



12 February 2018

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Dear Mr McIntyre

TOWN AND COUNTRY PLANNING ACT 1990 – HYBRID PLANNING APPLICATION FOR FULL AND OUTLINE PLANNING PERMISSION FOR LAND TO THE WEST OF THE A1290 AND NORTH OF NISSAN, WASHINGTON – PREPARED BY HENRY BOOT DEVELOPMENTS LIMITED (18/00092/HE4) – FORMAL OBJECTION

This objection is submitted on behalf of Town End Farm Partnership Limited ("TEFP").

TEFP instructed their consultant team to review the Lichfields submission package for the above hybrid planning application for 'IAMP One' (the "Application"). Below we set out our serious concerns and objections to the Application.

OBJECTION - LACK OF TRANSPARENCY AND FAILURE TO FOLLOW DUE PROCESS

As Sunderland City Council (the "Council") is aware we have previously made known that the consultation exercise undertaken for the Application was inadequate.

This is particularly concerning given that the Application is for a scheme submitted by Henry Boot Developments Limited ("HBD") on behalf of and funded by a public body (the Council backed partnership known as IAMP LLP) for determination by the same authority. Being judge, jury and executioner for a "nationally strategic project" is legally questionable and demands a high level of accountability and transparency. Putting the applicant name as HBD does not preclude the Application being handled in a proper manner by an appropriate body. We raised concerns over transparency and will be pursuing a request for the Application to be called in by the Secretary of State.

It is also apparent the Application is piecemeal and contradictory to the "comprehensive development" route embraced by the Council at the Examination in Public ("EIP") for the International Advanced Manufacturing Park Area Action Plan ("IAMP AAP").

The Application site falls within the IAMP AAP boundary and is therefore subject to the IAMP AAP policies which seek to deliver comprehensive development of IAMP by way of a Development Consent Order ("DCO").

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Instead, the Application seeks full planning permission for only one unit. We understand that this reflects the fact that there is only one Tier One supplier interest and that is from SNOP. The remainder of the proposals are submitted in outline only which reinforces our earlier objection during the consultation period which identified that the justification for IAMP One was over-optimistic and the Application before us is speculative.

Great play was made both in the local and regional press and at the consultation event within the documents that there were at least ten Tier One suppliers interested in locating in the IAMP One scheme. This simply has not materialised and the Application indicates that this submission is made to serve only to prevent the delivery of units on TEFP's land in an anti-competitive manner. That is to say that public money has been intentionally diverted to engineer a favourable position for the Council for land that it owns to be developed.

We consider that the Council has a clear conflict of interest in relation to the Application. The Council is the land owner, the effective applicant (via HBD and IAMP LLP), and the determining authority. We therefore consider that the Application should be referred to the Secretary of State and determined jointly with the development proposals for the TEFP land.

We make the following observations:

- 1) The TEFP site on the east side of the A1290 was refused planning permission and is now subject to a planning appeal. Our client's site provides the same opportunities to achieve the same objective as IAMP One but was refused permission on prematurity grounds. You can understand our client's frustration that the Council has removed the IAMP One land from the DCO masterplan and finds it expedient to submit a planning application.
- 2) The emergence of IAMP One as a suggested scheme confirms that the early delivery of units to meet the immediate and short-term demand can only be delivered via a planning application. TEFP has always promoted this approach. However, the principle of seeking planning permission for development on TEFP's land was rejected by the same Council that now seeks planning permission for development on its own land. This evidences a glaring lack of fairness and consistency in the Council's approach.
- 3) The TEFP site is now outside of the green belt after the adoption of the IAMP AAP, and it is the best located site. Given the impacts of the Application proposals (discussed below) the applicant has erred in failing to consider the TEFP site as an alternative.
- 4) The timely development of the TEFP site is not constrained by matters such as existing ground conditions, and the development of the TEFP site would contribute proportionately to the comprehensive development of an IAMP masterplan.
- 5) The mitigation proposed in the Application (for example the ecology and drainage) is within the DCO / IAMP Two boundary. The mitigation involves operational development including the construction of ponds for balancing and ecological mitigation. In the context of TEFP's development proposals, the Council has consistently taken the view that any development within the DCO / IAMP Two boundary must come forward as part of a DCO. As such, it is not apparent how the Application scheme will deliver mitigation land.
- 6) The proposed quantum of development for IAMP One cannot be delivered within the existing infrastructure and strategic road network capacity. As such, the proposals will be significantly delayed until the required infrastructure is built out and complete.

- 7) No evidence has been presented to prove that there is “actual” demand from occupiers for an IAMP One scheme. The proposal is essentially for speculative development, and in our opinion this means that buildings will need to be significantly altered in the future, further delaying the delivery of development.

It is considered that the Council has engineered a favourable position where it will be determining its own Application for development on a site which is in direct competition with the TEF land for a similar application which was recently refused and is subject to an appeal. For transparency and fairness, this Application will be requested to be referred under separate cover.

We would expect a thorough exercise to have been carried out to not only explain the planning application route for this Application, which is contradictory to the comprehensive DCO route espoused at the EiP, but to also acknowledge that there are no future tenants for IAMP One under contract.

The emergence of IAMP One as a suggested scheme proves that the case for the development of the TEF land, the only suitable delivery mechanism to satisfy immediate demand, is the application route presented by our client. We consider the Application timeline extremely optimistic, and will not deliver IAMP One in the predicted timescale.

OBECTION – POLICY COMPLIANCE AND PLANNING MERITS

Comprehensive Development

IAMP AAP Policy S1 requires the comprehensive development of IAMP. This policy requires Masterplans, Design Codes and Phasing Plans to be submitted which demonstrate how development:

- i will meet the objectives of the AAP and will not prejudice comprehensive development of the IAMP;*
- ii ensures the proposed development is designed and orientated to relate well to the existing employment area and Enterprise Zone and established infrastructure;*
- iii contributes fully to the delivery of the IAMP as a project of national significance;*
- iv contributes fully, in a proportionate and timely manner, towards providing the infrastructure identified in the Infrastructure Delivery Plan (IDP) (Appendix 6);*
- v contributes fully, in a proportionate and timely manner, to providing for the mitigation required for the IAMP, including environmental mitigation; and*
- vi is capable of being implemented without breaching the provisions of the Planning Act 2008.*

A draft Design Code for IAMP was submitted with the IAMP ONE Application. Paragraph 82 of the IAMP AAP states:

“The scale and national significance of the IAMP mean that it is inappropriate to allow it to come forward on a piecemeal basis, as this would undermine the IAMP AAP objectives and prejudice delivery”.

We have serious concerns that the IAMP One proposals will prejudice the comprehensive development of IAMP and will harm the delivery of IAMP as a project of national significance. The concerns relate to:

- Highway safety;
- Prejudice to the delivery of highway infrastructure;
- Failure to deliver landscape and ecological mitigation within IAMP ONE; and
- Prejudice to the delivery of other necessary mitigation.

These matters are discussed below.

Highways Safety and Delivery

We make the following observations:

- 1) The methodology adopted in the forecasting of development generated vehicular trips, contradicts the approach that the Council insisted was appropriate during the formulation of policies contained within the IAMP APP (with no justification for the change in approach or comparison of results).
- 2) Traffic surveys conducted during 2015 have been used to represent existing baseline operational conditions on the local highway network, which will be more than 3 years old by the time of likely consideration by the LHA. The traffic surveys were also conducted in mid-March, which is not technically a neutral traffic period in accordance with the definitions set out in both DMRB and WebTAG.
- 3) The Transport Assessment ("TA") considers committed development in the local area, however, it provides no consideration of the phasing of wider IAMP development up to 2028 (i.e. the future design year) and the traffic generation that may be likely by this time.
- 4) The methodology adopted in the forecasting of background traffic growth, contradicts the approach that the Council insisted was appropriate during the formulation of policies contained within the IAMP AAP (with no justification for the change in approach).
- 5) The junction modelling exercise presented within the TA demonstrates that a number of the intersections under consideration are currently operating above capacity (and likely still would be even if a theoretical adjustment is made to synthesise MOVA control). On the basis of the presented modelling results, they are not capable of supporting any additional traffic demand without significant infrastructure upgrades which will not be delivered prior to 2021 at the earliest.
- 6) The TA demonstrates that even with the modest mitigation scheme proposed by the Council, the A19/A1290 Downhill Lane junction will not be capable of supporting the quantum of development generated traffic flows during periods of peak demand on the network in the designated design year (with average queue lengths on the A19 northbound off-slip forecast to exceed 340m in length, which will likely equate to maximum queue lengths in the region of approximately 500m at critical times, thus extending back onto the A19 mainline and resulting in concerns over the safe operation of the strategic highway network).
- 7) The TA incorrectly concludes that the surrounding network, subject to the proposed mitigation on the A1290, can accommodate the additional traffic generated by the development without significant queuing or delay and that the impact of development traffic on the road network will not be severe.

Landscape and Ecological Mitigation and Impacts

We make the following observations:

Scope of Baseline EIA Report

- 1) The EIA has no assessment of the baseline ecological status of the aquatic ecology of the watercourses (River Don ad River Wear) which receive surface and groundwater discharges from the proposed development e.g. fish, aquatic invertebrates. This is despite the development being classified as having a 'high' pollution hazard with EA and LLFA (pg. 34 of Systra Flood Risk and Drainage Strategy EIA).

- 2) No bat emergence surveys of trees identified in the WYG 2015 baseline report as having potential bat roost features have been undertaken - contrary to ODPM Circular 06/2005 Biodiversity and Geological Conservation – Statutory Obligations and their Impact within the Planning System states that ‘It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making a decision’.
- 3) The existing ecological value of the Ecology and Landscape Maintenance Area (EMLA) is not described or evaluated.

Impact Assessment

Impacts Arising from Flood Risk and Drainage:

- 1) The Flood Risk and Drainage Strategy EIA identified that 5% of the site is within flood zone 3 and 25% in flood zone 2. Impacts of fluvial flooding on wildlife have not been considered but could result in pollution with other parts at high and moderate risk from surface water flooding. It is proposed that this risk is address by raising floor levels but the risk of car parks flooding with associated pollution impacts is not addressed. The EIA states that there is a risk of urban contaminates in surface water runoff flowing into receiving water courses with the IAMP site identified as having a ‘high’ pollution hazard with EA and LLFA (pg. 34 of Systra EIA).
- 2) The impacts of changes in surface and ground water flows, flooding and water pollution (including accidental spillage) on the ecology of receiving watercourses (the River Don and the River Wear?) have not been addressed. This is despite the confirmed presence of a European protected species (otter) and UK protected species (schedule 5 of the Wildlife and Countryside Act 1981 (as amended) (WCA) (otter and water vole) on the River Don within proximity to the development site.
- 3) There is no baseline data on the aquatic ecology of the River Don despite these identified impacts arising from the development on it with the receiving watercourses having the potential to host UK priority fish and aquatic invertebrate species which could be adversely impacted by the proposed development.

Impacts on EPS and UK Protected Species:

- 4) Disturbance impacts on otter and water vole arising from the proposed development have not been adequately addressed despite the red line boundary being located on the River Don banks, with the indicative masterplan showing engineering works within a few metres of the river at locations where water vole burrows and feeding signs etc. have been recorded and within proximity to confirmed otter activity.
- 5) No consideration is given to disturbance impacts arising from the proposed development on otter and water vole e.g. from human disturbance including dog walkers, lighting, noise etc. despite the red line boundary encompassing areas of known water vole habitat.
- 6) The Application is therefore contrary to ODPM Circular 06/2005 Biodiversity and Geological Conservation – Statutory Obligations and their Impact within the Planning System states that ‘It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making a decision’.
- 7) Under the Conservation of Habitats and Species Regulations 2017 it an offence to Intentionally or recklessly damage, destroy or obstruct access to any breeding site or resting place of otter. Under the Wildlife and Countryside Act 1981 it is an offence to intentionally kill, injure, or take water vole

or otter or to interfere with places used for shelter or protection, or intentionally disturbing animals occupying such places.

Impacts on Birds:

- 8) Construction (including specifically earth movements) is proposed to start June/July 2018 i.e. during the bird breeding season despite the proven presence of UK priority ground nesting birds e.g. skylark within the Application site.
- 9) The loss of arable land is assessed as 'a minor adverse significant effect' (pg. 24) (despite the presence of national priority bird species (wintering and breeding) associated with it because arable land is 'ubiquitous' at IAMP ONE site. The site supports a regionally significant farmland bird assemblage both during the winter months and the breeding period with WYG 2015 reporting 36 notable species during the winter period and 29 notable species within the wider IAMP site of which 5 of the breeding species are listed on schedule 1 of the WCA and therefore afforded strict protection from disturbance during the bird breeding season.
- 10) There is no quantitative assessment of the species or number of birds that will be either directly or indirectly lost to the proposed development (through habitat loss) or indirectly affected through e.g. disturbance and no prediction as to how this would change as a result of the proposed development.
- 11) Specifically, there is no assessment of the likely impacts of development on the schedule 1 WCA protected bird species, which include barn owl, fieldfare, hen harrier, peregrine falcon and kingfisher despite the high-risk of development resulting in disturbance to nest sites and the loss of foraging and commuting habitat which could prevent successful breeding.
- 12) Given the scale of habitat loss within the site, it is predicted that the impact on breeding, passage and overwintering birds would be significant and require mitigation. However, the EIA states that: Impact on Breeding, passage and Overwintering Birds: given their mobility, birds will be displaced and take up residence in neighbouring areas, so impacts are reversible in short to medium term. This assessment takes no account of the fact that overall there will be a net loss of suitable habitat for breeding, passage and overwintering bird species (including species identified as national priority), and it assumes that other habitat is present and available within proximity to the site with no assessment of the location of such land, its current use by birds and whether this land is currently operating at its maximum carrying capacity for these species.
- 13) It cannot be assumed that the EMLA land will provide the scale or level of mitigation required to off-set impacts on bird populations, as there is no assessment of current bird populations on the EMLA and how these will change as a result of the proposed habitat enhancement works.

Impact on EMLA land:

- 14) No assessment of the proposed habitat works within the EMLA has been provided.

Services:

- 1) A development of this size will require considerable upgrading of existing services e.g. power, gas, water mains, surface water discharge points etc. probably resulting in offsite and boundary impacts e.g. hedgerow loss, work within existing watercourses. No description of these works is provided within the EIA and no assessment of their impact on ecology.

Ecological Mitigation:

- 1) As noted above, it is unclear how the engineering operations within the DCO / IAMP Two boundary will be delivered.
- 2) The EIA provides no explanation or justification as to why this area of land is to be provided as part of the IAMP One Application and on what basis the proposed offset land was selected. The EIA identifies that the offset land is currently in an ELS scheme (see Fig 2.4 in WYG Baseline Report) with the management of the off-set land to be 'steered by entry and higher-level Countryside Stewardship principles' (pg. 31). No mechanism is proposed to ensure the long-term retention and management of off-set land for biodiversity in perpetuity (or until such time as the development land is non-operational and returned to a greenfield state). The long-term management of the land should be secured under a section 38 WCA agreement or other similar mechanism, but none is proposed. The management body is not defined, and no oversight of the management body is proposed. No monitoring scheme has been proposed to establish whether the EMLA delivers its aims and objectives (which are also not defined) and no mechanism identified for remedial or additional works should the EMLA not deliver biodiversity mitigation of the scale and nature intended.
- 3) As such there is real doubt as to whether the proposed EMLA:
 - Will be delivered as part of the Application.
 - Will result in net biodiversity enhancement to its current condition.
 - Will offset the adverse ecological impacts resulting from the proposed development, which include net greenspace loss.

Plot 3 Detailed Application:

- 1) The planning proposal differs from the illustrative IAMP masterplan in the following areas:
 - A belt of strategic landscape and swales north east of Plot 3, which is shown on the illustrative landscape plan, is not included.
 - The SUDS provision is not consistent with the surface water maintenance plan/strategy shown on Systra surface water maintenance plan for IAMP 1.
- 2) The Plot 3 Design and Access Statement identifies the need for flood protection works on land to the north of the site to enable the development, but the location, nature and timing of these works is unspecified. Are these works in the redline boundary? What would the ecological impacts of these works be?
- 3) Will surface water from this development be discharged to the River Don. If so what would the impacts of this be on the aquatic and terrestrial ecology of the River Don – the EIA is currently deficient with respect to impacts on aquatic ecology. There is also the risk of impacts on water vole, otter and kingfisher – a legally protected species.
- 4) The ecological impacts of the proposed Plot 3 development have not been specifically identified and no ecological mitigation is proposed as part of this development; there is also no commitment to deliver any part of EMLA as part of this planning approval. As such this development could proceed without any ecological mitigation being delivered.

Flood Risk and Drainage:

- 1) The site area within Flood Zone 3, is not being developed upon and additional compensatory storage is proposed to be provided as agreed with the EA. However, evidence of this agreement, including attenuation volumes and discharge restrictions is not provided within the report.
- 2) The volume of how flood compensation is catered for is unknown. In addition, during heavy storm events, the flood compensation areas also act as attenuation facilities for IAMP One but there is no evidence of an integrated model illustrating the flooding effects of River Don and IAMP One – as such the flood risk appears unknown. This should be clearly demonstrated to ensure flood risk is suitably mitigated.
- 3) There is evidence of discussing the flood levels and floor levels of the proposed site with the EA, however there is no mention of the bund set at the 1 in 100 year plus 50% climate change as shown on Drawing no. IAMP_ONE-SYS-HDG-ZA1-DR-D-05-014-SO-P04. Evidence is required to show that sufficient compensatory storage has been provided and that flood risk has not been increased off site.
- 4) The northern catchment area of the site discharges into the River Don via swale and ponds providing attenuation. River levels have not been provided for storm events below the 1 in 100 year frequency, therefore the effectiveness of such attenuation cannot be assessed as the likelihood of the storage being submerged during heavy rainfall events is unknown.
- 5) The layout drawings are in accordance with 'Non-Statutory Technical Standards for Sustainable Drainage' LASOO, 2016. However, quantities relating to flood compensatory and attenuation require clarification (refer to Flood Risk and Drainage Strategy Review notes above).
- 6) The 3rd party evidence requirements are not in accordance with 'Non-Statutory Technical Standards for Sustainable Drainage' LASOO, 2016. This is particularly important from the EA for the discharge into the River Don.
- 7) For the surface water drainage connection discharging into the Culvert, evidence from Sunderland City Council has not been provided. This should be provided for planning submission.
- 8) For the surface water drainage connection discharging into the River Don, evidence from EA has not been provided. This should be provided for planning submission.

Summary

We demonstrate that the Application proposals are fundamentally deficient. They would result in an increase in queue lengths on the road network which would present a severe impact during peak periods. This results in a highway safety concern, contrary to AAP Policy T1, UDP Policy T14 and draft CSDP Policy CC5. Additionally the Application Proposals fail to deliver the required ecological mitigation contrary to AAP Policies S1, EN2, IN1 and Del2, draft CSDP Policy CS7.7, UDP Policies CN18, CN22, and CN23 as well as paragraphs 109 and 118 of the NPPF.

We demonstrate that the scheme would prejudice the comprehensive development of IAMP and would harm the delivery of IAMP as a project of national significance, contrary to the objectives and policies of the AAP, the draft CSDP, the UDP and NPPF.

CONCLUSION

This speculative IAMP One scheme serves only to prevent the delivery of units on TEF land and in an anti-competitive manner. We consider that it is appropriate that any proposals for an IAMP One scheme be

referred to the Secretary of State and determined jointly with development proposals for the TEF land. As such, we consider it inappropriate for any IAMP One application to be determined by the Council as local planning authority.

Overall, the Application represents a departure from the IAMP AAP and conflicts with the UDP, draft CSDP and NPPF. Ultimately, the IAMP One Proposals would prejudice IAMP and the delivery of a project of national significance. TEF has serious and fundamental concerns relating to the proposals and they do not consider that the issues could be addressed through planning conditions or a Section 106 Agreement. Therefore the Application should be refused by the determining authority.

TEF is continuing to take professional advice on the IAMP One proposals and may make further comments on the Application during the determination period.

Yours faithfully

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