**COMMENTS ON ‘HICKLING GRAY ASSOCIATES’ (PATRICK GRAY) RESPONSE TO THE PROPOSED SUBMISSION LOCAL PLAN (ID 868070)**

I have extracted the below response from the Scarborough Borough Council Consultation Portal in its full form. My comments on the response are shown in blue text below.

I believe this response demonstrates that discussions have been held ‘behind closed doors’ on the link between HA 23 (site proposed to be allocated for new housing delivery), OS 10 (site proposed to be allocated for open space) and the Flood Alleviation Scheme.

This link is NOT provided in any of the consultation material provided on the Local Plan. I believe this raises both “legal compliance” and “soundness of plan” issues.

I suggest you digest the following and then we can possibly formulate a ‘storyline’ to issue to Planning Inspectorate, Local Press, Borough / Local Councillors demonstrating a sign that there have been these discussions.

**To which document does your comment(s) relate?**

*Scarborough Borough Local Plan*

**Housing Site**If your representation refers to a Housing Site listed under Policy HC2 please select the site from the list:

*Site HA23: Land off Church Cliff Drive, Filey*

**Legal Compliance**Do you consider the Scarborough Borough Local Plan to be legally compliant?

*Yes*

**Soundness Of Plan**Do you consider that the Scarborough Borough Local Plan is sound?

*Yes*

**Reason for being Unsound**If you consider the plan to be unsound, is it because it is not: (If you are suggesting the Plan is sound please select N/A)

*N / A*

**Unsound or Not Legally Compliant**Why specifically do you consider the Scarborough Borough Local Plan is not legally compliant or is unsound? (Or alternatively confirm your support)

*RE: OS10*

*We act for the owners of the proposed land allocation OS10 identified in the current Local Plan consultation document under Policy HC16.*

*We are aware of objections to the proposed open space allocation which have been submitted in response to the formal consultation.*

*We acknowledge that the local planning authority (LPA) will consider the objections and address the issues in any proposed modifications it might wish to make to the draft local plan (LP). However, we wish to indicate our support for the policy and allocation on behalf of the landowners.*

*We have indicated our overall and specific support for the proposed allocation of OS10 through direct representations to the proposed provisions of the draft local plan. It is a matter for the LPA how this direct submission in response to the objections might be considered. We have no concern should it be decided to include it as a local plan representation in support of Policy HC16, allocation OS10. We consider the proposed LP to be both legally compliant and sound.*

*We consider that the intention to allocate open space to the north of the town will form a fundamental part of bringing forward infrastructure that is vital to town, namely the Filey Flood Alleviation Scheme (FAS).*

The proposed allocation of Site OS10 is **specifically** linked to the proposed allocation of Site HA23 (see Local Plan, Appendix H). It is not an allocation in its own right (that is, would not be brought forward without the allocation / development of Site HA23). **Therefore,** **it does not (or rather should not) form a fundamental part of the Filey Flood Alleviation Scheme, or indeed any other scheme.**

*Work on provision of the FAS has been on-going for a number of years. The landowners to the north of Filey have been working with the Flood Working Group to promote and achieve a scheme which will ensure the protection of the town from a potential catastrophic flood event. Not only is this recognised at local level but we understand is the subject of potential funding from outside sources including the Environment Agency. The need for the FAS is essential.*

The objection to the proposed allocation of Site OS10 **is not** an objection to the Flood Alleviation Scheme (as the two are not linked).

*The allocation of the land under OS10 may not have been shown at the draft local plan stage. That is largely due to the fact that the final proposals for the FAS had not been prepared.*

The proposed allocation of Site OS 10 is **specifically** linked to the proposed allocation of Site HA23 (see Local Plan, Appendix H). **The proposed allocations of both Site OS10 and Site HA23 are not (and should not) be linked to the Flood Alleviation Scheme.**

Reference e-mail from Cllr Mike Cockerill to G Wood (23-02-2015): “*In reply to your question about the FAS, there have been discussions with the land owners on which it is anticipated construction work will be necessary to bring the FAS to fruition. As part of the scheme proposes some element of work on both HA21* [now HA23] *and the adjacent land to the North there will be some joint discussion.* ***Having said that, the FAS and the possible use of HA21***[now HA23] ***for residential development are separate matters and will be considered as such*** [emphasis added]”.

The proposals for the Flood Alleviation Scheme were included in the Strategic Flood Risk Assessment undertaken by Arup in 2010. This shows that the proposed swales would be outside the development limits of Filey. Therefore, **if an allocation of open space was likely to be required for the Flood Alleviation Scheme, this would have been known around 2010.**

Furthermore, Exhibition Boards for the Filey Flood Alleviation Scheme[[1]](#footnote-1) noted that “*the most recent phase of work on the Filey Flood Alleviation Scheme began in October 2013 to develop the scheme concept into a final detailed design ready for construction”.* Therefore, **as the draft Local Plan was not published until May 2014, again it is likely that if an allocation of open space was likely to be required for the Flood Alleviation Scheme, this would have been known at the draft Local Plan stage**.

*We now understand that a formal planning application for the scheme is imminent. Formal Notice has already been served on the owners of the land.*

*During discussions with landowners about the FAS it became clear that the details of the scheme would almost certainly result in the existing agricultural land immediately to the north of the town, as well as to the west and other locations around the area, becoming unusable as productive land.*

All consultation on the Filey Flood Alleviation Scheme to date has indicated that the land will continue to be used for agriculture.

In addition, it is unclear how the land would become unusable as all the consultation materials (including those used on the Exhibition Boards for the Filey Flood Alleviation Scheme) show examples of similar Flood Alleviation Schemes in agricultural settings.

Furthermore, the proposals on the Exhibition Boards for the Filey Flood Alleviation Scheme show that the swales / bunds would be located on existing field boundaries, therefore minimising the impact of the Flood Alleviation Scheme on agricultural land.

This also indicates that additional information is available, but has not been released.

*Not only is the land necessary to provide the FAS but a suitable use has to be found for it beyond its present productive agricultural use. The intention to allocate the land as informal recreational open space is therefore an appropriate way of addressing the future of the land, the ownership of which will form part of the proposed progression and implementation of the FAS.*

The proposed allocation of Site OS 10 is **specifically** linked to the proposed allocation of Site HA23 (see Local Plan, Appendix H). **The proposed allocations of both Site OS10 and Site HA23 are not (and should not) be linked to the Flood Alleviation Scheme.**

Also see e-mail from Cllr Mike Cockerill to G Wood (23-02-2015). **The proposed allocations and the Filey Flood Alleviation Scheme are “*separate matters”.***

*The fact that the open space allocation has been tied to the intended HA23 housing land allocation is as a result of the FAS not as a consequence of the proposed residential allocation.*

**THIS SENTENCE IS KEY – AND DEMONSTRATES THAT DISCUSSIONS HAVE BEEN HELD ‘BEHIND CLOSED DOORS’ WHICH LINK ALL THE THREE SITES / SCHEMES TOGETHER. SURELY THERE IS A QUESTION HERE OF “LEGAL COMPLIANCE”…**

*That residential allocation formed part of the original draft LP and has been carried through to the current stage with full Council agreement.*

*It is logical that the OS10 allocation be tied into the HA 23 allocation because it adds an additional benefit to the whole town as well as forming a further local benefit in adding an element of land use screening to both the existing and proposed residential development on the north side of Filey.*

*It is a matter of fact that in new residential development there will be a public open space requirement.*

It is not a “*matter of fact*”. **No open space requirement was recommended in the Green Space Audit 2014.** Indeed, in Filey, there is three times the recommended amount of ‘natural and semi-natural’ green space.

**Furthermore, if it was a “*matter of fact*”, the open space requirement would have been identified through the assessment of Site HA23. No requirement has been identified or recorded in any assessment.**

*The allocation of OS10 will be part and parcel of the HA23 allocation.*

The proposed allocation of Site OS 10 is **specifically** linked to the proposed allocation of Site HA23 (see Local Plan, Appendix H). **The proposed allocations of both Site OS10 and Site HA23 are not (and should not) be linked to the Flood Alleviation Scheme.**

*It will allow for local public open space that would otherwise have to be found elsewhere around Filey.*

**No open space requirement was recommended in the Green Space Audit 2014.** Indeed, in Filey, there is three times the recommended amount of ‘natural and semi-natural’ green space.

*In the event that the OS allocation was not to proceed following the current LP consultation it would have significant implications for delivery of the FAS which is vital to the town.*

The proposed allocation of Site OS 10 is **specifically** linked to the proposed allocation of Site HA23 (see Local Plan, Appendix H). **The proposed allocations of both Site OS10 and Site HA23 are not (and should not) be linked to the Flood Alleviation Scheme.**

**THEREFORE AGAIN THIS SENTENCE IS KEY – AND DEMONSTRATES THAT DISCUSSIONS HAVE BEEN HELD ‘BEHIND CLOSED DOORS’ WHICH LINK THE SITES / SCHEMES TOGETHER.**

If the proposed allocation of Site OS10 was required for the Flood Alleviation Scheme, this would have been known as early as 2010 and would also be specifically noted in the Local Plan. Instead the proposed allocation is **specifically** linked to the proposed allocation of Site HA23 (see Local Plan, Appendix H).

See e-mail from Cllr Mike Cockerill to G Wood (23-02-2015). **The proposed allocations and the Filey Flood Alleviation Scheme are “*separate matters”.***

*It would also require appropriate amendments to be made to the HA23 allocation. Given that the residential proposal formed part of the previous consultation and was not subject to any need for public open space along its northern boundary, the removal of the OS10 allocation would not prevent the LPA from continuing to allocate the HA23 site for residential development to meet national, Borough wide and local needs.*

**CONTRADICTS ALL THE ABOVE INFORMATION / RESPONSE THAT LINKS ALL THREE SITES TOGETHER, AND SAYS THAT THEY ARE “PART AND PARCEL” OF THE SAME DEVELOPMENT.**

*The benefits of providing the open space in conjunction with the delivery of the FAS carry considerable weight in determining the acceptability of proposed LP Policy HC16, allocation OS10, as well as Policy HC2, allocation HA23.*

The proposed allocation of Site OS 10 is **specifically** linked to the proposed allocation of Site HA23 (see Local Plan, Appendix H). **The proposed allocations of both Site OS10 and Site HA23 are not (and should not) be linked to the Flood Alleviation Scheme.**

*However, the removal of the OS10 allocation would not result in the HA23 allocation having to be set aside as well.*

**AGAIN CONTRADICTS ALL THE ABOVE INFORMATION / RESPONSE THAT LINKS ALL THREE SITES TOGETHER, AND SAYS THAT THEY ARE “PART AND PARCEL” OF THE SAME DEVELOPMENT.**

*The LPA is able to justify the allocation of the land under PolicyHC16 allocation OS10 to meet the public open space requirements in the Borough over the plan period regardless of any other benefits that may arise from its allocation.*

**No open space requirement was recommended in the Green Space Audit 2014.** Indeed, in Filey, there is three times the recommended amount of ‘natural and semi-natural’ green space.

*The allocation of the land identified in OS10 is fully supported by the site owners who have indicated their willingness to work closely with those bringing forward the Filey Flood Alleviation Scheme. This will achieve a development that will help to deliver essential infrastructure to meet the needs of the town, recognised beyond the LPA and Town Council by those such as the Environment Agency. That infrastructure will be to the wider benefit of all residents and businesses within Filey.*

The proposed allocation of Site OS10 is **specifically** linked to the proposed allocation of Site HA23 (see Local Plan, Appendix H). It is not an allocation in its own right (that is, would not be brought forward without the allocation / development of Site HA23). **Therefore,** **it does not (or rather should not) form a fundamental part of the Filey Flood Alleviation Scheme, or indeed any other scheme.**

The objection to the proposed allocation of Site OS10 **is not** an objection to the Flood Alleviation Scheme (as the two are not linked).

*We shall be pleased if you will have regard to this representation in support of the intended allocation of site OS10 under LP Policy HC16.*

**Necessary Changes to make Local Plan legally compliant or sound**What are the changes required to make the Scarborough Borough Local Plan legally compliant or sound? (If you support the Plan then please type N / A)

*N / A*

**If your representation is seeking a change, do you consider it necessary to speak at the Examination in Public? (If you are not seeking a change select N / A)**

*Yes*

**If you wish to speak at the Examination in Public, please state why you consider this to be necessary. If you have selected No, your representation(s) will still be fully considered by the independent Planning Inspector by way of your written representation(s). (If you are not seeking a change please type N / A)**

*We also wish to reserve the opportunity to appear at the Examination in Public into the provisions of the LP should it be necessary to further our clients support in principle for the terms of the plan.*

1. <https://fileyfloodalleviationscheme.files.wordpress.com/2015/06/filey-fas_public-exhibition_june-2015_display-boards_v2_11-06-2015.pdf> [↑](#footnote-ref-1)