Doncaster Local Plan 2015-2035: Examination in Public

Hearing Statement by Peel L&P / Doncaster Sheffield Airport

Matter 1: Legal and Procedural Requirements and other General Matters

2 September 2020
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Client
Peel Investments (North) Ltd

Our reference
PEEM3116

2 Sept 2020
1. **Introduction**

1.1 This Statement is prepared by Turley on behalf of Peel L&P and Doncaster Sheffield Airport Limited (hereafter referred to as “Peel” and “DSAL” respectively) in respect of the examination of the Doncaster Local Plan 2015-2035 (“DLP”). It provides Peel’s and DSAL’s response to the Issues and Questions identified by the Inspector in respect of Matter 1: Legal and Procedural Requirements and other General Matters, as set out in Inspector’s Note 4¹.

1.2 In overall terms, Peel and DSAL are fully supportive of the emerging DLP and consider that it is imperative the plan proceeds to adoption to ensure that Doncaster has an up-to-date Local Plan as required by national planning policy, and one which provides the policy tools for the planning system to support sustainable growth, including aviation growth, in accordance with national planning and aviation policy. Notwithstanding such general support, Peel / DSAL have identified a number of specific issues and concerns relating to the soundness of specific policies. Amendments to the relevant policies are suggested, without which those policies are not considered sound. The representations² and the comments set out in this Statement demonstrate how such concerns can be readily addressed through Modifications to the policies, such that the DLP can be found sound.

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¹ Inspector’s Note No. 4: Matters, Issues and Questions, 11 June 2020 [INSP4]
² Doncaster Local Plan (Regulation 19) Proposed Submission Version: Representations on behalf of the Peel Group (September 2019) [ref. 04288]
2. Matter 1: Legal and Procedural Requirements and other General Matters

Climate change

Q1.11. Is the Plan consistent with national planning policy relating to the mitigation of, and adaptation to, climate change?
2.1 Yes, Peel / DSAL consider that the Plan is consistent with national policy — including planning and aviation policy — in respect of climate change. Peel / DSAL’s submissions in respect of the Plan’s alignment with relevant legal commitments and policy on climate change are focused upon its proposals at DSA, including in respect of (i) the benefits arising from reduced car trips associated with air travel and (ii) from the co-location of housing, economic and retail/leisure development.

2.2 These comments will be provided in further detail in respect of Matter 10.

Viability evidence to inform the Plan

Q1.13. Is the Council’s viability evidence proportionate and up to date having regard to relevant national policy and guidance? Are the policy requirements set at a level such that the cumulative cost of all relevant policies will not undermine deliverability of the Plan?
2.3 The Council’s viability evidence is considered to be insufficient having regard to the requirements of national policy and guidance.

2.4 Firstly, many of the adopted assumptions which underpin the viability assessment — including the subsequent ‘update’³ (“WPVT-U”) and ‘addendum’⁴ (“WPVT-A”) — are not supported by published evidence. For example, the viability assessment does not provide:

- Evidence to support adopted assumptions in respect of: gross:net ratios and density; plot construction costs; externals/infrastructure; finance rates; the residential benchmark land value (“BLV”); and the profit level.

³ Whole Plan Viability Testing – Update, CP Viability Ltd (May 2019) [SDEB48.1]
⁴ Whole Plan Viability Testing – Addendum, CP Viability Ltd (March 2020) [DMBC11]
• Usual information such as scheme appraisals, development programmes / sales rate information, or development cash flows.

2.5 As such, the viability assessment is not transparent or proportionate. It cannot reasonably be audited or interrogated. In particular, the WPVT-U makes reference at various points\(^5\) to the use of an ‘in house database’ prepared and controlled by the Council’s appointed viability advisor (CP Viability Ltd (CPV)). Reference is made to the database comprising over 200 appraisals, showing key viability assumptions made by applicants. The data is stated to be of a sensitive nature and is inappropriate for full disclosure. However, the use of average rates determined from the database are regarded as appropriate by CPV.

2.6 The national Planning Practice Guidance (PPG) in respect of viability says:

“The inputs and findings of any viability assessment should be set out in a way that aids clear interpretation and interrogation by decision makers. Reports and findings should clearly state what assumptions have been made about costs and values (including gross development value, benchmark land value including the landowner premium, developer’s return and costs).”\(^6\)

2.7 The current approach of not publishing or making available information from CPV’s internal database other than average calculations is not consistent with the approach outlined by PPG and consequently appears inconsistent with the National Planning Policy Framework (“NPPF”)\(^7\) \(^8\) \(^9\) \(^10\) \(^11\) \(^12\) \(^13\). The PPG requires assumptions to be clearly stated. In the absence of such clarity, the evidence is not proportionate and/or robust. Such a deficiency can (and should) be addressed by the publication of the relevant evidence. Peel / DSAL requests that the evidence is published immediately such that it can be reviewed in advance of the hearing session.

\(^5\) WPVT-U Paragraphs 5.2.13; 5.6.17; 5.7.3; 5.11.2; 5.12.2; 5.14.16; and 5.14.33.
\(^6\) Paragraph: 020; Reference ID: 10-020-20180724.
\(^7\) National Planning Policy Framework Paragraph 31
\(^8\) National Planning Policy Framework Paragraph 35 b)
\(^9\) National Planning Policy Framework Paragraph 57
\(^10\) Paragraph: 012 Reference ID: 10-012-20180724
\(^12\) Paragraph: 014 Reference ID: 10-014-20190509
\(^13\) Paragraph: 016 Reference ID: 10-016-20190509
2.8 Secondly, neither WPVT-U or WPVU-A provide analysis in respect of the impact of DLP policies regarding the provision of plots for custom built or self-build – set out at Criterion F) of Policy 8. The viability assessment is not proportionate and is insufficient in this regard, such that the relevant part of Policy 8 is not currently justified or sound. However, it could be redrafted to take a more flexible approach to the requirement in this regard, such that it can be found sound. It is therefore proposed that Criterion F) is modified as follows (suggested modification in red and underlined):

“...the provision of opportunities to accommodate custom build and self-build homes will be encouraged on housing allocations and elsewhere, where it would not adversely affect development viability.”

2.9 Thirdly, it is considered that the Council’s viability assessment does not reflect current economic and market conditions. The viability assessment was originally produced in August 2016, with a May 2019 update (“WPVT-U”) and a March 2020 addendum (“WPVT-A”). The economic environment has changed since the publication of even the most recent viability testing document. It is of course acknowledged that the Council’s appointed viability advisor (CPV) could not foresee the impact of the ongoing Covid-19 pandemic; however, it is important that site specific testing is permitted, accommodating amendments to the assumptions adopted in the WPVT-U and WPVT-A in order to reflect the potentially negative impacts on economic growth in the short-term. The policy must, therefore, be sufficiently flexible to allow for changes in the economy.

2.10 As indicated in the following graph, the Office for Budget Responsibility (OBR) Fiscal Sustainability Report July 2020 provides a Central Scenario forecast that house prices will reduce by 5% from the March 2020 forecast, clearly indicating the need to ensure that Local Plan viability must not be assessed at the margins of viability, as is considered to be the case at the present time, with the Council’s viability evidence generating results that are based upon insufficient levels of developer margin and BLV.
2.11 The Council’s viability assessments include an insufficient level of ‘headroom’, with assumptions in respect of developer margin at 18.5% of market sale GDV and BLV at £150-400,000 per gross hectare being regarded as insufficient to reflect reasonable expectations. The assessment is not, therefore, able to accommodate adverse changes in market conditions.

2.12 We are aware that other local authorities are reviewing their policy requirements in order to reflect the impact of the Covid-19 pandemic on development viability. The NPPF makes clear that Local Plan policies ought to have inbuilt flexibility\(^\text{14}\), so as to be able to deal with issues such as the potential adverse effects of the pandemic and potential market adjustment on development viability.

2.13 As such, the ability for a developer to obtain a degree of ‘flex’ within a policy provision is of critical importance at the current time of significant economic uncertainty. Draft Policy 67: Development Viability (Strategic Policy) provides an opportunity for an applicant to make a case for variation of policy provision due to viability constraints. The flexible approach which is stated within Policy 67 is necessary to ensure that the deliverability of the plan and specific development proposals which are proposed within it are not undermined. The Inspector is requested to ensure that sufficient flexibility is maintained, permitting the submission of viability assessments at application stage in

\(^{14}\text{For example, paragraph 11a) states that policies should “...be sufficiently flexible to adapt to rapid change...”.}\)
line with Policy 67, with viability assumptions to reflect market conditions at the time of submission, and with variation from the assumptions adopted in the Council’s viability evidence to be considered positively following the provision of reasoned justification.

Developer contributions and viability assessments at planning application stage

Q1.14. Is policy 66 justified and consistent with national policy and guidance relating to the use of planning obligations? Is the Council’s suggested change necessary to make the Plan sound?

Draft Policy 66 of the DLP makes reference to seeking planning contributions “...where necessary, directly related to the development, and fair and reasonable in scale and kind...”. This is entirely consistent with the policy set out at paragraph 56 of the NPPF.

The PPG requires that:

“...plans should set out the contributions expected from development. The policy requirements should be informed by evidence of infrastructure... and a proportionate assessment of viability that takes into account all relevant policies, and local and national standards...”

The DLP provides details of policy requirements which will lead to developer contributions, but provides no indication of costs. The WPVT-U applies estimated costs to various DLP policies as follows:

<table>
<thead>
<tr>
<th>DLP Policy</th>
<th>Assumed Cost (£ per dwelling)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Policy 14 – promoting sustainable transport in new developments</td>
<td>£500</td>
</tr>
<tr>
<td>Policy 29 – Open space provision in new developments</td>
<td>£2,000</td>
</tr>
<tr>
<td>Policy 31 – valuing biodiversity and geodiversity</td>
<td>£250</td>
</tr>
<tr>
<td>Policy 46 – housing design standards</td>
<td></td>
</tr>
<tr>
<td>M4 (2) standard</td>
<td>£1,500</td>
</tr>
<tr>
<td>M4 (3) A</td>
<td>£12,500</td>
</tr>
<tr>
<td>M4 (3) B</td>
<td>£25,000</td>
</tr>
<tr>
<td>Policy 53 – New education facilities</td>
<td>£3,968</td>
</tr>
<tr>
<td>Policy 58 – Flood risk management</td>
<td>£4,000</td>
</tr>
</tbody>
</table>

15 Paragraph: 001; Reference ID: 10-001-20190509.
2.17 The above table makes clear that the WPVT-U does account for all relevant policies. However, it provides limited context or evidence to support the assumed cost for each policy requirement. Whilst it is stated that the figures are identified from comparison of costs included within planning permissions granted in Doncaster since 2017, limited details of the costs adopted in such previous planning permissions are provided. As such, the WPVT-U is not currently justified and is inconsistent with the NPPF. However, this could be readily addressed by the Council providing or commissioning estimates for the costs associated with achieving compliance with each policy. With the current absence of such information, there is a risk that the assessment of viability included within the WPVT-U and WPVT-A may be inaccurate, as higher costs may be identified.

2.18 The Council’s suggested modification to Policy 66\(^\text{16}\) to Preference pooled contributions is regarded as necessary to align with current guidance. However, reference should also be made to the Council’s infrastructure funding statement to ensure that the policy is effective at delivering the infrastructure that is needed. The following modification to the wording of the new part A4 is suggested as follows (red and underlined):

“4. pooled contributions for schemes necessitated as a result of the cumulative impact of a number of developments in line with the published infrastructure funding statement.”

Q1.15. Is policy 67 consistent with national policy and guidance relating to the use of viability assessments at the planning application stage?

2.19 Both the NPPF and PPG aim to ‘front-load’ the assessment of development viability at the plan-making stage. However, they also recognise that there may be “particular circumstances” which mean that it is necessary to re-consider development viability at the application stage\(^\text{17}\), such that development which is otherwise acceptable in planning terms is not unduly constrained. In such circumstances, the guidance makes clear that it may be appropriate to apply “review mechanisms” which trigger re-assessment of viability over the lifetime of the development in order to “...ensure policy compliance and optimal public benefits...” are achieved if viability improves\(^\text{18}\). The circumstances, process and terms of engagement for such review mechanisms and viability re-assessments should be set out in the Local Plan.

\(^{16}\)Doncaster Local Plan: Schedule of Suggested Changes to the Local Plan Publication Version, March 2020 [CSDS]

\(^{17}\)Planning Practice Guidance: Viability, paragraph 007, Reference ID: 10-007-20190509

\(^{18}\)Planning Practice Guidance: Viability, paragraph 009, Reference ID: 10-009-20190509
2.20 Policy 67 of the DLP is considered to be consistent with the national policy and guidance in this regard given that:

- It makes clear that a review of development viability at the application stage will only be considered acceptable where “...the applicant can demonstrate that particular circumstances...” necessitate such a review. The use of the phrase “particular circumstances” clearly relates back to the guidance (see above). There is therefore sufficient clarity about what such circumstances may include;

- Criterion A of the policy sets out where development which cannot viably make the “full contribution” will be allowed, i.e. where the benefits of the scheme outweigh the ‘harm’ resulting from its lower level of contribution such that it is still considered to be sustainable and acceptable in planning terms; and

- Criterion B of the policy sets out that reassessment of viability at appropriate trigger points during the lifetime of the development may be required. The explanation to the policy provides clarity regarding the process and terms of engagement for such re-assessments.

2.21 Policy 67 is therefore consistent with the approach and principles set out in national policy and guidance in this respect. Peel / DSAL consider that it provides a reasonable and pragmatic approach to viability which ensures that it is considered primarily at the plan-making stage, whilst providing sufficient flexibility for it to be considered further in some cases where specific circumstances prevail.

2.22 Considering that the UK is now in recession, as a result of the economic impact of the Covid-19 pandemic, the ability to review the development viability at the application stage is now of critical importance. The DLP wording offers sufficient flexibility to allow applicants to submit site specific viability appraisals and the inspector is requested to ensure that sufficient flexibility is maintained, ensuring that alternative viability assumptions from those adopted in the Council’s viability evidence can be adopted following the provision of reasoned justification.