

Examination of the Tunbridge Wells Borough Local Plan

Tunbridge Wells Borough Council Hearing Statement

Matter 14: Sustainable Design and Heritage and Conservation (Policies STR2, STR4, STR7, EN1, EN2, EN3, EN4, EN5 and EN7) Issue 3: Heritage and Conservation

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Matter 14 – Sustainable Design and Heritage and Conservation (Policies STR2, STR4, STR7, EN1, EN2, EN3, EN4, EN5 and EN7)

Issue 3 – Heritage and Conservation

Inspector's Question 1: [Policies EN4 and EN5 – consistency with NPPF paragraphs 194 to 208]

Are Policies EN4 and EN5 positively prepared, justified, effective and consistent with national policy, in particular paragraphs 194-208 of the Framework?

TWBC response to Question 1

Introduction

1. Paragraph 36 of the NPPF advises that consideration of the tests of soundness of non-strategic policies should be done in a *“proportionate way, taking into account the extent to which they are consistent with relevant strategic policies for the area”*. In this regard, Policies EN4 and EN5 (see pages 337 to 346 of the Submission Local Plan (SLP) [CD 3.128](#)) fall under Strategic Policy STR8 Conserving and Enhancing the Natural, Built, and Historic Environment, and criteria 7 to 9 (see pages 64 to 66 of the SLP) are of relevance:

“7. The designated and non-designated heritage assets of the borough, including historic field patterns, routeways, listed buildings, conservation areas, Scheduled Ancient Monuments, archaeological sites, and historic parks and gardens, will be conserved and enhanced, and special regard will be had to their settings;

8. Regard shall be given to the Historic England Conservation Principles and the Council's Historic Environment Review, which identifies historic environment themes particular to the borough; and

9. The positive management of heritage assets through partnership approaches and measures will be encouraged, including by the use of conservation area management plans.”

2. It is considered that the provisions of Policy STR8 reflect national policy and that Policies EN4 and EN5 go on to provide the further detail that is required with regards to criterion 7 in terms of how heritage assets “*will be conserved and enhanced, and special regard... be had to their settings*”; criterion 8 in terms of how “*regard shall be given to the Historic England Conservation Principles and the Council’s Historic Environment Review*”, and criterion 9 in seeking “*the positive management of heritage assets through partnership approaches and measures will be encouraged, including by the use of conservation area management plans.*” The specific tests of soundness as set out in paragraph 35 of the NPPF for Policies EN4 and EN5 are considered below:

(a) Positively prepared

3. Policy EN4: Historic Environment, is positively prepared in that it recognises that the historic environment is a valuable asset and resource, which is important not only for its cultural and social value, but also its economic potential for the borough. The policy also makes reference to the Councils Historic Environment Review [\[CD 3.100\]](#) at paragraphs 6.54 and 6.55, which summarises the main themes and characteristics that help to form the local distinctiveness of the borough and make a significant contribution to its heritage. The policy does not preclude development, in that paragraph 6.56 and the policy wording go on to say that proposals for development will be required to reflect the local distinctiveness, condition (state of repair), and sensitivity to change of the historic environment... and that “*all new development shall contribute to the overall conservation and, where possible, enhancement, of the historic environment of the borough.*”
4. Policy EN5: Heritage Assets – although this policy is generally worded to be restrictive, it is considered to be positively prepared in that its key aim is to conserve or enhance the character, appearance, amenity, and setting of heritage assets in line with the thrust of national policy, and supported by the local historic environment evidence base work in the Historic Environment Review. As set out at paragraph 189 of the NPPF:

“These assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations.”

(b) Justified

5. Policy EN4: Historic Environment - Whilst reflecting national policy, the details within Policy EN4 also reflect local circumstances and guidance, in particular the Historic Environment Review (referred to above), and the heritage characteristics distinctive to the borough as set out in the list at paragraph 6.51. Given the great weight attached to protecting, conserving and where possible enhancing the historic environment, it is considered appropriate and justified for the policy to set out what information and assessments are required for any development proposals which may affect it.
6. Policy EN5: Heritage Assets – Again, whilst reflecting national policy the details within the policy also reflect local circumstances such as that set out at paragraph 6.59:

“Tunbridge Wells borough has a rich and diverse built heritage, including a large number of heritage assets, all set within its historic towns and villages, a well-preserved medieval and pre-medieval landscape (dating back to Palaeolithic, Mesolithic, and Neolithic periods) of dispersed settlements, ancient routeways, ancient woodland, veteran trees, farmland, and farmsteads. A high percentage of the borough falls within the High Weald AONB, which is recognised as an important medieval landscape. Many of the heritage assets are identified as components of the natural beauty of the AONB.”

7. In addition to this, the supporting text to the policy sets out the Scheduled Ancient Monuments located in the borough, descriptions of the archaeological history and make-up of the borough, details of Historic Parks and Gardens across and within close proximity to the borough boundary; as well as its significant areas of ancient woodland. Given the great weight attached to protecting, conserving and enhancing the character, appearance, amenity, and setting of heritage assets, it is considered appropriate and justified for the policy to set out what approach will be taken, and the information and assessments required for any development proposals which may affect them.

(c) Effective

8. Policy EN4: Historic Environment – again, key to this policy is the Historic Environment Review and the list of relevant guidance set out at paragraph 6.56. It is considered to be effective in that it clearly sets out what information and assessments are required for any development proposals which may affect the historic environment. Paragraph 6.52 also states that the development management policies, in order to be effectively integrate heritage the borough’s policies, should be considered in conjunction with other policies in the Plan, which are then listed. This reference ensures that there is a strong thread for the protection of the borough’s heritage assets throughout the Plan.
9. Policy EN5: Heritage Assets – this policy is considered to be effective in that it clearly sets out each heritage asset – listed buildings, conservation areas, historic parks and gardens etc. and the requirements for each of these in relation to any development proposals which may affect them. Paragraph two of the policy wording makes it clear that:

“Designated heritage assets are the subject of separate legislative planning requirements, as set out in the above supporting text for each heritage asset type, and proposals shall specifically have regard to these.”

10. During the course of the local plan preparation, advice was sought and received from Historic England to ensure that, based on that organisation’s wide ranging experience, the wording of policies EN4 and EN5 policy would be effective in meeting the aims of the Historic Environment Review and the NPPF, to then be taken forward into the SLP. This agreement of the wording is set out in a Statement of Common Ground between the Council and Historic England as set out in Appendix H6, pages 79 to 88 of [CD3.132c \(v\)](#).

(d) Consistent with national policy

11. Policy EN4: Historic Environment – paragraphs 192 and 193 of the NPPF, advise that local planning authorities should maintain or have access to a historic environment record, containing up to date evidence about the historic environment in their area, including the significance of heritage assets and the contribution they make to their environment; and that this information should be publicly accessible. As mentioned above, the Council’s Historic Environment Review is such a record and is an important point of reference in the Policy EN4 (and EN5) in that it is one of a number of guidance

documents which would be used in the preparation and assessment of development proposals which affect the historic environment.

12. Policy EN5: Heritage Assets. Firstly it should be noted that this policy is not intended to directly repeat NPPF advice or national Planning Policy Guidance [PPG- Conserving and enhancing the historic environment](#), as it is expected that national guidance would be followed alongside SLP policies in the submission and assessment of development proposals affecting heritage assets; indeed the fifth paragraph in the Policy wording states that:

“Proposals should also comply with the advice set out in the Conserving and Enhancing the Historic Environment section of the NPPF (and any subsequent versions).”

13. However, this policy is considered to be consistent with the thrust of national policy, as follows:

Proposals affecting heritage assets (paragraphs 194 to 198 of the NPPF)

14. Paragraph 194 of the NPPF states:

“In determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets’ importance and no more than is sufficient to understand the potential impact of the proposal on their significance...”

15. It is considered that paragraph 6.67 of Policy EN5 makes provision for this as follows:

“The setting, significance, and importance of historic buildings can be seriously harmed by inappropriate neighbouring developments and/or uses. Therefore, for any proposals that would have an impact on the setting of a listed building, applicants will be required to submit technical and illustrative information about the proposed development and its relationship to its setting as part of a heritage statement and/or design and access statement.”

16.Paragraph 194 of the NPPF also states that:

“Where a site on which development is proposed includes, or has the potential to include, heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation.”

17.It is considered that paragraph 6.83 of Policy EN5 makes provision for this:

“Developers will need to demonstrate that the archaeological implications of the development have been properly assessed, and an appropriately detailed written archaeological assessment may be required to be submitted with an application for development. Planning permission may be refused without adequate assessment of the archaeological implications”.

18.And paragraph 6.63 states:

“Where proposals affect sites of archaeological interest, it is probable that a desk-based assessment and possibly fieldwork will be needed.”

Considering potential impacts (paragraphs 199 to 208 of the NPPF)

19.NPPF paragraph 200 states that:

“Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification. Substantial harm to or loss of:

a) grade II listed buildings, or grade II registered parks or gardens, should be exceptional;

b) assets of the highest significance, notably scheduled monuments, protected wreck sites, registered battlefields, grade I and II listed buildings, grade I and II* registered parks and gardens, and World Heritage Sites, should be wholly exceptional.”*

20.Paragraph 6.60 of Policy EN5 is considered to be consistent with this:

“As set out in the NPPF, heritage assets are an irreplaceable resource that should be conserved or enhanced in a manner appropriate to their significance. Any harm or loss will require a clear and convincing justification. Substantial harm to, or loss of, heritage assets of the highest significance, such as scheduled monuments, grade I and II listed buildings, grade I and II* registered parks and gardens, will be wholly exceptional. The Vision and Strategic Objectives of the Local Plan set out that the high quality natural, built, and historic environment will be conserved or enhanced.”*

21. Paragraph 202 of the NPPF states:

“Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.”

22. The thrust of paragraph 6.65 of policy EN5 is considered to be consistent with this, in that:

“There is a presumption in favour of preserving listed buildings, and consent will only be given in very exceptional circumstances for their demolition. Poor condition is no justification for demolition, and where a building is redundant, every effort must be made to find an optimum viable new use, which should be consistent with the character, appearance, and fabric of the building.”

23. Paragraph 197 of the NPPF states:

“In determining applications, local planning authorities should take account of:

- a) the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;*
- b) the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality;”*

24. Paragraph 3 of the policy wording is considered to be consistent with the thrust of this in that:

“Proposals that will assist in bringing a heritage asset at risk back into a use consistent with its conservation will be encouraged.”

25. Paragraph 203 of the NPPF states:

“The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.”

26. Paragraph 6.63 of policy EN5 makes provision for this:

“For any development proposal affecting a heritage asset, the submission of a heritage statement will be required with the planning application. This statement should describe the significance of the heritage asset based on historic research and the impact of the proposal on the significance. It should be proportional to its importance and clearly show the context of the proposal...”

27. While the policy itself includes the following wording:

“Applications will be assessed with reference to the following:

- 1. the historic and/or architectural significance of the asset;*
- 2. the prominence of its location and setting;*
- 3. the historic and/or architectural significance of any elements to be lost or replaced.”*

28. Paragraph 204 of the NPPF states that:

“Local planning authorities should not permit the loss of the whole or part of a heritage asset without taking all reasonable steps to ensure the new development will proceed after the loss has occurred.”

29. The final paragraph of the policy wording is considered to address this:

“Should permission be granted for the removal of part or all of a heritage asset, the Local Planning Authority will not permit the removal or demolition of the heritage asset until it is proven that the approved replacement development will proceed.”

Summary

30. For the reasons set out above, policies EN4 and EN5 are considered to be positively prepared, justified, effective and consistent with national policy.

Inspector's Question 2: [Policy EN5 – distinction between designated and non-designated heritage assets]

Does Policy EN5 adequately and accurately distinguish between designated and non-designated heritage assets?

TWBC response to Question 2

Introduction

31. Paragraph 189 of the NPPF states:

“Heritage assets range from site and buildings of local historic value to those of the highest significance, such as World Heritage Sites which are international recognised to be of Outstanding Universal Value. These assets are an irreplaceable resource, and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations.”

32. Paragraph 203 of the NPPF provides specific direction to local planning authorities when assessing the effect of an application on non-designated heritage assets, in that a “balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset”.

33. Paragraph Reference ID: 18a-040-20190723 of the [Planning Practice Guidance - Conserving and enhancing the historic environment](#) (PPG) confirms that authorities “should make clear and up to date information on non-designated heritage assets accessible to the public to provide greater clarity and certainty for developers and decision-makers. This includes information on the criteria used to select non-designated heritage assets and information about the location of existing assets”.

How are these non-designated heritage assets distinguished from designated heritage assets in the Local Plan?

34. With regard to the recognition given to non-designated heritage assets in paragraphs 189 and 203 of the NPPF above, it is considered that Policy EN5 reflects this protection to both non-designated and designated heritage assets as set out in the Framework, with the relevant paragraphs in the Framework referring to the conservation of each.

Paragraph five of the policy directs that proposals should comply with the advice set out in the Conserving and Enhancing the Historic Environment section of the NPPF.

35. The penultimate paragraph of Policy EN5 signposts to the List of Local Heritage Assets, which is under compilation, and is supported by the adopted [Local Heritage Assets](#) Supplementary Planning Guidance. This guidance includes a list of criteria against which potential non-designated heritage assets can be assessed, in accordance with the advice in paragraph 18a-040-20190723 of the above PPG. The Historic Environment Review ([CD 3.100](#)) sets out the historic environment themes that are distinct to the Borough and which assist in identifying non-designated heritage assets through the planning process, also in accordance with the aforementioned paragraph of the PPG. The Historic Environment Review is signposted in the penultimate paragraph of Policy EN5 as well.
36. These different typologies within the themes are discussed within the supporting text to Policy EN5, with paragraph 6.57 providing the opening to the text by stating that *“heritage assets are buildings, monuments, structures, sites, places, areas, whole landscapes, or elements of landscapes, identified nationally and locally as valued components of the historic character. They can include designated heritage assets and non-designated heritage assets identified by the Council as being of local historic importance (including local heritage assets or those identified during the determination of planning applications).* The following paragraph then clarifies that designated heritage assets, in comparison, are protected by national policy and legislation. During the course of the local plan preparation, advice was sought and received from the Kent County Council Heritage Team which resulted in the inclusion of further potential non-designated heritage asset typologies, such as the medieval and post-medieval farming landscape and remaining field boundaries from that period.
37. The second paragraph of Policy EN5 distinguishes designated heritage assets from non-designated heritage assets, and from each other. As set out under Question 1 above, during the course of the local plan preparation, advice was sought and received from Historic England, and the phrase *“designated heritage assets are the subject of separate legislative requirements”* was added at their request to distinguish these from non-designated heritage assets, and to distinguish the different types of designated heritage assets from each other in relation to the discrete legislative requirements.

38. 'Local Heritage Assets' are referred to separately in the list of assets set out in the sixth paragraph of the policy, followed by a separate paragraph dedicated to non-designated heritage assets. This describes the particular non-designated heritage assets that the Council has identified to date and refers to the advice in the paragraph 18a-040-20190723 of the above PPG on non-designated heritage assets.
39. To support this, paragraph 6.61 of the supporting text deals specifically with local heritage assets. This states that:

"Local heritage assets are those that appear on the local list of heritage assets and those that may be identified through the development management process as non-designated heritage assets. Non-designated heritage assets have no statutory protection, but are protected by national policy and guidance. They can include many different types of assets, such as structures, pavements and road surfaces, ancient trees, and other landscape features, which are considered to have a degree of local heritage significance and merit consideration in planning decisions".

Summary

40. In summary, policy EN5 and its supporting text in the Plan is considered to be consistent with the policies within the Framework and adequately and accurately distinguishes between designated and non-designated heritage assets, consistent with references to best practice in dealing with these assets, as set out in the Planning Practice Guidance.