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DL7 8AD

Our ref            RXM/RMS/OAK03482.2

Your ref

30 August 2024

BY POST AND EMAIL  
[REDACTED]

Dear Catriona Gattrell

### **Malkiln New Settlement DPD**

I'm writing to you on behalf of my clients, Oakgate Yorkshire Limited and Caddick Developments Limited (both of which are owned and controlled by Caddick Group Limited).

Oakgate Yorkshire Limited made an outline planning application to Harrogate Council in 2019 (reference 19/00017/EIAMAJ) for a new settlement development at Malkiln and your Council is now the relevant planning authority for the purposes of determination of that application. That application aligned with the Submission DPD for the new settlement. It predated several things that have happened more recently, and which are explained below. As you are also aware Caddick has now sought to amend that application on 23 July 2024. Attached to this letter (Appendix A) is a Document Schedule which sets out a chronology and list of relevant documents submitted to the Council, related to that amendment. The Document Schedule explains the nature of the amendment by reference to the relevant application documents.

In summary the effect of that amendment is to:

- Relocate one of the previously proposed A59 junctions that was west of the Gilsforth Hill/Station Road junction, to the east of that existing junction,
- Introduce a vehicular and active travel link from that new junction to the B6265 at Green Hammerton,
- Introduce a main circulatory road from that new A59 junction southwards and then through the southern part of the new settlement, before reconnecting with the A59 broadly in the area of the access shown in Figure 2 of the Submission DPD,
- Extend areas of the new settlement development eastwards (north of the railway line), up to the western edge of that new circulatory road,
- Make minor regularising boundary amendments to the north western and south western edges of the New Settlement, unrelated to the Green Gap area.

Given that the Council is aware of the revisions to the application referred to above and has been for some time, the purpose of this letter is to clarify further the case my client will be making to the DPD Examination, ahead of the submission of responses to the Inspector's MIQs on 6 September. The case we intend to make at the DPD Examination and will set out in answer to the MIQ's will reflect the amendments we have made to the planning application, and of which you are fully aware.

The purpose of this letter is to give you advance notice of the case we intend to make at the DPD EiP, so that you can consider your position in advance of your written answers to the Inspectors' MIQ's.

I have set out below the overarching propositions that set out my client's case.

For the avoidance of doubt, my client fully supports the broad location for growth as identified in Policy DM4 and the delivery of a mix of *inter alia* housing and employment floorspace, including the development of a minimum of 1,000 homes by 2035. It further supports (i) the allocation of land through a DPD to deliver the broad location for growth; (ii) the identification of 3 options and the selection of Option 3 through the process of consultation and SEA; and (iii) the inclusion of land in which my client has an interest within the proposed DPD boundary.

However, my client's case is that the DPD as submitted is not sound (for the purposes of paragraph 35 NPPF) but can be made sound with a relatively modest Main Modification (MM). Accordingly, we will be asking the Inspector to find the DPD sound, subject to proposed MM's.

The basis of the lack of soundness is a concern over delivery, such that the DPD as submitted does not have a reasonable prospect that it can be developed within the timescales envisaged (NPPF 35 and NPPG 61-059). Other related matters of soundness are also raised below.

It is noted that the current position of the landowners called Dent (hereafter Dent) appears to be that their land is not available for development as part of the new settlement in the proposed Plan period. The issue of delivery was considered by the Council in December 2023, when the effect of Dent's change of position on land availability was considered.

My client's support the use of CPO powers to acquire Dent's land if required, after attempts at negotiation and consistent with the relevant statutory, policy and guidance tests. It is considered that a compelling case in the public interest could clearly be shown.

The lack of soundness is however based on the following matters:

1. The new settlement shown in the Submitted DPD cannot be delivered without the Dent owned land as this amounts to some 42% of the new settlement (see Executive Committee Report of 12 December 2023 at 2.8).
2. There is currently no reasonable prospect that Dent will sell their land for development purposes, as made plain by their representatives and captured in the minute of the 12 December 2023 Executive Committee meeting at page 6, though noting that this also records that Dent were seeking negotiations with the Council. I also note that Dent had previously been contracted to sell their land to my clients up until the end of 2022 but had refused to extend that arrangement.
3. Consequently, compulsory purchase of the Dent land will be needed if it is to be included in the new settlement development scheme.
4. All other land needed to deliver the new settlement, as per the submitted DPD (and some additional parcels of land around it), is in the hands of willing sellers, with whom my client have agreed acquisition terms.

5. As the Council will be aware, the process of compulsory purchase is a lengthy one and is very unlikely to commence until there is both an adopted DPD and at least a resolution to grant planning permission. That planning permission would reasonably be expected to be for a scheme that accorded with the adopted DPD, which is not my client's current application, so would take time to be progressed. There would therefore be the following stages of work to be concluded:
- a. EIP of the DPD concluded, the plan found sound and adopted,
  - b. Submission of an updated planning application and ES,
  - c. Consultation and negotiation on the amended application,
  - d. Reporting and resolution to grant permission,
  - e. Negotiations on a S106,
  - f. Resolving to formally pursue a CPO,
  - g. Drafting a CPO and all supporting documents,
  - h. Serving a CPO, and receiving objections to the CPO (which can be expected given Dents opposition),
  - i. Arranging for and conducting a CPO inquiry (on the reasonable assumption there will be unresolved objections),
  - j. Receipt of the Inspectors report,
  - k. Consideration by the Secretary of State,
  - l. Confirmation,
  - m. Publication,
  - n. Legal challenge period.

Whilst some of these matters can be undertaken concurrently, if there was no legal challenge to any CPO, it is reasonable to conclude that the soonest a CPO could be confirmed is mid 2028 (then there is the process of actually acquiring land pursuant to it).

6. The points above should be uncontroversial. However, both my clients and the LPA need to understand the real-world consequences for deliverability for the new settlement, up to 2034/2035 and beyond. This particularly relates to the inclusion of land owned by Johnsons Nurseries (the plant nursery, the location of which is shown on Plan 2 attached) within the new settlement:
- a. The relocation of this nursery is highlighted in Local Plan DM4 as a principle/requirement of the policy. Now that the area of the new settlement is set out in the DPD, it is clear that the Johnsons' land is squarely in the new settlement and so the DM4 qualification "as appropriate" is met. The nursery needs to be relocated to deliver the requirements of DM4 and NS1,
  - b. The nursery operators have been seeking a relocation site for some 4 years, yet only one site has been identified as being suitable, viable and available, within the appropriate timescales, for re-location. They have particular operational requirements and the process of relocation

has not been at all easy. The only reasonably suitable, viable and available site has been chosen,

- c. The re-location site that has been identified is now contracted by the nursery business to be acquired, but the terms of that contract require the acquisition to be concluded before February 2026. This long stop date has been extended once by the landowner of that site and there is no reasonable prospect that it would be extended again. It is in an area that is attractive for other forms of development and so there is competition from alternative purchasers/developers. Further, the nursery business has already suffered a long period of uncertainty over its relocation, such that important investment decisions in the current site have been postponed. There is no desire on the part of the nursery business for this to be perpetuated and so a further extension is not attractive for them either. It follows that the acquisition of the re-location site must be concluded by February 2026. After that point, there is no reasonable prospect of the relocation of Johnsons.
  - d. For Johnsons to re-locate, they require the multi-million-pound purchase cost of their site to fund the cost of site acquisition, set up and development. It can only be funded by the nursery business if there is a very substantial receipt from the sale of their current site, that will at least meet this figure. The nursery business will not move for purely operational reasons.
  - e. My clients (and/or any other developer) could not contemplate acquiring the nursery site unless it was able to be developed in an early phase of the new settlement development. They would not spend millions of pounds to acquire land simply to hold it and not be able to develop it for any return and they would not in any case be able to acquire it if there is no relocation site that has already been acquired by Johnsons, before February 2026.
7. For the Johnsons' site to be developed in an early phase, there must be an access from the A59 which allows the site to be such an early phase of development. At present, the submitted DPD places the main access on the A59 to the west of the Gilsforth Hill/Station Road junction. This is a considerable distance from the Johnson's land and access to that land would almost certainly have to cross the land of Dent (as well as others). Consequently:
- a. Even if the Dent land was available now, and no delay for a CPO was necessary, the current DPD Figure 2 would not allow for the plant nursery land to be developed as an early phase. It would be distant from the A59 access and could only be developed in later phases. It would not be realistic for a road to be built to the nursery land alone without it serving development along the way. This would not be contemplated by my clients and/or other developers. I attach two plans, the first (Plan 1) is a copy of Figure 2 of the DPD that shows the location of the new settlement and the access from the A59. The second (Plan 2) is a land ownership plan that shows the location of the Johnsons land.
  - b. This problem is further compounded by the time taken to get to a confirmed CPO of the Dent land (as set out above).
8. The only solution that is capable of producing a reasonable prospect of development delivery requires an access from the A59 that is as close as possible to the nursery land. This will have to be to the east of the Gilsforth Hill/Station Road junction. I attach a plan that shows my clients suggested alternative to DPD Figure 2 (Plan 3), with access that allows early development of the Johnsons land.
9. This access location, along with the need for a circulatory road that connects from it to the south, which should cross the railway line at the most suitable point in terms of effects on cut/fill/levels and effects on heritage considerations<sup>1</sup>, determines the route of the road that would form the eastern

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<sup>1</sup> A road at this point can be on a bridge, which is effectively at grade, as the rail line is in cutting at this point.

boundary of the new settlement and in turn the appropriate extent of development up to this new road. The Document Schedule (Appendix A to this letter) identifies the documents that address the landscape and heritage assessments of these proposals in detail.

10. This approach also addresses a number of transport related concerns or provides benefits, as follows:

- a. There is a current safety concern regarding the junction of the A59 and the B6265 (the road that heads north along the western edge of Green Hammerton). This would be addressed with the new access, which would remove the need for the current junction to exist,
- b. This arrangement would also address the DPDs currently expectation of a connection that broadly follows the same route,
- c. There is also a current safety problem at the Gilsforth Hill/Station Road junction, which would be addressed through closing Station Road to vehicles and introducing a left in/left out arrangement for vehicles using Gilsforth Hill, utilising a roundabout both to the east and west of that junction for vehicles to change direction if a left in/out arrangement did not suit their origin or destination.
- d. The circulatory road bridge crossing of the existing railway would both consolidate the existing farm bridge crossing at this point and allow for the removal of the Parker Lane road level crossing; a manned grade level crossing to the east. This would meet Network Rail policy and safety objectives for closing crossings on the rail network. The new bridge would be set at or about the existing ground level, as the railway line is in cutting at the crossing point.

11. It follows that in the absence of a new access point off the A59, together with associated road infrastructure, there is (i) a soundness issue related to the delivery of the new settlement up to 2035 and beyond; and (ii) an additional highway soundness issue. Even if one disregarded the critical and binary position of the Johnsons relocation, the delaying effect of CPO of the Dent land alone would cause a significant failure of delivery of homes by 2035; to a figure far short of the 1,000 expected by the Local Plan.

The solution is a modification of the DPD to reflect the amendment to the current outline planning application that the Council has had for over a month, and which was prior to that the subject of detailed pre-application discussions. Such a proposal is well known to the Officers of the LPA.

The Environmental Impact Assessment that supports the revised planning application addresses the landscape, visual, and heritage impacts of the revised scheme, which in turn align with my client's suggested modification to make the DPD sound. The proposed changes to the extents of the DPD Green Gap (policy NS2), still performs the functions for which it was intended, that being protection of the rural setting of the villages of Green Hammerton and Kirk Hammerton and their respective conservation areas, and the prevention of coalescence. The extent of the Green Gap indicated in the DPD unnecessarily sterilises land from development (which is also a matter of soundness). Considering the evidenced acceptable harms within the recent planning application, and the concerns relating to delivery outlined above, it is considered that the new road alignment should logically form the easternmost extent of the new settlement (see Plan 3 attached).

The revised planning application submissions also explain in more detail the highways and transportation points referred to above. The highways solution my clients now offer also furthers the DPD policy objective of creating a new settlement that forms a community in its own right, by reducing the likelihood of traffic traveling to and from the New Settlement through Kirk Hammerton with a proper circulatory, two A59 access, route through the new settlement.

For clarity and so that the changes to the DPD my client is suggesting (to make it sound) are understood, I attach the copies of Figures 1 and 2 from the submission DPD, alongside the revised version of those Figures

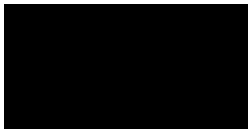
being put forward as the modification to address the soundness issues set out above. (Plan 4 is the DPD Figure 1 in its current form, and Plan 5 is as my clients propose, whilst Plan 1 shows Figure 2 of the DPD in its current form and Plan 3 is as my clients propose).

In the light of the above, it is my clients' position that the Plan as submitted is not sound but can be made sound by MM's comprising *inter alia* amendments to Figs 1 and 2, for the reasons set out above. It is likely that such MM's would require further SA/SEA and HRA assessment. The EiP Inspector will, therefore, be invited to recommend such MM's subject to such further assessment and consultation. We trust that such changes can be made with limited cost and timescale implications to the Examination process.

If you have any questions in relation to the content of this letter, my clients and I would be happy to discuss these with you.

Kind regards

Yours sincerely



Richard Sagar  
Partner  
**WALKER MORRIS LLP**

**Enc**

Appendix A – Document Schedule in relation to amendments to planning application reference 19/00017/EIAMAJ

- Plan 1 - Copy of Figure 2 of the DPD showing the location of the new settlement and the access from the A59
- Plan 2 – Land ownership plan showing location of Johnsons Land
- Plan 3 – Suggested Alternative to DPD Figure 2, with access allowing early development of the Johnsons land
- Plan 4 - DPD Figure 1 in its current form
- Plan 5 - DPD Figure 1 – Suggested Alternative as proposed by clients