

Kirklees Local Plan Examination

Stage 4 – Various Matters

Note to clarify the council's position in relation to public benefit versus harm to heritage assets (including reference to relevant appeal cases)

- 1.1 During the course of the Stage 4 hearings a number of site allocation discussions focussed on the issue of the way in which the council has interpreted policy in the National Planning Policy Framework and guidance contained in the National Planning Practice Guidance. It was agreed that the council should provide a statement of their position and provide copies of relevant appeal decisions.

Kirklees Council Statement

- 1.2 The Council followed national historic environment guidance with respect to the allocations proposed in the Local Plan. Specifically NPPG paragraph 18a-019-20140306. This states that a clear understanding of the significance of a heritage asset and its setting is necessary to develop proposals which avoid or minimise harm. The Heritage Impact Assessments (HIAs) that the Council has prepared provide a clear understanding of any potential impact (upon the significance of heritage assets) of developing land that is currently undeveloped.
- 1.3 In accordance with Paragraph 129 of the NPPF, the HIAs also identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset) taking account of the available evidence and any necessary expertise, in order to avoid or minimise conflict between any heritage asset's conservation and any aspect of the proposed allocation.
- 1.4 The NPPG refers to such studies like HIAs as being able to reveal alternative development options, for example more sensitive designs or different orientations, that will deliver public benefits in a more sustainable and appropriate way. The HIAs identify alternative development options to minimise harm in the form of the mitigation measures they outline. The council welcomes incorporating mitigation measures as modifications to the other site specific considerations where deemed necessary in order to ensure that development can occur upon all areas within the allocations proposed. Such modifications would ensure that the public benefits flowing from providing a supply of housing are delivered in a more sustainable way.
- 1.5 The sequential approach to conserving and enhancing the historic environment that the Council has followed (i.e. identifying and minimising harm before weighing up public benefits) is an approach that was advocated by Historic England in their Regulation 19 response to the Local Plan.
- 1.6 Historic England stated at Publication Draft consultation stage that before allocating sites for development an assessment needs to be undertaken of the contribution which sites make to those elements which contribute towards the significance of heritage assets and what impact the loss of undeveloped sites and their subsequent development might have upon significance; if it is considered that the development of a site would harm elements which contribute to the significance an asset, then the Plan needs to set out the measures by which that harm might be removed or reduced; and if, at the end of the assessment process, it is concluded that the development would still be likely to harm elements which contribute to the significance of assets, then sites should not be allocated unless there are clear public benefits that outweigh the harm (as is required by NPPF, Paragraph 133 or 134).

- 1.7 In preparing the HIAs and accepting the incorporation of mitigation measures within the Plan, the Council has adhered to this process, and thereby considers, in light of having taken into account all reasonable alternative sites (based on proportionate evidence), that the public benefits of providing a supply of housing to meet the needs of present and future generations outweighs any less than substantial harm to the significance of designated heritage assets that may arise.
- 1.8 Throughout the NPPF, there is a presumption in favour of sustainable development, and therefore in favour of granting permission. That is the default setting. However, certain specific policies within the NPPF indicate situations where this presumption does not apply and where, instead, development should be restricted. Paragraph 134 is, one such policy. That said, paragraph 134 provides for a balancing exercise to be undertaken, between the 'less than substantial harm' to the designated heritage asset, on the one hand, and the public benefits of the proposal, on the other. Consequently it is the council's view that paragraph 134 should not be considered restrictive until public benefits are deemed, after undertaking a balancing exercise, to not outweigh harm to the significance of a designated heritage asset.
- 1.9 In terms of the scope of public benefits and whether they must address all dimensions/roles of sustainable development, or include heritage benefits as well, a recent appeal decision issued by the Planning Inspectorate supports the Council's contention that they do not (Appeal Decision APP/E2530/W/17/3181823).
- 1.10 This appeal decision serves to illustrate that providing a supply of housing to meet the needs of present and future generations is a public benefit that delivers social and economic progress, and is capable, in its self, of outweighing harm to the significance of designated heritage assets (as outlined under the terms of NPPG 18a-020-20140306 and NPPF paragraphs 7 and 134).
- 1.11 Attached are a number of planning appeal and Court of Appeal decisions which the council considers relevant to its position.

**Appendix 1 – Court of Appeal Decision: Forest of Dean
District Council and Secretary of State for Communities and
Local Government and Gladman Developments Ltd**

**Appendix 2 – Planning Appeal Decision:
APP/E2530/W/17/3181823 – Land off south side of
Kettering Road, Stamford, Lincs PE9 2JS**

Appendix 3 – Court of Appeal Decision: Dorothy Bohm and Secretary of State for Communities and Local Government and London Borough of Camden and Jez San