

Inspector's question 91

I would welcome the Council's observations on the various representations alleging that policy BE1 is inconsistent with passages of the NPPF; 278 Nigel Wilson on behalf of Buckinghamshire Archaeological Society, 797 Mark Rose of Define on behalf of Bovis Homes, 1638 Mrs Nicole Penfold of Gladman Developments Ltd, 1704 Cameron Austin-Fell of RPS Planning and Development on behalf of Richborough Estates, 1812, Jonathan Liberman of Boyer Planning Ltd on behalf of Wates Developments Ltd.

AVDC's Responses

The representations referred to by the Inspector have been summarised below, with the Council's observations following.

Cameron Austin-Fell of RPS Planning and Development on behalf of Richborough Estates 1704

The policy needs to be re-considered in light of the requirements of the NPPF and NPPG. For example the policy states that development will not be permitted if it causes harm to the character or appearance of conservation areas or their settings. This is inconsistent with chapter 12 of the NPPF. An example of where the Local Plan allows for the balancing approach to take place is Policy NE1 (first sentence). The Council should re-consider all policies in the plan in this context.

AVDC Response

Paragraph 8.10 specifies that conservation areas are deemed locally designated heritage assets. Paragraphs 8.12 and 8.13 set out in what manner development can cause harm to conservation areas. Paragraph 8.14 states that "If harm is likely to be caused [to a conservation area], this must be weighed in the wider planning balance." Paragraph 133 of chapter 12 of the NPPF states that "*Where a proposed development will lead to substantial harm to or total loss of significance of a designated heritage asset, local planning authorities should refuse consent, **unless it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh that harm or loss...***" This is presumed to be the 'balancing approach' that is stated to exist in the first sentence of policy NE1 which states that "*Development proposals that would lead to an individual or cumulative significant adverse impact on SSSIs, or irreplaceable habitats such as ancient woodland or ancient trees the Council will be refused **unless exceptional circumstances can be demonstrated and that the impacts to the site are clearly out weighed by the benefits of the development.***" Policy BE1 contains a similar passage stating that "*There will be a presumption in favour of retaining heritage assets wherever practical, including archaeological remains in situ, **unless it can be demonstrated that the harm will be outweighed by the benefits of the***

development.” As such, the Council proposes no amendments to the policy as it already allows for the balancing approach referred to in the representations. It is also the case that the balancing approach is not appropriate for heritage assets as per paragraphs 132 to 134 of the NPPF where the public benefit is the prime determinant in considering the harm from a development.

Nicole Penfold of Gladman Developments Ltd 1638

Nicole Penfold of Gladman Developments Ltd. states that policy BE1 does not conform with the NPPF. The necessary policy tests in relation to non-designated heritage assets are not applied. The NPPF provides clear guidance on the policy approach Local plans should be adopting. It requires a clear distinction between designated and non-designated heritage assets and outlines that different policy tests should then be applied to proposals which may affect each of these.

Further it is stated that, with reference to designated heritage assets, the Council should refer to para. 132 to 134 of the NPPF which sets out that the Council should assess the significance of the designated heritage asset and where there is less than substantial harm, this should be weighed in the planning balance against the public benefits of the proposal. Where there is deemed to be substantial harm, then the proposal would need to achieve substantial public benefits to outweigh that harm. Gladman welcome and support these changes to the policy. BE1 does not provide for the balanced judgement identified within the NPPF in respect of non-designated heritage assets. Para 135 states that the policy test to be applied is that a balanced judgment should be reached having regard to the scale of any harm and the significance of the heritage asset. Gladman recommend that the Council review and update this policy to ensure that it complies with national policy to ensure the soundness of the plan.

AVDC Response

The Council acknowledges the points made by Nicole Penfold. In relation to the point made regarding necessary policy test. It is the view of the Council that the preamble presented prior to the policy set out the necessary detail for planning applications for designated and non-designated heritage assets to be dealt with through the policy in accordance with the NPPF regarding the separate policy tests for designated and non-designated heritage assets. The Council agrees that there should be reference made to paragraphs 132 to 134 of the NPPF and proposes to add this to the existing paragraph 8.4. Reference to the requirements of paragraph 135 of the NPPF has been made in paragraph 8.3 of the preamble. As such, the Council proposes no amendments in this regard.

However in the council’s response to Inspector’s question 21 regarding issues raised by Historic England, the council has agreed to modify policy BE1 to address a

disparity with the NPPF and considers that this addressed the points raised by the representor.

Jonathan Liberman of Boyer Planning Ltd on behalf of Wates Developments Ltd. 1812

The policy states “Where a development proposal is likely to affect a designated heritage asset and or its setting, the significance of the heritage asset and the impact of the proposal must be fully assessed and supported in the submission of an application.”

This is inconsistent with para 128 of NPPF which emphasises proportionality rather than ‘fully assessed’:

“128. 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. As a minimum the relevant historic environment record should have been consulted and the heritage assets assessed using appropriate expertise where necessary. 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”.

AVDC Response

The Council acknowledges this point and proposes to reword the policy in order to clarify that a full assessment of the significance of the heritage asset is required, and that the impact of the proposal should be assessed in proportion to the asset’s importance.

The representor goes on to point out that the policy also states that “Heritage statements and/or archaeological evaluations will be required for any proposals related to or impacting on a heritage asset and/or known possible archaeological site”. Archaeological evaluation implies some form of field testing (i.e. trial trenches) but this is not necessary for certain types of development where scale, location and previous knowledge indicate that field testing is not necessary. In some cases an archaeological desk-top study may be sufficient. A requirement in all cases, as set out in the policy, does not seem justifiable and the phrase ‘may be required’ rather than ‘will be required’ seems more appropriate.

The Council acknowledges the point made, but disagrees that the term ‘archaeological evaluations’ exclusively implies field testing. A desk based

archaeological assessment could be covered by the term as well. An archaeological interest is defined in paragraph 8.32 of the VALP as an above-ground archaeological site or historic building recorded in the Buckinghamshire County Council Historic Environment Record. As such, it is reasonable for the policy to require an archaeological evaluation for developments that are likely to affect a designated heritage asset or its setting.

The representor's next point is that sub-section b) states: "Require development proposals that cause substantial harm to, or loss of a designated heritage asset and its significance, including its setting, to provide a thorough heritage assessment setting out a clear and convincing justification as to why that harm is considered acceptable. Where that case cannot be demonstrated proposals will not be supported unless the harm or loss is necessary to achieve substantial public benefits that outweigh the harm or loss and accord with the requirements of national guidance..." This wording is inconsistent with paragraph 133 of the NPPF as it only duplicates the NPPF in part, setting up a potential contradiction between local and national policy.

The Council acknowledges this point but disagrees with it. Paragraph 133 of the NPPF states "Where a proposed development will lead to substantial harm to or total loss of significance of a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh that harm or loss, or all of the following apply:

- the nature of the heritage asset prevents all reasonable uses of the site
- no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation
- conservation by grant-funding or some form of charitable or public ownership is demonstrably not possible
- the harm or loss is outweighed by the benefit of bringing the site back into use".

It is clear that, while parts of paragraph 133 are paraphrased, there is no contradiction or discord between what is stated in the policy and in the NPPF. As such, the Council proposes no amendments in regards to this.

However, in the council's response to Inspector's question 21 regarding issues raised by Historic England the council has agreed to modify policy BE1 to address a disparity with the NPPF and considers that this addressed the points raised by the representor.

Nigel Wilson on behalf of Buckinghamshire Archaeological Society 278

We have a concern about non-designated heritage assets of archaeological significance within the Plan and urge that the following suggested amendments are included in the final version.

Paragraph 8.22: delete the words 'is a building and structure'. We would argue the criteria for defining significance in relation to non-designated heritage assets should apply equally to buildings, structures and archaeological remains, whether they be above or below the surface of the ground.

The Council agrees that the criteria for defining significance in relation to non-designated heritage assets should apply equally to buildings, structures and archaeological remains. The words 'is a building and structure' will be removed to clarify this. Additionally, paragraphs 8.23 to 8.26 will be moved to after paragraph 8.37 to further clarify this.

The representor goes on to argue that paragraph 8.32 needs development to include:

(a) The definition of archaeological interest needs to correspond with the definition set out in the NPPF Glossary in Annex 2. This reads 'There will be archaeological interest in a heritage asset if it holds, or potentially may hold, evidence of past human activity worthy of expert investigation at some point. Heritage assets with archaeological interest are the primary source of evidence about the substance and evolution of places, and of the people and cultures that made them.'

(b) The identification of the archaeological interest of archaeological sites and historic buildings both above and below the surface of the land should be made in conjunction with the Buckinghamshire County Council Archaeological Service (or any successor organisation), who should take into account the County Council Historic Environment Record and any other relevant information.

AVDC Response

The Council notes these points. It is agreed that it is important for 'archaeological interest' to be defined under paragraph 8.32, and that this definition is based on the definition in the NPPF. As such, the Council will amend this paragraph to reflect this. The paragraph does already include the fact that Buckinghamshire County Council Archaeological Service will be part of the identification of archaeological interest, and as such opt to not amend this paragraph further.

Mark Rose of Define on behalf of Bovis Homes 797

Bovis Homes recognise the overarching principle of safeguarding heritage assets. However, the requirement to preserve the historic interest of archaeological remains in situ is too prescriptive with the result that it could prevent otherwise sustainable development. The policy should simply require an appropriate desk based assessment and, where necessary, field evaluation that would then determine the appropriate mitigation required taking account of the merits of the proposed development (NPPF paras. 128 and 129).

Soundness: For the reasons set out above, Bovis Homes object to Policy BE1, which is considered unsound on the basis that it is inconsistent with national policy.

AVDC Response

The Council mentions earlier in this response in relation to Jonathan Liberman of Boyer Planning's representations that the term 'archaeological evaluations' does not exclude desk based assessments where appropriate. This means that both an appropriate desk based assessment and field evaluation may be required. No amendments are proposed in regards to this.

Overall the council considers that the policy and preceding text should be revised as follows. It should be noted that this response should be cross reference to the council's response to Inspector's Question 21. Further amendments may be needed to address the changes which will result from that response.

Proposed amendments

Designated heritage assets

8.4 Designated heritage assets are a World Heritage site, scheduled monument, listed building, registered park and garden, registered battlefield, or conservation area. Designated heritage assets are protected by statute, as set out in relevant legislation, as well as by policy contained within **paragraphs 132 to 134** of the NPPF.

BE1 Heritage assets

The historic environment, unique in its character, quality and diversity across the Vale is important and will be preserved or enhanced. All development, including new buildings, alterations, extensions, changes of use and demolitions, should seek to conserve heritage assets in a manner appropriate to their significance, including their setting, and seek enhancement wherever possible.

Proposals for development shall contribute to heritage values and local distinctiveness. Where a development proposal is likely to affect a designated heritage asset and or its setting, the significance of the

heritage asset ~~and the impact of the proposal~~ must be fully assessed and supported in the submission of an application. **The impact of the proposal must be assessed in proportion to the significance of the heritage asset and supported in the submission of an application.** Heritage statements and/or archaeological evaluations will be required for any proposals related to or impacting on a heritage asset and/or known possible archaeological site.

Proposals which affect the significance of a non-designated heritage asset should be properly considered, weighing the direct and indirect impacts upon the asset and its setting. There will be a presumption in favour of retaining heritage assets wherever practical, including archaeological remains in situ, unless it can be demonstrated that the harm will be outweighed by the benefits of the development.

The Council will:

- a. Support development proposals that do not cause harm to, or which better reveal the significance of heritage assets
- b. Require development proposals that cause substantial harm to, or loss of a designated heritage asset and its significance, including its setting, to provide a thorough heritage assessment setting out a clear and convincing justification as to why that harm is considered acceptable. Where that case cannot be demonstrated proposals will not be supported unless the harm or loss is necessary to achieve substantial public benefits that outweigh the harm or loss and accord with the requirements of national guidance, and
- c. Require development proposals that cause less than substantial harm to a designated heritage asset to weigh the level of harm against the public benefits that may be gained by the proposal, including securing its optimum viable use.

Developments affecting a heritage asset should achieve a high quality design in accordance with adopted SPD and the Council will encourage modern, innovative design which respects and complements the heritage context in terms of scale, massing, design, detailing and use.