

## Kirklees Local Plan Examination

### Stage 3 – Policy hearings

#### MATTERS, ISSUES AND QUESTIONS (MIQs)

##### Council Response

#### **Matter 21 – Natural and historic environment policies**

- 1.1 This statement sets out the council's responses in relation to the Inspector's matters and issues. All the documents referred to in this statement are referenced within the main body of the statement.
- 1.2 The modifications proposed in this document have been provided to assist with the discussions at the hearings for this matter and have not been subject to sustainability appraisal testing or public consultation. Should it be necessary to make any of the modifications these will be added to the full schedule of modifications to the Local Plan which will be made available for comment and subject to sustainability appraisal at a later stage of the Examination in Public, subject to the delegated powers agreed by the council's Cabinet.

***Issue - Does the Plan set out positively prepared policies for conserving and enhancing the natural and historic environment, which are justified, effective and consistent with national policy?***

#### **[Policies PLP 30, 31, 32, 33, 34, 35]**

- a) Are the criteria in Policy PLP 34 requirements, or are they measures that the Council will seek to encourage?
- 1.3 Policy PLP 34 seeks to set out policy mechanisms to conserve and enhance the water environment in Kirklees in accordance with NPPF (NE1, paragraph 109) which states that the planning system should contribute to and enhance the natural and local environment by preventing new and existing development from contributing to or being adversely affected by unacceptable levels of water pollution. The measures listed state that support will be given to proposals which meet the policy criteria and as such seek to prevent negative impacts on water quality as well as assisting in improving water quality where possible in accordance with the Humber River Basin Management Plan (which provides the local context in relation to the EU Water Framework Directive) in accordance with NPPG (34-001-20161116).
  - 1.4 As stated in the policy, the council will be supportive of proposals meeting all of the criteria listed however, in reality there are some criteria which the council will require applicants to demonstrate whereas others are desirable as they seek to achieve wider water quality improvements. It may be beneficial for the council to take this opportunity to consider a modification to clarify the requirements of the policy. This would mean re-ordering of the requirements within the policy to clarify which elements are required and which are to be encouraged but would not result in additional criteria. Such a modification would clarify that the criteria which are requirements of the policy are those which aim to ensure proposals do not have a negative impact on water quality whereas the desirable criteria relate to water quality improvements.

- 1.5 The requirements include that proposals must not result in the deterioration of water courses or water bodies which is in accordance with the key objectives of the Water Framework Directive as set out in the guidance and recommendations in the Humber River Basin Management Plan. The modification would also clarify the requirement to ensure Source Protection Zones are protected from contamination as a result of the proposal in line with national guidance as set out by the Environment Agency's Groundwater protection technical guidance<sup>1</sup>. In accordance with NPPG ((NE2, 7-080-20150323), proposals would also be required to follow a hierarchy of drainage options to ensure the appropriate disposal of surface water reflecting the general aim of the surface water run-off hierarchy.
- 1.6 The remaining criteria listed in Policy PLP 34 are considered to be desirable as they seek to promote improvements to water quality beyond the impacts of the proposal and may not be applicable in all cases. The criteria setting out the desirable outcomes including assisting in achieving an improved status in surface and groundwater bodies and improving water efficiency through water conservation. The supporting text would also require an amendment (paragraph 13.43) to clarify the intention of the policy.
- 1.7 The council have noted an error in Policy PLP34 (Part 6b) where it states that "to comply with 'part a' this must be following treatment where necessary...." but should in fact state "to comply with part 1 of this policy this must be following treatment where necessary..... The council therefore consider that a modification is necessary to correct this error.

**Proposed modification:** (additions underlined and deletions crossed through)

Page	Relevant part of the Plan	Tracked change	Reason for change
141	PLP 34	<p>Amend Policy PLP 34 (Conserving and enhancing the water environment ) to read:</p> <p><i>Proposals <u>must:</u> <del>will be supported which:</del></i></p> <p><i>1. <del>Do not result in the</del> <u>Ensure no</u> deterioration of water courses or water bodies (including groundwater) <del>and by conserve</del> <u>conserving</u> and, <del>enhance where practicable, enhancing:</del></i></p> <p><i>a. the natural geomorphology of watercourses, including reinstating watercourses to their natural state through removal of modifications resulting from past industrial uses;</i></p> <p><i>b. water quality; and</i></p> <p><i>c. the ecological value of the water environment, including the functionality of habitat networks.</i></p> <p><del>2.</del> <u>2.</u> <i>Ensure Source Protection Zones are protected from contamination as a result of the proposal in</i></p>	Clarification

<sup>1</sup> <https://www.gov.uk/government/publications/groundwater-protection-technical-guidance/groundwater-protection-technical-guidance>

		<p><i>line with national guidance.</i></p> <p><del>6.</del> <u>3.</u> <i>Dispose of surface water appropriately (in accordance with the Local Plan drainage policy) adhering to the following networks in order of preference:</i></p> <p><i>a. to an infiltration based system wherever possible (such as soakaways);</i></p> <p><i>b. discharge into a watercourse with the prior approval of the landowner, navigation authority or Environment Agency, where applicable. To comply with part <del>a</del> <u>1 of this policy</u> this must be following treatment where necessary or, where no treatment is required, to prevent pollution of the receiving watercourse;</i></p> <p><i>c. discharge to a public sewer.</i></p> <p><u>Proposals are encouraged to:</u></p> <p><del>2.</del> <u>4.</u> <i>Make positive progress towards achieving 'good status or potential' under the Water Framework Directive in surface and groundwater bodies.</i></p> <p><del>4.</del> <u>5.</u> <i>Manage water demand and improve water efficiency through appropriate water conservation techniques including rainwater harvesting and grey-water recycling as well as considering water availability from surface water and groundwater sources.</i></p> <p><del>5.</del> <u>6.</u> <i>Improve water quality through the incorporation of appropriately constructed and maintained Sustainable Drainage Systems and surface water management techniques taking into account the sensitivity of groundwater.</i></p>	
P142	Paragraph 13.43	<p><u>13.43 To conserve and enhance watercourses and water bodies in Kirklees, proposals will be supported which do not result in their deterioration and where practicable should include measures to improve water quality especially in areas which are not currently and which make positive progress towards achieving 'good status or potential' under the Water Framework Directive. In Kirklees, modification of watercourses has occurred to facilitate past industrial uses. Where these modifications are now redundant and where flood risk would not be increased as a result, consideration should be given to their removal to facilitate improvements in biodiversity and water quality. The role of tree planting in appropriate locations within the catchment should be</u></p>	

		<i>considered in meeting the aims of improving water quality.</i>	
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**b) Does the absence of Conservation Area Appraisals in some parts of Kirklees have implications for the delivery of criterion 3c in Policy PLP 35 and the Plan’s strategy for the conservation and enjoyment of the historic environment?**

- 1.8 Paragraph 126 of the NPPF requires Local Plans to set out a positive strategy for the conservation and enjoyment of the historic environment. Alongside indicating the designated Conservation Area boundaries of the submitted Policies Map (SD3) and specific allocations which have been accompanied by Heritage Impact Assessments, this policy provides a key part of the positive strategy in the Local Plan towards conservation and enjoyment of the historic environment.
- 1.9 The Planning (Listed Buildings and Conservation Areas) Act confirms that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area when making decisions affecting them. The designation of Conservation Areas and their appraisals are not within the remit of the development plan with statutory duties laid out under the Planning (Listed Buildings and Conservation Areas) Act rather than the Acts and/or Regulations affecting the preparation of a Local Plan. Equally the duty to review their function and their boundary is also not within the remit of a development plan. Section 69 (2) of the Planning (Listed Buildings and Conservation Areas) Act states: *“It shall be the duty of a local planning authority from time to time to review the past exercise of functions under this section and to determine whether any parts or any further parts of their area should be designated as conservation areas; and, if they so determine, they shall designate those parts accordingly.”*
- 1.10 Proposals affecting the setting of a conservation area which do not have a conservation area appraisal are assessed on their individual merits, taking into account the original Conservation Area reports prepared when they were first established. This issue has been address by PINS in recent appeal cases in Kirklees, including (PINS Ref: APP/Z4718/W/17/3177622, Inspector Darren Hendley – copy attached). Paragraph 10 of this decision states:
- “The main issue reflects the statutory duty in Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. For the reasons set out above, I conclude the proposal would fail to preserve or enhance the character or appearance of the Conservation Area. This failure and the resulting harm to the significance of the heritage asset are of considerable weight and importance. The absence of a conservation area appraisal does not lessen the protection which is applied to the Conservation Area under the statutory duty (our emphasis). I also conclude the proposal would not comply with ‘Saved’ Policy BE5 of the Kirklees Unitary Development Plan (1999) which states that development within Conservation Areas should contribute to the preservation or enhancement of the character or appearance of the area.”*
- 1.11 In practice, most development proposals are accompanied by a form of heritage impact assessment to help understand whether proposals preserve or enhance a Conservation Area. Any impacts are further assessed through the council’s development management function taking on board specific comments from expert consultees.

- 1.12 The council does however recognise that criterion (b) of the policy requires proposals to conserve elements of Conservation Areas that have been ‘identified’ as contributing to their significance in relevant Conservation Area Appraisals. As some Conservation Areas do not currently have up-to-date appraisals a modification could be made to clarify how development proposals might be considered in the interim:

Ref	Page	Para/table/box	Tracked change	Reason for change
TBC	145	PLP35 (criterion 3b)	Amend text to read: <i>“ensure that proposals within Conservation Areas conserve those elements which <del>have been identified as contributing</del> <u>contribute</u> to their significance in the relevant Conservation Area Appraisals”</i>	Clarification

**c) Does the Plan provide sufficient protection for the historic canal network in Kirklees?**

- 1.13 Paragraph 14.9 of the Local Plan – Strategy and Policies document (SD1, page 146) states:

*“Much of the distinctiveness of Kirklees’ historic environment is steeped in the development of the textile industry. This is directly evident in surviving weavers’ cottages, some dating back to the 17<sup>th</sup> century, and mill complexes, both large and small, which developed in the late 18th and 19th centuries. Industrial activity also gave rise to associated projects such as mill workers’ housing and, in urban centres, commercial buildings and the historic canal network.”*

- 1.14 The council recognises that the historic canal network in Kirklees contributes significantly to its industrial revolution past and the increase in the textile industry - a key part of the local distinctiveness of Kirklees. A number of structures associated with the network are either listed buildings or sit within Conservation Areas; any structure that is not designated will be considered to be a non-designated heritage asset if appropriate in terms of significance. Therefore it is considered that Policy PLP35 criterion 3 would apply and any development proposals will be assessed against this and paragraphs 133, 134 and 135 of the NPPF (NE1).

- 1.15 In other parts of the Local Plan the policy framework assists the protection of the historic canal network, including:

- Policy PLP2 seeks to *protect and enhance the qualities* which contribute to the character of the district. Its place shaping statement for Huddersfield recognise that the River Holme, River Colne, Huddersfield Narrow canal and Huddersfield Broad canal, with the Aspley Marina and Waterfront Quarter can provide attractive settings for development and attract investment. The place shaping statement for Dewsbury and Mirfield recognise that there is potential to enhance river and canal corridors for the River Calder, Spen River and the Calder Hebble Navigation to help attract investment and provide an attractive setting and a leisure and recreation asset. The Kirklees Rural place shaping statement recognises that the Huddersfield Narrow

Canal, through Slaithwaite and Marsden and to Standedge provides a tourism and recreation asset.

- Paragraph 11.4 of the Local Plan – Strategy and Policies document (SD1, page 115) as part of PLP24 (Design) confirms *“The canal network across the district is a legacy of the industrial revolution, new development can help to enhance its setting and support the recreational role that it has today.”*
- Policy PLP32 (SD1, page 138) requires developments to take into account the landscape features and setting of rivers, canals, reservoirs and other water features within the landscape.

**d) Is the approach to designated heritage assets, as set out in section 1 of Policy PLP 35, consistent with paragraphs 132, 133 and 134 in the NPPF?**

1.16 Policy PLP35, criterion 1 states:

*“Development proposals affecting a designated heritage asset (or an archaeological site of national importance) should conserve those elements which contribute to its significance. Harm to such elements will be permitted only where this is outweighed by the public benefits of the proposal. Substantial harm or total loss to the significance of a designated heritage asset (or an archaeological site of national importance) will be permitted only in exceptional circumstances.”*

1.17 Paragraph 132 of the NPPF (NE1) seeks to ensure that substantial harm to designated heritage assets should be exceptional or wholly exceptional. The council considers that the policy as drafted allows the exceptional tests to be applied, particularly when considered alongside the advice set out in the NPPF (NE1).

1.18 Paragraphs 133 of the NPPF (NE1) confirms that where a proposed development will lead to substantial harm or total loss of a designated heritage asset should be refused 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; and
- no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; and
- conservation by grant-funding or some form of charitable or public ownership is demonstrably not possible; and
- the harm or loss is outweighed by the benefit of bringing the site back into use.

1.19 Paragraph 134 of the NPPF (NE1) states that 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 securing its optimum viable use.

1.20 The council considers that the policy as drafted allows the public benefit test to be applied, particularly when considered alongside the advice set out in the NPPF (NE1), however it may be desirable for clarification purposes to include modifications to the policy to confirm its overall alignment with the NPPF (NE1):

Ref	Page	Para/table/box	Tracked change	Reason for change
TBC	145	PLP35 (Section 1)	Amend text to read: “Development proposals affecting a	Clarification

			<p>designated heritage asset (or an archaeological site of national importance) should conserve those elements which contribute to its significance. Harm to such elements will be permitted only where this is outweighed by the public benefits of the proposal. Substantial harm or total loss to the significance of a designated heritage asset (or an archaeological site of national importance) will be permitted only in exceptional circumstances.</p> <p><u><i>“Development proposals affecting a designated heritage asset (or an archaeological site of national importance) should preserve or enhance the significance of the asset. Harm to the significance of the asset will only be permitted where there is clear and convincing justification and the harm is outweighed by the public benefit the development affords. In cases of substantial harm, development will only be permitted where there is clear and convincing justification and substantial public benefits are achieved, or where all of the following criteria are met:</i></u></p> <ul style="list-style-type: none"> <li>• <u><i>the nature of the heritage asset prevents all reasonable uses of the site; and</i></u></li> <li>• <u><i>no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; and</i></u></li> <li>• <u><i>conservation by grant-funding or some form of charitable or public ownership is demonstrably not possible; and</i></u></li> <li>• <u><i>the harm or loss is outweighed by the benefit of bringing the site back into use</i></u></li> </ul> <p><u><i>Loss or substantial harm to an asset should be exceptional and loss or substantial harm to an asset of the highest significance should be wholly exceptional.”</i></u></p>	
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**e) Is the approach to non-designated heritage assets, as set out in section 2 of Policy PLP 35, consistent with paragraph 135 in the NPPF?**

1.21 Policy PLP35, section 2 states:

*“Development proposals affecting archaeological sites of less than national importance should conserve those elements which contribute to their significance in line with the importance of the remains. In those cases where development affecting such sites is acceptable in principle, mitigation of damage will be ensured through preservation of the remains in situ as a preferred solution. When in situ preservation is not justified, the developer will be required to make adequate provision for excavation and recording before or during development. Proposals which would remove, harm or undermine the significance of a non-designated heritage asset, or its contribution to the character of a place are permitted only where the public benefits of the development would outweigh their harm.”*

1.22 Paragraph 135 of the NPPF (NE1) confirms that for proposals affecting 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. Policy PLP35 as submitted uses the term ‘*public benefits of the development would outweigh their harm*’. The council is of the view that there is little difference in the application of the words and the policy as drafted is generally consistent with the national planning policy framework. Should the policy need to be modified to clarify the policy’s consistency with the NPPF the final sentence of section 2 could be amended to read:

Ref	Page	Para/table/box	Tracked change	Reason for change
TBC	145	PLP35 (Section 2)	Amend text to read: “..... <i>Proposals which would remove, harm or undermine the significance of a non-designated heritage asset, or its contribution to the character of a place, <del>are permitted only where the public benefits of the development would outweigh their harm</del> will be <u>assessed against the scale of any harm or loss and the significance of the heritage asset.</u></i> ”	Clarification

**f) Does Policy PLP 35 provide a clear framework for conserving archaeological sites which is consistent with the NPPF?**

1.23 Paragraph 139 of the NPPF (NE1) states: “*Non-designated heritage assets of archaeological interest that are demonstrably of equivalent significance to scheduled monuments, should be considered subject to the policies for designated heritage assets.*”

1.24 The policy as drafted sets out in section 1 how non-designated archaeological sites which are considered to be of national importance will be considered in the same way as designated heritage assets in accordance with paragraph 139 of the NPPF (NE1). In relation to non-designated archaeological sites of less than national importance section 2 of the policy sets out the approach to be taken (subject to the proposed modification suggested by the council’s response to question (e). Should the policy need to be modified to clarify the policy’s consistency with the NPPF the first sentence of section could be amended as follows:



Ref	Page	Para/table/box	Tracked change	Reason for change
TBC	145	PLP35 (Section 2)	<p>Amend text to read:  <i><u>“Development proposals affecting archaeological sites of less than national importance (non-designated heritage assets of archaeological importance) that are demonstrably of equal significance to scheduled monuments, shall be subject to those policies for designated heritage assets. Substantial harm or total loss to the significance of a designated heritage asset will be permitted only in exceptional circumstances. <del>should conserve those elements which contribute to their significance in line with the importance of the remains.</del>”</u></i></p>	Clarification



## Appeal Decision

Site visit made on 26 September 2017

**by Darren Hendley BA(Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 5<sup>th</sup> October 2017**

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**Appeal Ref: APP/Z4718/W/17/3177622**

**Adjacent to 14 Manor Road, Farnley Tyas, Huddersfield HD4 6UL**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr and Mrs Michael Bullas against the decision of Kirklees Metropolitan Borough Council.
  - The application Ref 2016/62/93177/E, dated 30 August 2016, was refused by notice dated 1 March 2017.
  - The development proposed is the erection of a detached dwelling with an attached garage.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. For the purposes of clarity and accuracy, I have used the description of development and site address details that are given on the planning appeal form, and as these also reflect the Council's decision notice.

### Main Issue

3. The main issue is whether the proposal would preserve or enhance the character or appearance of the Farnley Tyas Conservation Area.

### Reasons

4. The appeal site comprises part of a paddock that forms a frontage onto Manor Road, which is defined by a stone wall. The site shares a common boundary with 14 Manor Road, whilst the boundaries with the remaining area of the paddock are undefined. To the rear of the site is open countryside. Further to the east, two new dwellings have recently been constructed at Park Farm. Opposite the site are dwellings, and to the east of these is a further paddock.
5. Manor Road's contribution to the Conservation Area is derived from a clustering of principally traditionally styled residential properties and farm buildings that are interspersed with open gaps that allow views through to the countryside. These gaps contribute towards the semi-rural character and are a constituent of the significance of this part of the Conservation Area. The importance of the site in this regard has been acknowledged through previous appeal decisions on the site in 1984 and 2001, albeit in relation to larger residential schemes.

6. The proposal, by virtue of its siting in close proximity to the boundary with No 14, would serve to increase the extent of linear built development along Manor Road. In doing so it would also erode the importance of the site as a gap that separates the existing clusters of development. Whilst a gap would remain to the new dwellings at Park Farm, this would be narrowed so as to give a noticeable consolidation of development that would detract from the contribution of the site to the prevailing character and appearance.
7. The narrowing of the gap would also reduce views into the countryside from Manor Road, as the view from in front of the site would be significantly reduced. The view through the remaining gap would also be framed by the increased presence of built development rather than the current largely uninterrupted view over the paddock into the countryside. This would further compromise the importance of the site as a gap between the clusters of development.
8. The proposed design does not change my views because the relevant consideration is the loss of the contribution of the site as part of an important open gap along Manor Road. Similarly, any restrictions over further building towards the remaining part of the gap up to Park Farm through the imposition of conditions would not overcome this detrimental effect as it would not address the loss of this character. The two new dwellings at Park Farm themselves are clustered and sited around the access with the farm buildings. With the different set of circumstances, the proposal fails to preserve the character. None of these matters alter my conclusions.
9. Reference has been made by parties to a recent appeal decision for a dwelling at 20 Manor Road. However, the proposal is on a different site and I have dealt with the current appeal on its merits. I also note comments made about how the Council dealt with the planning application, although this is not a matter for me to comment on in the context of this appeal.
10. The main issue reflects the statutory duty in Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. For the reasons set out above, I conclude the proposal would fail to preserve or enhance the character or appearance of the Conservation Area. This failure and the resulting harm to the significance of the heritage asset are of considerable weight and importance. The absence of a conservation area appraisal does not lessen the protection which is applied to the Conservation Area under the statutory duty. I also conclude the proposal would not comply with 'Saved' Policy BE5 of the Kirklees Unitary Development Plan (1999) which states that development within Conservation Areas should contribute to the preservation or enhancement of the character or appearance of the area.
11. Paragraph 132 of the National Planning Policy Framework (Framework) is also clear that when considering the impact of a proposal on the significance of a designated heritage asset, great weight should be given to the asset's conservation. For the purposes of paragraphs 132 to 134 of the Framework, I consider the proposal would lead to less than substantial harm to the significance of the Conservation Area, which is to be weighed against the public benefits.
12. The Council accepts it cannot demonstrate a five year housing land supply, and the proposal would make a contribution, albeit modest, to addressing the shortfall. In respect of a cumulative contribution, no evidence has been

submitted that demonstrates the proposal, in combination with other sites, would significantly contribute to addressing the shortfall. Given the harm that would arise to the character or appearance of the Conservation Area, this would not be outweighed by the benefit to housing land supply, or a demand for housing in the area. Although construction would give rise to some economic benefit, this would be likely to be modest and for a short duration. Consequently, these matters only provide limited weight in favour of the proposal. The public benefits would not outweigh the harm.

### **Conclusion**

13. The proposal would fail to preserve or enhance the character or appearance of the Conservation Area, and would cause less than substantial harm to the significance of the designated heritage asset that is not outweighed by the public benefits. Accordingly, I conclude the appeal should be dismissed.

*Darren Hendley*

INSPECTOR