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Dear Sir

THE OBJECTION OF THE THORP ARCH PARISH COUNCIL (TAPC) TO APPLICATION NO. 13/03061/OT OUTLINE APPLICATION FOR RESIDENTIAL DEVELOPMENT OF UP TO 2000 DWELLINGS AND ASSOCIATED INFRASTRUCTURE AT THE THORP ARCH TRADING ESTATE, WETHERBY (TATE)

1.0 Introduction

The UDP Inspector's findings

1.1 The TAPC has already responded to LCC about its Proposed Site Allocation for the Thorp Arch Trading Estate (TATE). It made clear then its disappointment and concern at how the LCC had used various sources of information in a selective and misleading way to try and promote the prospects of this location for early development while 'sweeping under the carpet' the very serious concerns expressed by the UDP Inspector about the location. He said that:-

(i) It was inherently unsustainable in terms of location, accessibility and the ability to sustain services

(ii) It was the wrong location for a large amount of affordable housing, which should be situated closer to the main urban area

(iii) The developer's ability to subsidize the facility in (ii) above, and financially contribute to the provision of a wide range of services the location totally lacked, called the viability of the project into question, and

(iv) The likely impact of the proposals on Boston Spa and Thorp Arch, and the absence of proposals to deal with that situation

1.2 It is in the interests of equitable and sensible planning that the reality of what the UDP Inspector said should be faced by LCC. His stark message was that this location was inherently unsustainable, and the completely wrong location for a large influx housing and with it a substantial proportion of affordable homes. He argued that the location could not be made sustainable. The TAPC is convinced that no information produced by the applicant as part of this application has disproved these findings. They still stand. It is both unreasonable and irresponsible, therefore, for LCC to even consider this application, let alone approve it, until it has properly examined the Inspector's findings, instead of ignoring them, and shown him to be wrong if that is the case. Such work would be the only relevant context within which any planning application on this site for large scale residential development should be considered.

1.3 The LCC appears to have convinced itself that 'things have moved on' and the Inspector's findings should not be given the weight they deserve. It has used a range of approaches to promote the merits of the location beyond their realistic value, whilst not thoroughly exploring alternative, and arguably more sustainable locations. If the LCC is pursuing this 'head in the sand' approach because it is desperate to boost its housing supply numbers, this is misplaced because of the likely time lag in getting such a difficult site underway, and more likely than not placing delivery of a large number of homes towards the medium term rather than the short. In contrast, it is understood there are planning permissions for over 1000 units already available in Outer North East Leeds. In addition, a planning application for 400 units is being considered by LCC at Spofforth Hill, Wetherby. In addition, there are other locations closer Wetherby where development could be achieved with more ease, in shorter periods of time, and without seriously affecting existing communities.

The likelihood of serious risk

1.4 The location carries with it a number of very serious sustainability risks. These should have been more thoroughly examined and admitted to in the Site

Allocation process, rather than in looking 'down the barrel of a gun' of a planning application. These include:-

(i) The risk is that the build up of new households will be slow. This would be a major disincentive to the provision of services and public transport for the new residential location until later stages. LCC are acting irresponsibly by not recognising this risk and admitting how unsatisfactory this could be for new residents, who could be isolated from proper service provision, and particularly for occupiers of affordable housing who might be dependent upon what could be a limited public transport service. It is understood that the applicant does not even intend to produce limited health services for the site. It would also be unfortunate for the residents of Boston Spa and Thorp Arch because there is a strong possibility that a car dependency upon the services in the former would develop. This is not only a sustainability problem, it is an impact on local highways problem, with the approach roads to this location being largely substandard and unsafe

(ii) This risk is not reduced a great deal by claims by the applicant that a considerable number of people living in the new housing would work on site. Evidence to support of this hoped for linkage is limited, but existing local evidence suggests that something in the order of 1 in 10 households might be expected. Hopes for a higher ratio ignores search for work realities and a family's strong ties to its existing place of residence for a range of reasons. Nor will inflated claims/suspect measurement about people walking from the site to services in Boston Spa reduce the dependency risks. These walking claims ignore the realities of the gradients, inclement weather, pushing prams and push chairs, partly disabled people, and distance

(iii) The serious risk that the applicant/developer could not sustain the major financial subsidies needed over a lengthy period of time to overcome the sites inherent unsustainability. The TAPC submission for the Site Allocation process showed that there were at least twelve substantial areas/fields of activity in which whosoever is developing the site would have to make major financial contributions. Many of these situations could be in advance of much housing being built. The practical and commercial risks of such a situation are obvious. There are also risks in the nature of the planning application itself. It is for outline planning permission. The scheme proposed in it is illustrative only with

all matters reserved. The applicant is not the developer. Some of the measures required to boost the sustainability qualities of the site might not be included at the detailed stage because it would be a developer facing the cost realities not a land owner wanting a planning permission

(iv) The risk to the future of the Thorp Arch Trading Estate as an important employment location. Although the planning application has set out the limited scale of the clearance of underused employment buildings and the relocation of a limited number of existing companies, it would be difficult to prevent further changes from employment to residential, given the general encouragements given in the National Planning Policy Framework, and the recently announced Government intentions to liberalize the conversion of employment buildings to residential use by giving such changes permitted development rights. In addition, it is understood that the applicant is saying that the density of the development likely to be acceptable in planning terms, which he sees as too low, might mean that some amenity/environmental items might not be affordable. This sort of pressure could lead to the vulnerability of some existing employment locations in the TATE to further residential development, particularly bearing in mind the long period of time over which financial subsidies would have to be made

(v) There are serious and obvious risks attached to the residential development of this location being given the 'Nelsonian' eye by LCC. It, more likely than not, would result in a remote unattractive residential development due to lack of sustainability essentials for a new community while seriously harming the nearby villages and the established TATE employment location, which has a recognized value. In LCC giving strong encouragement to this location, it is a 'high wire act' with all these risks that no local planning authority should be performing. However, It is not too late for LCC to take its blinkers off, face the fundamental reality of the unsustainable and risky prospect that this site really is and restore its credibility by refusing this planning permission. In objecting most strenuously to this ill thought out location for major residential development, the analysis of the TAPC, set out below, shows that the following grounds exist for a refusal:-

Grounds for refusal

1. Serious risk – explored in the Introduction
2. Process
3. Prematurity
4. No authority exists in the existing statutory planning process for a grant of planning permission
5. A range of other material considerations, which, inter alia, show that other sites having less disadvantages to the Public must be explored before any decisions are made about this application
6. Sustainability linked to viability/deliverability/availability issues

2.0 The Process

2.1 The TAPC has set out its concerns about the LCC 's approach to boosting the prospects of the TATE in its response to the Site Allocation process. There is no need to repeat that material here – except for raising again the very important issue of whether the LCC has approved this location as being suitable for large scale development in principle. There are various inferences to that effect in documents and the LCC Site Allocation Schedule, Page 11, states that the site is 'a major brownfield site suitable for large scale development in principle...' Where has the authority to make this statement comes from? It is not from the Core Strategy, because LCC withdrew information about the location from the Key Diagram in the final version. It is not from any analysis in the Site Allocation process with the exception of this description in the Schedule. The TAPC has asked LCC to clarify whether any person, representative body, panel or committee of the City Council has given the site this status. If this has occurred, then the concerns of TAPC would be:-

(i) The practical point, explained above, that LCC does not appear to have done any work to allow it to reach such a diametrically opposed conclusion to the UDP Inspector

(ii) The clear inference that the LCC has closed its mind to other, and possibly more sustainable locations, with which to meet a substantial share of future household needs in Outer North East Leeds

(iii) The process point is that it would be practically impossible for the LCC to carry out its statutory duty as Local Planning Authority for this application, with this sort of statement on the public record. How could it give proper weight to serious objections to the development, which might want to question its basic unsuitability, if it has already agreed that it is suitable in principle for such a development? This also applies to the Council's officers. How can they give an objective response to their Members about representations received if internally it is believed that the site has crossed the rubicon principle

(iv) It also raises the question of what encouragement might have been given to the applicant for it to incur the scale of professional fees involved in preparing an application for such a difficult site. If, for example, the applicant has been told that the location is acceptable in principle providing sustainability issues can be satisfied, for an applicant, this almost equates with a grant of outline planning permission

(v) Under the circumstances explored above, the only safe course would be for LCC to refuse the planning application. To do otherwise could lay the Local Planning Authority open to a charge of acting unreasonably

3.0 The Prematurity Issues

3.1 Although produced some time ago by Central Government, the document 'The Planning System : General Principles' is still operational. Lord Matthew Taylor, who carried out an external review of Government Planning Advice in 2012, commented that 'most of this document is out of date, but retain for now as it sets out guidance on prematurity, paras 17-19...'

3.2 In Section 17, the document states that 'In some circumstances, it may be justifiable to refuse planning permission on grounds of prematurity, where a DPD is being prepared, or under review, but has not been adopted. This may be appropriate where a proposed development is so substantial, or where the cumulative effect would be so significant, that granting planning permission could prejudice the DPD by pre-determining decisions about the scale, location

or phasing of new development which are being addressed in the policy in the DPD. A proposal for development which has an impact on only a small area would rarely come into this category’.

3.3 The context in which this application is being considered fits the above, namely a DPD is being prepared but has not been adopted. If planning permission were granted for this development it would severely prejudice the proper consideration of that plan i.e. arguably ignoring more sustainable locations to serve Outer North East Leeds, and, at the same making the main location for meeting future household need in the Plan Period a major exception to the spatial principles of the DPD. None of this is sound planning and smacks of TATE being a desperate choice. In July 2013, the Area Planning Manager for Leeds gave an informal written view about prematurity to the Chairman of TAPC. He justified a dismissal of the prematurity ground largely because of the pressure Leeds was under to deliver housing in large numbers. This would appear to be the driving force behind this unfortunate choice, and is clearly more important in the eyes of LCC than providing the majority of its future households in Outer North East Leeds with convenient and sustainable locations in which to live, and ones that will not severely damage the living conditions in some existing settlements.

3.4 In contrast to what the Area Planning Manager said, the issue of prematurity should be judged against the wording in Section 17 of the Government advice. The TAPC considers that some of the common sense arguments why this development would be premature are because:-

(i) The size of the development is significant, over fifty per cent of the proposed household formation amount for Outer North East Leeds, once planning permissions have been discounted. This should not be determined until the justification for this amount of housing in this part of Leeds has been examined in the Core Strategy Examination by a Government Inspector i.e. if this figure of 5000 households is considered too large for this part of Leeds, this site might not be required, or it might be more sensibly brought forward for examination when a future development plan is being prepared. In addition, the Core Strategy will examine the thinking behind the formation of future households for Leeds as a whole and test the proposed scale of provision and against the latest household formation data. The doubling of the

forecasts available at the time of the UDP will certainly need justifying to the Inspector. This, again, might mean that the scale of provision proposed at TATE might be premature, and arguably it is unsafe to make this major planning application decisions until the forecasts of LCC have been thoroughly tested

(ii) It is also premature because to grant planning permission would prevent other locations being examined through the Site Allocation process. The TAPC proposes to bring to the attention of the Inspector other locations which are arguably more in accord with the spatial intentions of the Core Strategy than TATE. In contrast, LCC has 'put all its eggs in one basket' without the context from the emerging DPD process being available and without a thorough examination of alternative possibilities

3.5 It would be illogical to approve such a large proposal, which is a major exception to the spatial vision of the Core Strategy, until the basic elements of the latter are tested through the examination in public process, and for the Site Allocation process to determine whether this site is needed or not to implement the Core Strategy.

3.6 Finally, it is unsafe to make a positive decision now, on the basis of decisions made by the courts considering other material considerations, because, as the TAPC will show, these circumstances are identical to ones where the courts have said alternative sites must be considered before any decision is made about an application

Contradictions

3.7 The TAPC is puzzled why this application has been made/encouraged now because comments made by representatives of LCC show that the authority thought a different timing was more suitable:-

(i) The LCC Strategic Housing Land Availability Assessment, which it is accepted is not a policy commitment to development, identified the location as having a number of problems (which is contrary to the majority of LCC observations about this location) and might be best treated as a long term choice, and

(ii) The Chief Planning Officer's Report to the City Plans Panel of September 2012, in reviewing a number of issues associated with the location, said the

following 'Officers have advised that in terms of the timing of the submission of an application this should be at a time when the Neighbourhood Plans for nearby villages have been further advanced, when the Council's Site Allocations DPD is at a more advanced stage and when significant and meaningful consultation has been undertaken with local communities'.

(iii) Although almost 12 months have passed since the above report was written, the three situations referred to have not advanced a great deal, except, as it is understood, LCC has discussed Section 106 Agreements for cycle paths and other matters with the Walton Parish Council, which, if true is a vivid demonstration of how difficult it will be for the LCC to impartially consider objections made to the principle of this development taking place at all.

Lack of reliable information

3.8 A final reason why this application should be dismissed on prematurity grounds is that a range of issues about affordability/viability/deliverability and the availability of third party land for highway works have not been adequately studied, and insufficient time has been provided to the objectors in which to do so. The issues are complex, and there would be huge financial burden on the developer to try and create some sustainability normality at a site that is far from normal in many of its aspects. Smith Gore, objecting on behalf of the TATE Action Group query the reliability of a range of issues associated with these key topics.

3.9 The TAPC believe it likely that the developer might have to bear much of this expenditure while limited properties have been built. These matters could only be adequately studied by looking at what would be occurring on site, say, at five yearly intervals, but there is a worry that the developer might not be able to complete the development, including all the necessary sustainability supports due to these financial pressures. This is typical of the risks that this site, if given planning permission, would face.

3.10 There is every likelihood that the pursuit of this difficult site by LCC, and the land owners, would be contrary to the Government planning advice in the NPPF, namely Section 173 of the latter, which states that 'pursuing sustainable development requires careful attention to viability and costs in plan making and decision taking. Therefore, the scale of development identified in the plan

should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened’.

3.11 The responsibility for pursuing this site, which needs so many financial commitments to make it even remotely acceptable, lies with LCC. It should have clarified and costed all the potential development parameters before giving encouragement to the site and its owners. It has apparently failed to do so. The UDP Inspector said that the operation of the development process should not be prejudiced by unreal expectations of the development of particular sites. He said that to assess whether a development is a real expectation or not, is the role of the Council rather than an objector. The TAPC has asked the LCC to produce any such analysis it has carried out, linked into the Inspector’s findings about TATE, before someone or some body decided to re-promote this location, but nothing has been forthcoming.

3.12 In the LCC Core Strategy dealing with Implementation and Delivery, LCC stated, inter alia, that ‘making planning decisions on sustainable development through development management is an integral delivery mechanism of the Core Strategy’. – and ‘an element of development management is also recognising that schemes need to be deliverable, and planning applications where viability is a concern should be submitted with a full Viability Assessment which contains sufficient evidence to enable officers to properly assess a scheme...’

3.13 LCC chose not to follow the Inspector’s advice and take responsibility to assess these key indicators. They have passed the baton to the applicant, who has not convinced TAPC, from the material it has seen, that the proposed development is either deliverable or viable because it would have to carry too many financial burdens. Nor has the actions of LCC so far demonstrated that the above development management aims are working well for this particular site. The worst planning decision LCC could take would be to approve this outline planning application, with its notional development scheme, with so many of these issues up in the air. The application is clearly premature from that point of view alone. The best planning decision it could take would be to find a more straight forward, and sustainable site.

4.0 The Statutory Process for considering the Application, and lack of authority for a grant of planning permission

4.1 In an exhibition of the Site Allocation plans in Wetherby, Leeds officers said that the determination of the application would not await the findings of the Core Strategy and the Site Allocation process, and the application would be determined on its merits. This, again, is an indication that minds might have been made up. However, this expression is not a recognized term in the Planning Acts. Section 70(1) of the 1990 Act states that...

(a) ...they may grant planning permission, either conditionally or subject to such conditions as they think fit: or

(b) they may refuse planning permission

4.2 Section 70(2) of the 1990 Act provides that the LPA '**shall** have regard to the provisions of the Development Plan, so far as material to the application, and to any other material considerations. This provision is recognized in the NPPF. The TAPC believes that there are a number of material considerations which apply to this application which have not been addressed by LCC. These will be examined later.

4.3 A presumption in favour of the Development Plan was made by Section 26 of the 1991 Act, added to the 1990 Act as Section 54A ' Where, in making any determination under the planning Acts, regard is to be had to the Development Plan, the determination **shall** be made in accordance with the Plan unless material considerations indicate otherwise.

4.4 The primacy of the Development Plan over other material considerations was made stronger by Section 38 (6) of the 2004 Act, which is also recognised in the NPPF 'If regard is to be had to the Development Plan for the purpose of any determination to be made under the Planning Acts the determination **must** be made in accordance with the Plan unless material considerations indicate otherwise.

4.5 It is the TAPC assertion that the material considerations, which it will identify and demonstrate, do not indicate that planning permission should be granted, in fact they indicate otherwise, and that determination should,

therefore, be made in accordance with the Development Plan i.e. the planning application should be refused.

The National Planning Policy Framework and statutory authority

4.6 Government policies are material considerations, although they cannot change what is or what is not a material consideration, which is a matter for the courts. Nor, looking at the wording in the NPPF, can they prevent other material considerations relevant to an application being considered by an LPA

4.7 Section 12 of the NPPF reflects Section 38 (6) of the 2004 Act. Section 14 is in two parts. In the first one of the former, it states that decision making means approving development proposals that accord with the development plan without delay. In small print in a footnote the words 'unless material considerations indicate otherwise' This underlines the point made in 4.6 above.

4.8 The second part states that where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:

'any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this framework taken as a whole; or specific policies in this Framework indicate that development should be restricted'

4.9 The wording in the footnote referred to in 4.6 also applies to the second part of this government statement i.e. the other material considerations must be considered in addition to those set out in the NPPF. These might indicate, as much as the policies in the NPPF, whether a permission should be granted or not.

4.10 It is also self evident that the second part of Section 14 of the NPPF does not apply to TATE because the development plan is not absent. It is in operation reflecting an important existing use. Nor is it silent as far as TATE is concerned, and its allocation/policies are relevant to existing development at that location. In addition DPD work on the Core Strategy and Site Allocations is not so advanced as to provide a different statutory context. Although the Core Strategy contains some of the wording in Section 14 of the NPPF, it does not

follow it accurately, and would not be a basis of satisfactory decision making even if a new Development Plan were operational.

4.11 Looking at the above, the TAPC concludes that, in the terms of the NPPF, LCC does not have an acceptable statutory basis for approving this planning application i.e. in the terms of the first part of Section 14, it is not a proposal that accords with the operational development plan. In the terms of the second part of the same section, the operational development plan is not absent or silent or out of date for the area in question. The caveat weighing adverse impacts and benefits only applies if the second part applies to an application, which it does not in this case.

4.12 The TAPC also believes that it is important to make clear in this context that sustainability is not the only material consideration in the examination of a planning application. In his introduction to the NPPF, Greg Clark, the Minister for Planning states that 'Development that is sustainable should go ahead without delay'. It would be unfortunate if the reader thought that this gave a green light for any development that a Local Planning Authority wished to promote or approve i.e. in the body of the Report, Section 14, it is made clear that this only applies to development proposals that accord with the development plan. If the plan is not relevant it could go ahead if adverse impacts are significantly and demonstrably outweighed by the benefits. This is not thought to apply to this application because the plan is still relevant. Even if it were not, the potential adverse effects against a range of subject matters and affecting a range of people are not outweighed by the benefits.

5.0 Other Material Considerations in relation to the TATE planning application

5.1 The Courts have made a number of judgements on material considerations. Partly as result of this it is now recognized that they have a much wider connotation and can cover social and economic considerations. In *Stringer v Minister of Housing and Local Government 1970*, Cooke J said '... it seems to me that any consideration which relates to the use and development of land is capable of being a planning consideration...'

5.2 The law makes a clear distinction between the question of whether something is or is not a material consideration and the weight that should be given to it.

5.3 The material planning considerations relevant to this application are considered by the TAPC to be as follows:-

Nature of the land

5.4 One of the benefits of the application is that it would use brownfield land, which from a planning point of view is preferred to using greenfield land. However, there is a dispute about how much of the site is brownfield because some parts of the Estate have merged into their natural surroundings and large areas have not received any development at all. It would also be bad planning to select a brownfield site with unsatisfactory/unacceptable development characteristics, simply because it was a brownfield site, and ignore a site with much more advantageous characteristics for the public simply because it was a greenfield one

Previous appeal decisions

5.5 In *North Wiltshire DC v Secretary of State for the Environment 1992*, the Court of Appeal held that it was indisputable that a previous appeal decision concerning the same site was a material consideration in determining a subsequent application for the development of the same site. There are a number of court cases where the same position is taken. By analogy, the findings of the UDP Inspector for practically the same TATE location should be a material consideration in this planning application. A systematic analysis of the Inspector's findings should have been carried out by LCC before deciding whether or not to encourage development at TATE, although some limited reference is made to it by the applicants. The issues in the UDP Inspector's report should now be thoroughly reviewed against the proposals by the officer preparing the application report.

Creation of a precedent

5.6 The courts have accepted the principle that although land may be suitable for the development proposed, the LPA may refuse planning permission for that development if to grant it would be likely to lead to a proliferation of

applications for similar development, which the authority would then find difficult to refuse. In the view of TAPC this is a material consideration for the TATE location because the grant of planning permission would probably considerably raise land values above prevailing employment ones. This would be likely to build up pressure for more application to change employment use to residential, particularly if viability problems for the development are present. It is possible that this change might not even require a planning application as the Government is poised to put the conversion of some types of employment buildings in the permitted development category for change to residential use i.e. once the genie is out of the bottle it would be difficult to put back in – the importance LCC attaches to this employment location might be difficult to protect

Existence of alternative sites

5.7 It would seem that although on the surface that the question of alternative sites ought not to be a material consideration in determining an individual planning application, the courts have been reluctant to follow this approach. The law was summarized by Simon Brown LJ as follows and quoted with approval in two Court of Appeal Cases in 2000 and 2003:-

(1) 'Land ...may be developed in any way which is acceptable for planning purposes. The fact that other land (whether or not in the applicant's ownership) upon which the development would be yet more acceptable for planning purposes would not justify the refusal of planning permission upon the application site

(2) Where, however, there are clear planning objections to development upon a particular site then it may well be relevant and indeed necessary to consider whether there is a more appropriate site elsewhere. This is particularly so when the development is bound to have significant adverse effects and where the major argument advanced in support of the application is that the need for the development outweighs the planning disadvantages inherent in it'

5.8 Some further clarification about when the merits or demerits of an alternative site can be material was spelt out in 1986 by Oliver LJ in *Greater London Council v Secretary of State for the Environment*. Oliver LJ thought that

there were cases in which a comparable site had to be a material consideration and he thought that it might be that:-

Comparability was appropriate generally to cases having the following characteristics : first of all the presence of a clear public convenience, or advantage, secondly, in the proposal under consideration, the existence of inevitable adverse effects or disadvantages to the public or some section of the public in the proposal; thirdly, the existence of an alternative site for the project which would not have those effects or would not have them to the same extent; and fourthly a situation in which there could only be one permission granted for such development, or at least only a very limited number of permissions

5.9 The situations set out immediately above is precisely the position that LCC has created at TATE. There are clear planning objections and there are bound to be significant adverse effects upon both the incoming population and existing local residents due to the remoteness of the location, its inherent lack of sustainability and the likely detrimental effect upon Thorp Arch and Boston Spa, and possibly upon the long term future of the Trading Estate as an important employment location. From the point of view of the residents of Thorp Arch, this material consideration of alternative sites also links with another recognized one, namely **the fear of residents**.

5.10 As explained by Simon Brown LJ, another factor present has to be a major planning arguments advanced in need of the application that are thought to outweigh its disadvantages can be seen in the informal letter from the Area Planning Manager to the Chairman of TAPC, i.e. he says that 'As you can see the policy context as it currently exists places significant pressure on local councils to deliver housing in large numbers so as to meet objectively assessed needs for housing and significantly boost supply'. In a nutshell, the patently obvious drawbacks of the location are being ignored because of a perceived strategic need, but clearly one not yet adequately tested through the DPD process.

5.11 Because the situation at TATE very closely matches that summarized by Simon Brown LJ and Oliver LJ, it means that to be safe legally, and acting within the context of what the Courts have said, LCC should not determine the

application before alternative locations have been properly examined, and to do so under these circumstances, and within the context of an on-going DPD process, would appear to be acting unreasonably. These locations are as follows:-

5.12 The villages in Outer North East Leeds. So far LCC has chosen to largely ignore this source, and protect the villages from development, while paradoxically being willing to sacrifice Thorp Arch in order to promote the TATE application. Its view on the villages might be correct i.e. development there might be unsustainable and possibly unacceptable. Nonetheless, the scope for them to meet some fair share of future household formations should be objectively examined, including any need for affordable housing.

5.13 Some extension(s) to the eastern side of the Leeds urban area. The TAPC does not know the extent to which this option might have been explored by LCC, and the potential relevance to helping Outer North East Leeds meet its household formation requirement.

Options around Wetherby

5.14 In the view of TAPC this location has been inadequately examined, and mainly in a manner which emphasizes the negative and reduces the positive, possibly because of an anticipated reliance by LCC of the TATE location. In contrast, the spatial vision of the Core Strategy is that growth will be mainly centred upon existing settlements, Wetherby is identified as a major settlement, but this status has not been supported by sufficient work by LCC to thoroughly assess how sites for new housing could be closely related to the Wetherby urban area. In the view of TAPC, LCC has no justification for pressing the case for TATE. It is a major development out in the open countryside, which is contrary to existing national and local policies. It cannot be justified by a statement in the Core Strategy, which has a lower standing than existing policy for the present. This statement says that 'sites outside the settlement hierarchy could be considered where they are able to provide a full range of local facilities and services and are more appropriate in meeting the spatial objectives of the Plan than the alternatives within the settlement hierarchy'. Clearly this statement could never apply to Tate, because its scope to provide full services fits into the impossible category. Arguably as well, it cannot meet

other objectives of the Core Strategy, centred upon a range of sustainability factors, anywhere near as well as locations close to the existing Wetherby urban area on its northern and eastern flanks.

(i) The most obvious location around Wetherby for the location of a significant amount of housing would be the fairly large areas of land in the north/north east sector of Wetherby situated between the existing built up area and a road system looping around the town from the Racecourse along Racecourse Approach and Sandbeck Approach to the Deighton Road, and below the Racecourse to the Walton Road, within which the Racecourse Approach could be extended through to the latter road. The vast majority of this land is fairly flat grazing land without any particular large scale landscape merits as open countryside, although there are some pockets of attractive woodland. These lands are not washed over by the Green Belt.

(ii) In part, these lands have been examined in the Schedule to Site Allocation Plan. Some of the comments are negative in nature, for example, 'the site is quite isolated from the main urban area of Wetherby' which is an exaggeration, and 'the site has high potential to create a car dominated development...' These observations would apply with considerable more force for the TATE location, but a negative or querying comment for that location is not allowed to breathe its name by LCC for that particular entry on the Schedule

(iii) The TAPC believes that these locations are worthy of a thorough examination, and they could be compared with TATE. All this should be part of the Site Allocation process. Clearly there would be issues to address, but they start with the principal advantages that they are positioned relatively closely to Wetherby Town Centre, where main services are well established, the land itself is not of high landscape value or within the Green Belt, and the sites could be developed without having a serious detrimental effect upon a settlement like Thorp Arch or existing development in Wetherby. There are a range of other potential advantages that the Site Allocation analysis has not brought out. For example, the sites could be linked into the existing transport services serving Wetherby. Some parts would be within a comfortable walking distance of Wetherby Town Centre, particularly if motorway bridges are provided. The sites would provide relatively easy access to the main road

system for longer distance journeys to work without this traffic having to travel through the Wetherby Urban area.

(iv) There is a LCC concern that development would breach the defensive line for intrusion into the open countryside formed by the A1(M) Motorway. Although this is understood, there would be the potential for a new defensive line to be formed by Sandbeck Approach, continuing into Racecourse Approach, and the latter could be continued into the Walton Road. Realistically, if Wetherby is going to perform as a major settlement during the plan period it will be very difficult to meet the demand from people who want to live there in the tightly confined shape of the settlement as it is today

(v) The Site Allocation Schedule also refers to the position that housing in these locations would be close to the Motorway. Although some would be close, this would be little different to what exists in Wetherby along the western side of Privas Way running alongside the Motorway, and there are now examples in Leeds and elsewhere of new housing close to Motorways,

Cross boundary working

(vi) This land has the potential to be expanded into and linked with land in the Harrogate BC area on the western side of the A1(M) Motorway, bounded by the Sandbeck Approach and the Deighton Road, and making a very sizeable potential development area without intruding on the free standing settlement of Kirk Deighton. This location would be much more sustainable than Thorp Arch because main services already exist in Wetherby and existing bus services could be expanded into these areas without great difficulty. In the view of TAPC, LCC has not carried out its strategic role adequately, and explored this possibility with Harrogate BC. The Parish Council is informed by the latter body that both Councils have informed each other that they can manage their household formations within the new Plan Period within their own boundaries. This suggests very strongly that on its side of the joint boundary LCC is relying on TATE as a banker (i.e. a supposedly certain bet).

5.15 All these locations would be much more likely to meet the aspirations of Section 19 of the NPPF than TATE, where the Government is committed to ensuring that the planning system does everything it can to support sustainable economic growth, and weight should be given to this. These

locations would support the continuing prosperity of Wetherby much more than the peripheral location of TATE. Prior to determining this planning application, and in the context of the above, TAPC strongly suggests that LCC should recognise this view of the courts and explore the alternative sites to TATE using option 3 above in particular

5.16 As the TAPC said in its submission on the Site Allocation proposals, there is an urgent need for a more balanced look at sustainable locations to meet future housing need in Outer North East Leeds.

The fears of residents

This has been recognised by the Courts as a material consideration. It has a relationship to why alternative sites should be examined as explained above. In the case of Thorp Arch the residents fear the potential damaging effects on their village which would come about through the likely dependency of the TATE residents upon Boston Spa for services, and also for making some car trips to the external road network in the same direction. They also fear the change in character of their village from a relatively quiet rural location to one dominated by an adjacent major residential development on an urban scale

The material considerations must fairly and reasonably relate to the application

The Government advice 'The Planning System : General Principles refers to the case of *R v Westminster CC ex-parte Monahan 1989*. One of the findings of the court in this case is that material considerations must fairly and reasonably relate to the application. By analogy, this must also mean the site on which the planning application is based. Although a Local Planning Authority must take account of its wider concerns and responsibilities in meeting the need for housing land, that, and the need to maximise a location for affordable housing, appear to be the only motivations driving this location forward. They do not fairly and reasonably relate to the application site itself in terms of such considerations as local need, suitability, viability and deliverability and impact on surroundings.

6.0 The Sustainability Issues

6.1 Sustainability is clearly a material consideration for a planning application, though, that it is only one of a number of material considerations to be weighed, although clearly a very important one backed by the NPPF. In his introduction to the latter, the Minister for Planning states that 'Development that is sustainable should go ahead without delay'. However, within the body of the document it is made clear that this only applies to development proposals that accord with the development plan, and that other material considerations still have to be applied

6.2 The NPPF identifies three dimensions to the achievement of sustainable development, which should be performed by the planning system – an economic role, a social one and an environmental one.

(i) In the view of the TAPC these planning application proposals fail an essential element referred to in the NPPF economic role, namely it is not in the right place.

(ii) More likely than not it would fail an essential element referred to in the NPPF social role because it is seriously doubtful that it can support/provide accessible local services that support the community's needs, and support its health and social well being. It is possible that these aims might be more achievable in the long term once population numbers build up, but there could be many years with a population living with inadequate facilities in a remote location feeling isolated. This is when car dependency develops, for those households that have one. Services outside the application site would be sought, and these habits are difficult to change once established.

6.3 The proposals fail an important part of the NPPF environmental role because it would not be protecting and enhancing the built and historic environments of Thorp Arch, Walton and Boston Spa. All these locations contain conservation areas. In practice it would be undermining them, as well as having a detrimental effect on some historic structures.

Failure to meet other NPPF sustainability aims

6.4 The proposals, more likely than not, would also not meet some of the sustainability aspirations set out in Section 9 of the NPPF i.e. it would not seek

or provide positive improvements in the quality of the built, natural and historic environment. The potential traffic and other pressures on Boston Spa, Thorp Arch and Walton, the conservation area villages, have been mentioned above, and the quality of people's lives will be reduced. In Thorp Arch walking routes would be cut off by the proposed relief road and views over attractive open land seriously disrupted. The TAPC considers that this proposed major development would create a major imbalance between urban and rural locations in this part of Leeds. It could be refused on this ground alone because it is seriously detrimental to the rural character of the area, and also because it is contrary to Section 55 of the NPPF, which states that 'to promote development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. The effects of this application, if approved, would be moving in the opposite direction to that aim

6.5 The proposals in the planning application run contrary to the Government's aim for promoting sustainable transport. Section 34 of the NPPF says that 'plans and decisions should ensure developments that generate a significant movement are located where the need to travel will be minimised and the use of sustainable modes can be maximised'. It is hard to imagine a location that has the potential to have a more opposite effect.

6.6 LCC has no sustainability credibility if it believes that the TATE location complies with the Government's sustainable transport aims set out in the NPPF, and the accessibility aims of its own Core Strategy. It says that the locations being selected for sustainable development, according to the Core Strategy, will have the best public transport accessibility and will have the best accessibility to local services. Few people believe that these statements link with TATE in any sensible and measurable way.

6.7 Looking at the contents of the Core Strategy, it is very doubtful whether this location would ever have sufficient sustainability merits to justify it being one of the exceptions to the Core Strategy sought by LCC. This statement says that, 'exceptionally, sites outside the settlement hierarchy could be considered where they will be in sustainable locations and able to provide a full range of local facilities and services and ...are more appropriate in meeting the spatial objectives of the Plan than settlements within the settlement hierarchy'. Looking at these ambitions sustainable location, able to provide a full range of

services etc, it would be 'fools gold' for LCC to believe that TATE could be justified on the back of this statement

6.8 Sustainability is also an issue where the conservation of the historic environment is concerned, and the impact of the proposals would not be sympathetic to the Government's aims set out in Chapter 12 of the NPPF, and explained in more detail in Section 132.

6.9 In Government Planning Advice PPS1 of 2005, now superseded, it was stated that sustainable development supports existing communities. The situation at TATE, if planning permission were granted, would not.

Serious risk

6.10 The TATE location would not only fail a number of sustainability objectives. It would carry with it the very serious risk that the costs of trying to overcome its inherent unsustainability would put such a financial burden upon the project that parts of the proposal could not be delivered, the inhabitants would then suffer and there could be pressure upon the well established TATE location as an employment zone.

6.11 In summary, the planning application fails three basic sustainability considerations:-

(i) One is that the inherent unsustainability of the location, set out by the UDP Inspector, has not been seriously challenged by the supporting texts that accompany the application

(ii) Another is that the majority of the sustainability factors which need to be achieved for this location carry with them a serious risk of failure, or only part achievement, which would be to the considerable detriment to the local population, the incoming population and highways and traffic movement in the general area. These risks are financially related, but in other situations it might also be because of practical limitations, such as the limit to which commercial driven ventures like the provision of a convenience store might want to come to the site, or sufficient private bus services be attracted to it

(iii) The third is that, in many respects, the building out of the proposals if given planning permission, would be in strong conflict with many of the sustainability aims set out in the NPPF

7.0 Conclusion

7.1 The TAPC believes that LCC must refuse this planning application because no justification exists for approving it as a major development in open countryside because it would be contrary to:-

- (i) Existing national and local planning policies
- (ii) The development plan in force
- (iii) The planning advice set out in the NPPF, and
- (iv) The aims of the emerging LCC Core Strategy

There is no statutory authority for approving this application

7.2 In addition, the TAPC strongly objects to the proposed residential development at the TATE location and recommends that it should be refused on prematurity grounds, supported by the arguments set out in Section Three of this objection. Without prejudice to this reason, in addition, the TAPC recommends that the planning application should additionally be refused on the following grounds:-

- (i) Because of the statement already made by LCC that the application site is suitable in principle for large scale residential development it has removed its locus to act impartially in determining this planning application as Local Planning Authority. The only decisions it can now make without acting unreasonably is to refer the planning application to the Secretary of State as a neutral decision maker, or refuse the application
- (ii) Because the application is contrary to the existing and active operational development plan for the area and determination of the planning application must be made in accordance with the plan because the application fails the test set out in Section 38(6) of the Planning and Compulsory Purchase Act 2004, namely that a consideration of the material considerations do not indicate otherwise

(iii) Because the application should be refused as it fails the tests set out in Sections 12 and 14 of the NPPF, namely that it does not accord with an up to date development plan, and that plan is not absent, silent or out of date for the site

(iv) Because the site, and the planning application, fails to satisfy a number of other material considerations. One is that the grant of planning permission could create a precedent for the further release of employment land for residential in an unsuitable location and to the potential detriment of TATE as an employment location.

Another is that it does not comply with case law decisions in the courts that where there are clear planning objections to a development, and the existence of inevitable significant adverse effects or disadvantages to the public, it may be relevant, and indeed necessary to consider whether there is a more appropriate alternative elsewhere. Additionally, as in the approach set out by the court, this is also a situation where there is a major planning argument advanced in support of the application (supply and housing numbers) and the need for the development outweighs the planning disadvantages inherent in it. This has not been done i.e. there is an existence of an alternative site(s) which would not have those effects - and thus the application should be refused to allow this process to take place.

(v) Because the proposed development if implemented, would be completely contrary to the rural character of the area and seriously harmful to the balance between urban and rural locations in Outer North East Leeds

(vi) Because the inherent unsustainability of the location, set out by the UDP Inspector, has not been seriously challenged by information supporting the application, and, if implemented, it would result in problems across a range of indicators affecting people – access, local facilities, health provision, public transport and car dependency, to the detriment of local nearby settlements and the incoming population

(vii) Because the proposed development is contrary to, or could not meet, a wide range of sustainable aims set out in the NPPF

7.3 The TAPC also believes that this application should be rejected because although LCC appears to be preparing to approve this application, no evidence has been produced by it to show that there is an urgent need for its proposed housing provisions in this location.

8.0 Epilogue

8.1 To use an analogy from the automobile industry, the prospect of LCC granting planning permission for the proposed residential development at TATE is like a car hurtling towards a major accident. It is not too late for LCC to discover its reverse gear, and have a serious re-think. If it cannot, or if it will not, and it is minded to approve this application, then it should refer the application to the Secretary of State as a departure application.

8.2 It has already been indicated under The Process above in this report, LCC should do this in any case, because it has already placed itself in a difficult position by appearing to endorse this site in principle before the planning application and the representations have been considered.

8.3 It should also do so because of the Town and Country Planning (Development Plans and Consultation)(Departures) Directions 1999, issued as Annex 1 to Circular 07/99.

The Directions apply to 'departure applications' i.e. an application which does not accord with one or more provisions of the development plan in force.

8.4 Where a departure application which a local planning authority does not propose to refuse is for:-

(a) Development which consists of ...more than 150 houses or flats

(c) Any other development which, by reason of its scale or nature or the location of the land would significantly prejudice the development plans's policies and proposals

Factually (a) applies to the application. Arguably (c) does also because it would significantly prejudice the plans allocation for employment at the TATE. It would also prejudice the plan's intention for the status quo around Thorp Arch, Walton and Boston Spa

8.5 Annex 2 to the Circular advises only significant departures should be notified. This is a significant departure, not only in the scale that far exceeds the guideline in (a) above but because of its significant impact on the local area, the Wetherby area generally and Outer North East Leeds.

Submitted electronically on behalf of the Thorp Arch Parish Council by:-

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