consideration at the time the application was made.

Site 392 is included within the Skerningham Strategic Allocation site as shown by Maps 4 and 7 in the Policies Map Consultation Draft June 2018.

The draft housing allocation statement includes Site 392 wholly in the Masterplan Framework without qualification.

In Section 6.10.3 of the draft plan it is stated that "*The finalised Masterplan is to be agreed with the Council in advance of any planning application being submitted for the Skerningham strategic allocation site, either as a whole or in part*".

Comments on Site 392 Elm Tree Farm
Mr Atkinson

The statement does not exclude any housing allocations within the site. The reference to either whole or in part is directly applicable to Site 392.

The statement establishes the principle that the Masterplan comes first. This makes sense and is to be expected as per the NPPF.

The Council state in DBDLP1170 that the Elm Tree Farm site was included within the boundary of the Skerningham Strategic Allocation because it forms a logical extension to the Masterplan Framework area.

The statement of 6.10.3 in the draft Local Plan applies both factually and in principle to Site 392.

The evidence supports the view that the planning application should not have been considered as part of the Local Plan process because it failed to meet important, relevant criteria of the draft Local Plan.

It is considered that the option to refuse the planning application on the grounds of it being premature was strongly supported by the evidence meeting the conditions in the NPPF (2018) for refusal on those grounds. The site was within the massive Skerningham Strategic Allocation site and Masterplan, which requires phased development. Elm Tree Farm was previously described by the Council as pivotal to the Skerningham area development. The draft plan had completed a consultation and submission was expected in weeks. The option to refuse the application was not taken.

At the time of the application the Council needed the planning permission to secure the land for the road to Skerningham and Bellway were a partner in that endeavour.

In response to a query of when the application would be determined an email, dated 28/01/20, from Head of Planning , Development Management and Environmental Health acknowledged that the progression of the planning application depends upon the site being allocated in the adopted Local Plan. He confirmed that it will not be presented to the Planning Committee before then. It is to be noted that at this point it was known the Springfield Park road was being removed from the Local Plan.

The email has re-affirmed the order of things as per the NPPF which states "Planning Law requires that applications for planning permission be determined in accordance with the development plan".

The pending planning application cannot be used to inform an amendment within the Local Plan.

1.5.2. The Council used the planning application to change the Masterplan itself.

In the same response to DBDLP1170 it is stated "*the framework plan has been amended to more closely reflect the layout of the development in the planning application for the Elm Tree Farm site*".

This response was included in the preparation documents for the Cabinet meetings of 09/07/19 and 11/02/20 and cannot be due to the removal of the Springfield Park road.

What the Council have done is exactly what statement 6.10.3 discussed above was designed to avoid both specifically and in principle.

Comments on Site 392 Elm Tree Farm Mr Atkinson

The application involves Site 392 Elm Tree Farm. There are serious concerns over the creation of the site and continued inclusion in the plan as raised earlier.

In stating the reasons for making the amendment to the Local Plan the Council are demonstrating predetermination of the planning application, both in success and content.

1.5.3 The amendment has included the removal of the indicative green infrastructure that was Site 126 Council owned green space and replaced it with development. This contradicts the HELAA for this site.

The changes to the Masterplan Framework based on the planning application should be reversed, the most prominent of which is the reinstatement of the green space infrastructure for Site 126.

1.5.4. The Cabinet report 12/09/17 referred to the minimum consultation required for the development of green space, under legal advice.

In an Internal Review DBC 2809 -18 dated 12/03/19 the Council state that "*Any development of green space within the town would be subject to public consultation*".

It is not clear whether what has happened via the Local Plan process meets the legal requirements of a public consultation for the disposal or development of the green space.

1.5.5. Site 392 is within the Masterplan Framework with all that entails.

However, the housing statement has had an addition:- "*Development should be in broad alignment with the Skerningham Masterplan Framework (Figure 6.1).*"

This was added in response to a comment from Bellway, DBDLP1170 as referenced in preparation documents for the Cabinet meetings of 09/07/19 and 11/02/20.

The phrase "should be in broad alignment" is open to inconsistent and wide variation of interpretation and is meaningless for common understanding and enforcement. The inclusion of such wording would allow diversion from the Masterplan Framework.

The implication is that Site 392 will be treated differently to the rest of the sites within the Masterplan Framework. Why that should be the case and how that will manifest itself is not stated.

This undermines the previous narrative from the Council advocating the benefits of a masterplan approach. It also sets a precedent that could be exploited by developers in the future.

If Site 392 is allocated then the additional wording should not be included. However, for the avoidance of doubt it is suggested that any additional wording should read "Development must be fully integrated with the agreed Skerningham Masterplan Framework."

By contrast to the response to DBDLP1170 is the response to a comment made by Banks Property, DBDLP868. The Council stated "*...it has been emphasised with the landowners/developers that any development proposal at Elm Tree Farm would have to be well integrated with the masterplan area...*"

This was included in the preparation documents for the Cabinets meetings of 09/07/19 and 11/02/20, the same as Comment DBDLP1170.

Comments on Site 392 Elm Tree Farm Mr Atkinson

It shows the Council simultaneously stated two different positions on the issue of the relationship of Site 392 with the Masterplan Framework in response to comments from two separate developers. One resulted in action for Bellway whilst the other for Banks Property, who were requesting a separate allocation as per Site 392, resulted in no action.

1.5.6 The site will be accessed via residential Sparrowhall Drive. No details are given on the impact to Sparrowhall Drive and surrounding area. The integration with the Masterplan Framework lacks detail and does not consider the effect of the golf club relocation.

Comment DBDLP910 from Highways England includes concerns about the individual site, as well as it being part of the Skerningham Masterplan, on the impact on the road network.

2. Overall Summary

The evidence presented outlines a number of issues that individually and collectively show the Local Plan has not been positively prepared, is not justified, and contravenes the NPPF.

There has been ambiguity that has prevented understanding and hindered effective consultation and comment.

The ambiguity remains in the policies and statements and processes discussed.

The issues are linked to the proposed road across Springfield Park connecting the already congested A1150 through Elm Tree Farm to the massive Skerningham site. The situation with the A1150 was previously used to support the case for a northern bypass road.

The indicative access across Springfield Park was included in the plan but stopped short of Elm Tree Farm. No detail was published.

The decision by the Cabinet to exchange land with Bellway to create a piece of land for the road has been shown to be critical. The rationale and information presented to inform that decision was not sound.

The site created eventually materialised as Site 392 Elm Tree Farm in the Local Plan without any published history or analysis. The Site 21 Elm Tree Farm does have published history and analysis. Naming a site the same as an existing site created confusion.

The evidence shows the site could not have existed within the Local Plan process at the time of the Local Green Space Designation report of June 2018. The proper consideration of the Sparrowhall Drive green space for designation has been prevented and promises by a senior Council officer were not kept.

The Council simultaneously stated two different positions on the issue of the relationship of Site 392 with the Masterplan Framework in response to comments from two separate developers.

The integration of the site with the Masterplan Framework lacks detail and the impact on residential Sparrowhall Drive and the wider road network has not been presented.

A pending planning application involving Site 392 was cited as a reason to change the Masterplan Framework. Not only was this not sound for the Local Plan it also shows pre determination of the

Comments on Site 392 Elm Tree Farm
Mr Atkinson

planning application. The land exchange agreed by Cabinet depended upon the granting of planning permission.

The rationale for the site, Springfield Park road, has been removed from the plan because it was not sound.

Site 392 Elm Tree Farm, and its consequences, should be removed because they are not sound.

Comments on Designation of Local Green Space 5/8/20 to 17/9/20
Mr Atkinson

The Local Green Spaces designation is not sound. Evidence is presented below.

1. Evidence

1.1 The process starts from the position that the green space submitted for consideration is not designated and this is changed to designated status if judged to meet the criteria.

1.2. Whinfield Residents Association submitted the green space on Sparrowhall Drive for green space designation between Feb. and March 2018 as per the council process.

1.3. The Local Green Space Designation Report June 2018 allocated Sparrowhall Drive the number LSG08.

1.4. The method for Assessment One checked the HELAA to determine if an area was likely to be allocated for an incompatible alternative use in the emerging plan.

1.5. The relevant HELAAs identified for Sparrowhall Drive green space were for Site 126 Sparrowhall Drive Green Space, owned by the Council, and Site 251 Skerningham Strategic Allocation.

1.6. The final HELAA 2017 report published March 2018 stated site 126, was not suitable, not achievable and not available for development.

1.7. Site LGS08 was scoped out of the rest of the green space determination with N/A entered for the for the remaining criteria two to six.

The words "*Site LSG08 Sparrowhall Drive - Scoped out of further assessment*" were included.

1.8. The reason given was the site was within the Skerningham Strategic Allocation area. The Council expected a range of sport and recreational facilities within the area and this submission would be reviewed when more detail was known.

1.9. It was stated that if this was not possible by the time the plan is submitted it can be undertaken during the next local plan review.

1.10. Site 251 was subject to the Skerningham Masterplan Framework.

1.11. The draft Masterplan Framework used by the Council in various meetings and on the website show a triangle of indicative green infrastructure that matches Site 126.

1.12. Bellway held an event on the afternoon and early evening on the final day of consultation for the draft Local Plan (2nd Aug.2018, closing at 17:00) for a proposed development.

The development was for housing on land that included Site 126 green space on Sparrowhall Drive.

1.13. Clarification was sought and in an email to Whinfield Residents Association, dated 06/09/18, from the Head of Planning Policy, Economic Strategy and Environment he stated "*In respect of Sparrowhall Drive Local Green Space I note you have made representation as part of the Local Plan and it will be reconsidered as part of that process*".

1.14. Bellway submitted a planning application in Oct. 2018 for their proposal and it is linked to the formation of Site 392 to allow access for a proposed road across Springfield Park, through Elm Tree

Comments on Designation of Local Green Space 5/8/20 to 17/9/20
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Farm to the Skerningham Strategic area. The details are given in separate comments on Site 392 Housing Allocation.

The agreement to exchange land to form Site 392 depends upon a successful planning application.

1.15. The response to Comment DBDLP1170 showed the Council changed the Masterplan to reflect the pending planning application.

This was included in the preparation documents for the Cabinet meetings of 09/07/19 and 11/02/20.

1.16. No evidence can be found for a reconsideration of the Sparrowhall Drive application for green space designation.

1.17. An email dated 28/01/20, from Head of Planning , Development Management and Environmental Health acknowledged that the progression of the Bellway planning application depends upon the site being allocated in the adopted Local Plan. He confirmed that it will not be presented to the Planning Committee before then.

1.18. The submitted Masterplan shows the green infrastructure for Site 126 present in the draft Masterplan Framework has been replaced with development.

1.19. The Springfield Park road was later found to be not sound and it has been removed from the submitted Local Plan. Reference "An Update Briefing Local Plan Skerningham Garden Village Springfield Link Road". It was created by Dave Winstanley of Darlington Borough Council on 31/10/19 and last modified on 12/12/19.

1.20. No HELAA for Site 392 was identified as part of the green space designation process.

Neither was a connection found with Site 126 despite this site being part of Site 392 for housing allocation in the draft Policies Map June 2018 and draft Local Plan for consultation, starting 20/06/18.

1.21. The report locates Site 126 within the Skerningham Strategic site.

The Skerningham site is fully integrated with the Masterplan. Details of which are vague.

Site 126 is part of Site 392 in the Policies Map.

The housing allocation statement for Site 392 states "development should be in broad alignment" with the Masterplan, response to formal comment DBLP1170.

Response to comment DBLP868 states "Elm Tree Farm would have to be well integrated with the masterplan"

1.22. The Cabinet report 12/09/17 referred to the minimum consultation required for the development of green space, under legal advice.

In an Internal Review DBC 2809 -18 dated 12/03/19 the Council state that "*Any development of green space within the town would be subject to public consultation*".

It is not clear whether what has happened via the Local Plan process meets the legal requirements of a public consultation for the disposal or development of the green space.

Comments on Designation of Local Green Space 5/8/20 to 17/9/20
Mr Atkinson

2. Summary

The evidence presented shows the Local Plan has not been positively prepared, is not justified, and contravenes the NPPF.

There is ambiguity of the relationship between each of the Sites 126, 392, 251 and for Sites 126 and 392 with the Masterplan. This includes two different responses by the Council to formal comments DBDLP1170 and DBDLP868.

The proper consideration of the Sparrowhall Drive green space for designation has been prevented.

No evidence can be found of the reconsideration of the Sparrowhall Drive application for green space designation, as stated in the report and promised by a senior Council officer.

Site 126 was to be given to Bellway as part of a deal to allow access through Elm Tree Farm for a proposed road across Springfield Park. The exchange of land depended on the granting of planning permission.

The Springfield Park road has been subsequently proved to be not sound and has been removed from the plan.

Using the pending planning application to make a change to the Masterplan is not sound and shows predetermination by the Council of the success and content of the planning application.

The amendment removed the indicative green space for Site 126 from the Masterplan. This should be reinstated.

The land is council owned and it is not clear that the minimum mandatory requirements for public consultation on development of the green space have been met.