

EXAMINATION OF THE TUNBRIDGE WELLS LOCAL PLAN 2020-2038

Matter 10, Issue 6, Question 3

Rep:1266536

Subject: Policy ED5 and the conversion of Rural Buildings to residential development

To be heard on the 7th July 2022- Hearing Day 17

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1. Policy ED5 of the Local Plan is not “sound” in terms of Para 35 of the NPPF. It is specifically contrary to Para 80 of the NPPF but in so doing it is also contrary to para’s 6, 53 and 54 of the NPPF.

2. Para 80(c) of the NPPF specifically states that re-use of redundant or disused buildings in the countryside for residential use would be acceptable subject to the enhancement of their immediate setting . It is a specific issue that was chosen by the Government to be included in the NPPF and is not subject to any further criteria. It did not have to be included in Para 80 or it could have been subject to further criteria but it was not. It is one of five circumstances in Para 80 where residential development is permitted. The five circumstances are mutually exclusive and only one of them needs to be met to satisfy Para 80. As worded it is a proactive policy that gives a positive presumption in favour of such development.

3. Para 6 of the NPPF states that “other statements of Government Policy may be material when preparing plans...” and clearly permitted development rights are material with regard to this issue.

4. Government Policy in Schedule 2, Part 3 of the T& CP(General Permitted Development)(England)Order 2015 specifically allows

redundant /disused agricultural buildings to go to residential use without any requirement that they first be tested for an alternative economic use or be of historic merit. The overall purpose of the General Permitted Development Order (GPDO) is too fast track **non contentious development** and specifically with regard to redundant rural buildings is to provide much needed additional residential units. This priority of providing additional residential units over other uses is also demonstrated elsewhere in Part 3 of the GPDO. Classes O and P give permitted development rights to changing business use and storage / warehouse uses to residential development respectively.

5. With regard to the weight to be given to permitted development rights in the GPDO the NPPF in Para's 53 and 54 sets out the situations when Article 4 Directions and Conditions can be used to take away Permitted Development rights. Para 53 states, inter alia:

“The use of Article 4 directions to remove national permitted development rights should:

- where they relate to change from non-residential use to residential use, be limited to situations where an Article 4 direction is necessary to avoid **wholly unacceptable adverse impacts...**”

6. And Para 54 states:

“ Similarly, planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so.....”

7. With regard to para 53 of the NPPF the Local Authority have not demonstrated that the change of use of redundant/disused buildings in the countryside to residential use will lead to “ wholly unacceptable adverse impacts” or with regard to Para 54 of the NPPF there is any justification to impose onerous conditions on such residential uses or

that Tunbridge Wells Borough has any special circumstances with regard to this issue that would justify going against national policy .

8. The Government not only supports the conversion of these buildings to residential use without onerous conditions but considers it is non-contentious to the extent that they have permitted development rights.

9. Thus Policy ED5 is contrary to the wording and the spirit of the NPPF and the Governments approach with regard to permitted development rights.

10. The justification for Policy ED5 is set out in paragraphs 6.474- 6.479 of the Local Plan under the title “Conversion of Rural Buildings outside the Limits to Built Development” . In para 6.475 it accepts that it is possible to convert agricultural and other commercial buildings under permitted development rights to residential use but in para 6.476 It then states that **where proposals fall outside these permitted development rights** the Local Authority will apply the following approach which is then set out in Policy ED5. If this is the case then the Policy should specifically state that it only refers to categories of rural buildings not covered by permitted rights. However the Policy will then only relate to a small minority of rural buildings. The majority of rural buildings that will be suitable for conversion too dwellings will be disused /redundant agricultural buildings and will therefore come within permitted development rights. This calls into question the need for the Policy.

11. The Policy will also be inequitable and unjustifiable. For example why should a non-Listed barn be able to go to a residential use with no onerous restrictions under permitted development rights where as a Listed Barn that is not covered by permitted development rights be subject to a pro employment policy with residential use being only in exceptional circumstances. Furthermore what is the planning justification for such a position. If there is no material harm from a non-Listed Barn going to residential use then why is the position different for a Listed Barn?

12. If on the other hand the policy covers all rural buildings then it will lead to confusion and inconsistencies. For example, a barn in the countryside could be converted to residential use under permitted rights but if a full planning application was submitted for a nearby barn it would be subject to the very onerous criteria in Policy ED5. Furthermore it will force applicants to go down the permitted development route where the Local Authority will have very limited scope to exert further controls, whereas a permissive policy in the Local Plan will encourage applicants to proceed with full detailed planning applications where the LPA will have greater control.

13. These points go to the need, effectiveness and justification for Policy ED5 and thus its soundness in terms of Para 35 of the NPPF.

14. Para 6.477 of the Local Plan states that the NPPF promotes a prosperous rural economy as the justification for Policy ED5. However it makes no other reference to the NPPF, in particular Para 80(c) of the NPPF which is clearly central to the conversion of these buildings. It also fails to recognise the critical point that the approach of the NPPF is that a prosperous rural economy is entirely consistent with disused/redundant agricultural buildings being used for residential use. The Local Plan has not considered the NPPF as a whole but instead has been selective and “cherry picked” the parts that support their approach.

15. It is questionable why a Policy dealing with the conversion of redundant buildings to residential use is included in the section of the Plan dealing with Economic development. However what is clear is the presumption in Policy ED5 in favour of employment development over residential use. However this is not in conformity with the Government's approach. The NPPF seeks a ‘significant boost to housing delivery’ and contains lengthy and specific requirements to measure and meet

housing targets . While also acknowledging the importance of employment development it is clear that housing delivery is the most significant issue. As part of this provision Para 69 of the NPPF supports the development of windfall sites as does Para 4.15 of the Local Plan and Para 80 of the NPPF supports the re use of redundant buildings in the countryside for residential use.

16. Thus the thrust of National Planning Policy is to prioritise residential over employment uses and specifically the use of redundant rural buildings for residential use .In direct conflict Policy ED5 supports economic use for such buildings and only permits residential use in exceptional circumstances with very onerous conditions. Thus the approach in Policy ED5 is clearly at odds with the revised NPPF and other National policy with regard to this matter.

17. Policy ED5 provides very onerous tests with regard to demonstrating that rural buildings should first be considered for employment uses which includes the requirement for a lengthy 18 month marketing period .This will be highly onerous to the applicant and goes against the principle of rapid decision making. Policies should only be adopted if they can be justified in terms of meeting specific planning objectives and safeguarding against specific planning harm. Policy STR1 identifies the need for a further 14 ha of employment land in the Borough up to 2038 based on the Economic Needs Study (ENS) that was carried out for Tunbridge Wells and Sevenoaks in 2016. Para 4.56 of the Plan and the adjoining Table 5 in the Plan show gross employment allocations of 26.5 ha with a net developable area of 25.8 ha. Thus there is a very healthy economic land supply situation.

18. The ENS only makes general references to rural employment provision and that converted rural buildings only make a small contribution to Employment land supply and new employment provision should be made adjoining existing major employment areas or close to good transport links. With regard to “**existing**” employment sites it says in Para 10.32 that these should be protected but **consistent with the provisions of the NPPF**. It suggests marketing evidence over 2 years

should be provided to support a change of use and the the Council have misinterpreted this to apply it to rural buildings that are not existing employment sites. In its conclusions it does say that the council should react positively to applications for employment use in rural buildings but not to the extent that it should override other uses. The Economic Development Topic Paper puts forward a permissive approach to rural businesses but again there is no in-depth need analysis and no justification to override other policies. Thus in terms of provision there is no justification to prioritise employment over residential use with regard to conversion of these buildings.

19. It is also noteworthy that Policy ED5 allows redundant farm buildings to go to Tourism use without having to meet any of the tests for residential use. This also demonstrates that there is not an overriding need for these buildings to be used for employment purposes and it is clearly wrong that Tourism should be given priority over housing provision under current National and Local Planning Policies.

20. As stated above the need for residential units should have priority over the need for economic units and therefore there is no justification for the onerous tests in the Policy with regard to the residential use of rural buildings and therefore no material harm can be shown for giving residential use as a priority for the conversion of rural buildings . This would be in line with recent National Planning Policy.

21. There is also an objection to criteria (a) in Policy ED5 which is that buildings for conversion to residential use should have historic or architectural value. This again is completely contrary to para 80 of the NPPF. Para 80 sets out five circumstances where homes can be provided in the open countryside . Circumstance (b) relates to the preservation of heritage assets and circumstance (c) to redundant/ disused buildings. Only **one** of the circumstances has to apply to satisfy the policy. They are clearly separate issues in the NPPF . This is another example of Policy ED5 implying that that the conversion of redundant / disused buildings in the countryside to residential development is in some way onerous and needs special justification which is clearly contrary to the NPPF. The need to preserve buildings of historic or

architectural merit is covered by other policies in the Local Plan. In para 6.474 in explanation of Policy ED5 it acknowledges the importance of rural buildings generally and states;-

“Many of the existing buildings are of historic or architectural interest...others are not of historic or architectural interest but rather of a more functional appearance, however they are still reflective of the rural character and landscape”.

22. Criteria (a) is therefore unnecessary in planning terms, and contrary to National Planning Policy . Criteria (b) is not a requirement in Para 80(c) of the NPPF or under Class Q of Part 3 of Schedule 2 of the GPDO 2015 and should be deleted. Criteria (c) would be covered by other legislation and is not necessary and criteria (d) should be deleted for the reasons given above.

CONCLUSION

23. Policy ED5 is not “Sound” in terms of Para 35 of the revised NPPF for the following reasons:

(1).It has not been positively prepared . It is a confused Policy that seeks to deal with employment ,redundant buildings, historic buildings and tourism in one policy in the Economic Development section of the plan. The overriding needs of the Borough are the provision of housing but Policy ED5 prioritises employment use over residential use with regard to disused rural buildings.

(2).It is not justified, effective or equitable. The evidence argues in favour of prioritising residential use in redundant rural buildings not employment.The approach to redundant/disused rural buildings is clearly set out in the NPPF and in Permitted Development Rights and no special justification has been put forward to override this approach. The policy will not be effective as the overall majority of rural buildings will be dealt with under Permitted Development Rights.

(3). It is inconsistent with National Planning Policy contained in the NPPF and in the T&CP(General Permitted Development)(England) Order 2015.

24. In order to meet these objections the following changes should be made:-

25. Proposed changes to Policy ED5:- The revised Policy ED5 should positively promote residential development in rural buildings outside the limits to built development and without the need to meet any of the tests for residential conversions in the current policy wording. Ideally the policy and supporting text should be completely re-written.

26. If the current policy text is to be amended then as a minimum the first sentence of the first paragraph should include reference to the acceptability of residential development with the other uses and the second sentence should be deleted. Criteria 7 should refer to the provision of Gardens. Criteria (a) (b) (c) and (d) and the penultimate paragraph of the Policy should be deleted .Delete Para 6.480 and 6.481 and Criteria 7 of Para 6.482 and all references to criteria (a) (b)(c) and (d) of the Policy and any other amendments needed in the explanatory text to be consistent with the proposed policy changes.

Note: All highlighting in this representation is my own.

