

# HEARING STATEMENT

## Policy SB26: Park and ride sites

- 1.1 Context Planning Ltd have been instructed to prepare this hearing statement on behalf of The Bath Preservation Trust (BPT). This statement responds to the Inspector's initial matters, issues and questions (EXAM 4), in particular Q.47 – Q.55 and should be read in conjunction with BPT's earlier representations.

### **The lack of evidence base justifying the need for multimodal transport interchanges (MMTIs)**

- 1.2 NPPF 137 makes clear *'the Government attaches great importance to Green Belts'*. NPPF 140 guides that *'once established, Green Belt boundaries should only be altered where exceptional circumstances are fully evidenced and justified...strategic policies should establish the need for any changes to Green Belt boundaries, having regard to their intended permanence in the long term'*.
- 1.3 NPPF 141 goes on, *'before concluding that exceptional circumstances exist to justify changes to Green Belt boundaries, the strategic policy-making authority should be able to demonstrate that it has examined fully all other reasonable options for meeting its identified need'*.

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- 1.4** Given the great importance to be attached to Green Belts, their need to endure permanently and the advice that boundaries should only be altered in exceptional circumstances it is clear that this is a very ‘high bar’ indeed to pass from a policymaking perspective.
- 1.5** The Council’s justification for seeking removal of the P+R sites from the Green Belt is principally contained within (CD-SD023) ‘Topic Paper: Exceptional Circumstances Case’ and (CD-TRN006) ‘Bath Park and Ride Green Belt Assessments. The starting point in this instance should be to consider whether there is an identified need for multimodal transport interchanges (MMTIs) within Bath. The evidence presented in (CD-SD023) comprises a series of high level targets expressed in the Council’s Corporate Strategy which have been arrived at in conjunction with the Council declaring Climate and Ecological Emergencies.
- 1.6** These targets (paragraph 5.3) are not specific, or limited, to the scope of delivery of MMTIs. They cannot be said to require the delivery of MMTIs as they make no reference to them. There is no specific evidence presented as to the likely effectiveness or otherwise of MMTIs within this documentation.
- 1.7** What is actually proposed to be comprised within the MMTIs is only loosely described within the Local Plan Partial Update (LPPU) policies ST7 and SB26. The failure to precisely describe how the MMTIs would operate, and what they would comprise of, undermines the case being put that they are necessary and require removal of land from the Green Belt.
- 1.8** Each of the three park and ride sites (P+R) are located at the edges of Bath in locations which don’t lend themselves particularly to more sustainable forms of transport other than the bus connections which already exist. Lansdown and Odd Down are positioned at the top of the city’s bowl and only the keenest of
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walkers and cyclists would find them accessible. Most cyclists would also be discouraged by the need to access each of the three sites along busy main roads, without cycle lane provision.

- 1.9** It is important to highlight that BPT support initiatives to promote sustainable travel but there are real barriers to these sites acting as MMTIs even if a need can be evidenced. MMTIs would be more successful if promoted in more accessible locations in the centre of the city. The provision of shower and changing facilities for cyclists and walkers who are only part way through their journey for example would be little used.
- 1.10** MMTIs need to connect densely populated areas to be well patronaged. It would be far more effective to provide onward bus services from the P+R site to major neighbouring centres because in the absence of this the majority of users will still need to drive one leg of the journey, even if they walk or cycle the other leg, thereby somewhat undermining the effectiveness of choosing these as locations for MMTIs.

### **The lack of a requirement to remove the P+R sites from the Green Belt**

- 1.11** In the event that MMTIs are determined to be required, we also argue that no detailed evidence has been presented to substantiate the position that these cannot be delivered by retaining the Green Belt designation on the sites.
- 1.12** The infrastructure needs associated with the MMTIs appears to be very limited. Electric car charging spaces already exist at some of the locations as does cycle parking. For cyclists presumably car parking spaces will be

repurposed and bike stands and e-bike stands introduced. For walkers the existing infrastructure is adequate save possibly for improved wayfinding.

- 1.13** The Council as landowner and local authority in the case of the P+R sites benefits from permitted development rights under Schedule 2, Part 12, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (see Fig 1).

**Class A**

**Permitted development**

**A. The erection or construction and the maintenance, improvement or other alteration by a local authority or by an urban development corporation of—**

- (a) any small ancillary building, works or equipment on land belonging to or maintained by them required for the purposes of any function exercised by them on that land otherwise than as statutory undertakers;**
- (b) lamp standards, information kiosks, passenger shelters, public shelters and seats, telephone boxes, fire alarms, public drinking fountains, horse troughs, refuse bins or baskets, barriers for the control of people waiting to enter public service vehicles, electric vehicle charging points and any associated infrastructure, and similar structures or works required in connection with the operation of any public service administered by them.**

**Interpretation of Class A**

**A.1** For the purposes of Class A, “urban development corporation” has the same meaning as in Part 16 of the Local Government, Planning and Land Act 1980 (urban development)<sup>120</sup>.

**A.2** The reference in Class A to any small ancillary building, works or equipment is a reference to any ancillary building, works or equipment not exceeding 4 metres in height or 200 cubic metres in capacity.

**Fig 1 – Permitted development rights**

- 1.14** The majority of the minor forms of operational development which might be required appear capable of being undertaken without recourse to the Local Planning Authority. Furthermore, in the event that permitted development rights had been removed or a particular piece of infrastructure falls outside of

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the remit of the permitted development rights it may nonetheless be not inappropriate development in the Green Belt.

- 1.15** CD-TRN006 (page 26) accepts that the proposals under policy SB26 could comprise *‘diversification of the Park and Ride Sites for cycle storage and hire facilities, ridesharing, electric car charging and sharing of delivery hubs could broadly fall within this ‘local transport infrastructure’ but it is argued that ‘almost all forms of development associated with the diversification...are likely to be considered inappropriate development’.*
- 1.16** This conclusion is not supported, NPPF 150 advises that local transport infrastructure which can demonstrate a requirement for a Green Belt location which would preserve its openness and not conflict with the purposes of including land within the Green Belt may be not inappropriate development.
- 1.17** In respect of how to assess whether a development will have a greater impact on the openness of the Green Belt, case law has clarified the approach. In *Samuel Smith Old Brewery (Tadcaster) & Oxtou Farm v North Yorkshire CC & Darrington Quarries Ltd* [2018] EWCA Civ 489 the Court of Appeal confirmed that whether the development would preserve the openness of the Green Belt cannot mean that a proposal can only be regarded as not inappropriate development if openness would be left entirely unchanged (paragraph 39).
- 1.18** It is not therefore the case that all transport infrastructure will be automatically considered as inappropriate development. Indeed, were this the intention it would not be listed within the exhaustive list of exceptions in paragraph 150. If only modest structures and buildings are proposed it is entirely possible that these may constitute not inappropriate development, if a planning application

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is even required. The argument put forward in CD-TRN006 (page 26) has not been substantiated in this regard.

- 1.19** CD-TRN006 argues (page 26) that canopies over parts of the facilities for solar energy generation will be inappropriate development. This may be the case, but NPPF 151 provides a mechanism for renewable energy projects to be developed where ‘very special circumstances’ exist in Green Belt locations. It is perfectly feasible in this regard that any such proposals could potentially be approved with the sites retaining their Green Belt status. It is not the Council’s position, as we understand it in any event, that possible renewable energy provision forms an exceptional circumstance for potentially removing the sites from the Green Belt.
- 1.20** The planning history of each of the P+R sites further evidences the above. Planning permission was granted at Odd Down P+R for a 230 space expansion (09/00305/ERE03) (Appendix 1). Planning permission was granted at Lansdown P+R for a 390 space expansion of the facility to take overall capacity to 880 spaces (09/00304/ERE03) (Appendix 2). In both cases the Council concluded that the developments would not be inappropriate development in the Green Belt and that they would not unduly impact on the openness of the Green Belt. The officer Committee Report noted that there was no need to consider whether ‘very special circumstances’ existed.
- 1.21** More recently approval to expand Newbridge P+R by 248 spaces was approved (13/03194/REG03) (Appendix 3). This decision was reached under the auspices of the NPPF (2012) which had exactly the same wording (paragraph 80) as the current NPPF (paragraph 150) in respect of the circumstances when local transport infrastructure will be not inappropriate development. The Committee Report commented that the P+R expansion was
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considered to be a local transport infrastructure which could demonstrate a requirement for a Green Belt location, which would preserve the openness of the Green Belt. Consequently, there was no need to go on to consider ‘very special circumstances’.

**1.22** The officer report within (Appendix 3 -pages 3-4) also outlines that land for an expansion to Newbridge P+R was previously proposed to be removed from the Green Belt in the preparation of the previous Local Plan. The Inspector rejected the proposal, in his Inspectors Report, opining that surface level expansion could come forward without removing the land from the Green Belt.

**1.23** There is simply no need for the land to be removed from the Green Belt at the P+R sites to enable the broadening of the use of these facilities as MMTIs, indeed to a small extent this has already happened. As outlined, exceptional circumstances are required, which must be fully evidenced and justified, to remove land from the Green Belt. BPT consider that it is unnecessary and therefore cannot come close to achieving the particularly ‘high bar’ of constituting exceptional circumstances. Policy SB26 is not ‘justified’ because there is a reasonable alternative and it is inconsistent with national policy and unsound.

### **Alternatives to Green Belt removal**

**1.24** In the event that the Inspector concludes a case has been made for MMTIs and that there might be exceptional circumstances to consider removing the sites from the Green Belt, BPT have residual concerns that other realistic alternatives exist and that the site selection methodology promoted by the Council is not robust.

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- 1.25** NPPF 141 requires the '*strategic policy-making authority should be able to demonstrate that it has examined fully all other reasonable options for meeting its identified need for development*'. Appendix 1 in CD-SD023 outlines the 'alternative sites review' undertaken. It is suggested the site must be Council owned to be considered, this unreasonably restricts possible candidate sites. To draw an analogy, the sequential tests for flooding and town centre uses require all 'available sites' to be considered. The requirement to fully examine all other reasonable options means only considering Council owned site is unreasonable and the methodology cannot be considered robust.
- 1.26** The site selection only considered sites of at least 20,000 sq.m in size. The document (page 19) then concedes that '*there may be scope for smaller transport exchanges/mobility hubs across the city*'. It then outlines that as the Council's own transport strategy (not a planning document) seeks redevelopment of the P+R sites no other sites have been considered unless they can accommodate a P+R. The site selection process cannot be driven by a preconceived conclusion it must fully assess all alternatives, including smaller sites and split delivery.
- 1.27** A MMTI could quite conceivably be delivered without a car park of at least 800 spaces being attached to it. Indeed, the purpose of the MMTI is to promote non-private car modes of transport. There are likely to be many more options for delivering smaller hub sites which themselves may be better connected to the public transport network of the city and be positioned closer to the centre.
- 1.28** Policy ST6 is proposed to be amended to promote further transport interchanges. It describes there being '*great potential for the function of our traditional 'Park and Ride services, at existing and new facilities, to be expanded to 'interchange hubs*'. There is a conflict between policy ST6 and
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the conclusion of the alternative sites review. If there are no such sites outside the Green Belt, which BPT contest, then policy ST6 is undeliverable and should be deleted/modified through the examination. In the alternative, if there are sites then SB26 is unsound because there are not exceptional circumstances for removing land from the Green Belt.

- 1.29** In terms of the alternative site review, it is incumbent on the Council to demonstrate flexibility in their approach and all sites outside the Green Belt, i.e. anywhere within the city itself must be ruled out before it can be safely concluded that exceptional circumstances exist. It is clear that the site selection criteria is not robust and policy SB26 is also inconsistent with the NPPF in this regard.

### **The harm to the Green Belt**

- 1.30** The *Calverton* judgment<sup>1</sup> (paragraph 51) outlines the need to consider the nature and extent of the harm to the Green Belt (i.e. those parts which would be lost) and the extent to which the consequent impacts on the purposes of the Green Belt may be ameliorated. (CD-TRN006) provides an assessment of each site.
- 1.31** Odd Down P+R, the document advises, may still be worthy of retention as Green Belt given its distinction from the urban area. The benefit of the Green Belt designation in guarding against larger scale development is also noted. The field to the east would also be weakened and potentially more vulnerable to future removal from the Green Belt. This analysis is broadly agreed with. It

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<sup>1</sup> *Claverton PC v Nottingham CC* [2015] EWHC 1078 (Admin)

is also worthy of note that the removal would extend slightly beyond the current confines of the site (Fig 2).



**Fig 2 – Odd Down P+R proposed Green Belt removal**

- 1.32** (CD-TRN006) reaches similar conclusions in respect of Newbridge P+R (depicted at Fig 3). Whilst tree cover limits intervisibility there is potentially still enough separation to justify retention of Green Belt status and again the potential for further denser forms of development would be damaging. The land to the west, south and north would also become more visually contained, weakening the case for retention of these parcels.
- 1.33** (CD-TRN006) draws similar conclusion in respect of Lansdown P+R. This site is also positioned some distance from the built up area of Bath (Fig 4) and has significant potential to weaken the integrity of significant areas of Green Belt to the south west.



**Fig 3 – Newbridge P+R proposed Green Belt removal**



**Fig 4 – Lansdown P+R proposed Green Belt removal**

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- 1.34** The level of harm which the Council's evidence base highlighted would in the view of BPT clearly outweigh the perceived limited benefits of removing the P+R sites from the Green Belt. This conclusion further undermines the case that exceptional circumstances exist to support policy SB26.
- 1.35** Given the lack of clarity as to what may be within the scope of a MMTI there is a risk that this might encourage more development at the P+R sites which go beyond forming pieces of transport infrastructure. Policy ST6 for example references delivering community uses. Given the extent of what can be achieved under current designations, BPT has residual concerns that the removal of land from the Green Belt might be intended to enable more intensive forms of development which would clearly also not have exceptional circumstances. Once land is removed from the Green Belt control over alternative forms of development would of course be greatly weakened.

### **Compensatory improvements to the Green Belt**

- 1.36** The proposal to secure 10% biodiversity net gain in developments at each site would simply meet the minimum requirement which the Council's ecologists are currently seeking on new development. The Environment Act 2021 will be enacted through secondary legislation to mandate this target for all new development following the current transitory period. The retention of existing trees, planting and calcareous grasslands are mitigation measures for new development rather than compensation for the loss of Green Belt.
- 1.37** Given that a variety of different forms of infrastructure might be provided in the MMTIs, and taking account of the existing well treed boundaries to the P+R sites, it is unclear how much space would be afforded to deliver any

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enhancements which themselves appear to be limited to the minimum which would be required going forward in terms of biodiversity net gain.

- 1.38** The extent of land to be removed from the Green Belt is principally limited to the sites and their immediate setting. (CD-SD023) argues that the proposals offer a unique opportunity to facilitate new safe walking and cycling routes through the site with connections to the countryside. Within the sites this may be possible but given their limited size, and remote locations, this is unlikely to attract footfall or cyclists or present a significant benefit. Connections beyond the site require clarification if it is to be considered a compensatory measure including how they might be delivered.
- 1.39** Overall, the measures proposed would largely be mitigatory, limited to the confines of the sites, rather than truly compensatory. They do not meet the requirement outlined in NPPF 142 to improve the environmental quality of the remaining Green Belt land because they focus only on the sites themselves.

## **Conclusion**

- 1.40** Policy ST26 is argued to be unnecessary, unjustified and inconsistent with national policy and therefore unsound. BPT encourage the Inspector to suggest deletion of this policy because a main modification will not resolve the areas of unsoundness which are fundamental to the proposed designation.

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Preservation Trust**