

NORTH WEST LEICESTERSHIRE LOCAL PLAN EXAMINATION
POLICY He1 – CONSERVATION AND ENHANCEMENT OF NORTH WEST
LEICESTERSHIRE’S HISTORIC ENVIRONMENT
RESPONSE TO COMMENTS FROM COUNCILLOR SAFFELL ON BEHALF OF CASTLE
DONINGTON PARISH COUNCIL (REPRESENTOR 20)

- 1 Castle Donington Parish Council is concerned that Policy He 1 (as proposed to be modified in accordance with a Statement of Common Ground agreed between NWLDC and Historic England (EX/24)) does not go far enough in addressing the issue of harm to Heritage Assets. The Parish Council submitted a PowerPoint presentation, which was prepared by a third party and which included references to case law and the Framework, to support its case.
- 2 The presentation makes reference to the Barnwell judgment. This was clear that:
 - i. Within a conservation area the decision maker has two tasks, with the first being to pay special attention, which by extension must have considerable weight, to preserving.....
 - ii. ...Preserving means doing no harm (as opposed to requiring improvement to be made), and it follows that mediocre replacing mediocre is acceptable, as long as the replacement mediocre is no worse than that which it replaces
 - iii. If a development would conflict with the objective to preserve (in other words if it were worse than existing) then that should be weighed against any material considerations (benefits) but it would be exceptional to grant permission
 - iv. If a development would not conflict with the objective to preserve, then it should be considered in the normal way
 - v. If there is harm, but that harm were to be less than substantial, then the presumption to refuse would be lessened (but not eliminated entirely)
- 3 Also of relevance is The South Lakeland (House of Lords)¹ judgment which is clear in concluding that:

“...where a particular development will not have any adverse effect on the character or appearance of the area and is otherwise unobjectionable on planning grounds, one may ask rhetorically what possible planning reason can there be for refusing to allow it. All building development must involve change and if the objective of section 277(8) were to inhibit any building development in a conservation area which was not either a development by way of reinstatement or restoration on the one hand ('positive preservation') or a development which positively enhanced the character or appearance of the area on the other hand, it would surely have been expressed in very different language.....”
- 4 From the above it follows that if, in the judgement of the decision maker, what is proposed is no worse than what exists, then the presumption in favour of sustainable development, as set out in the NPPF, would apply. It is also the case that, if what is proposed is worse than existing, then the presumption would be to refuse permission, unless the harm would be less than substantial, and material considerations in favour of the development outweigh that less than substantial harm.
- 5 What this does not mean:
 - That any harm at all should automatically result in refusal of planning permission
 - That any modern development within a conservation area is automatically inappropriate

¹ South Lakeland District Council Appellants v Secretary of State for the Environment and Another Respondents
House of Lords 1992

- That any new development within a conservation area must improve the setting of the conservation area
- That any new development to or within the curtilage of a designated heritage asset should usually be refused

6 It is also necessary to consider what the NPPF has to say on this matter.

7 Paragraph 14 says that the presumption in favour of sustainable development applies unless specific policies indicate that development should be restricted, and included within the list of such policies is designated heritage assets and other heritage assets of archaeological interest referred to in paragraph 139.

8 Paragraphs 126 to 141 specifically consider conserving and enhancing the historic environment:

Paragraph 126	sets out that local planning authorities should seek to conserve assets in a manner appropriate to their significance
Paragraph 129	says that local authorities should assess the particular significance of an asset, and take that into account when considering the impact of a proposal
Paragraph 131	says that when considering planning applications, local planning authorities should take into account, <i>inter alia</i> the desirability of new development making a positive contribution to local character and distinctiveness
Paragraph 132	is clear that great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be
Paragraph 134	clarifies that where a development would lead to less than substantial harm, this should be weighed against the benefits
Paragraph 135	refers to a balanced judgement to be applied
Paragraph 138	says that not all elements of a conservation area will necessarily contribute to its significance. Loss of a building (or other element) which makes a contribution ... (should be assessed) taking into account the relative significance of the element affected and its contribution to the conservation area <u>as a whole</u>
Paragraph 140	concerns enabling development, and again refers to considering whether the benefits outweigh the harm

9 The theme of this section of the framework is that a judgement should be made, depending on the circumstances, whether the benefits of the proposal outweigh any harm. It is clearly set out that not all heritage assets have equal status.

10 Paragraph 133 of the NPPF is clear that "*Where a proposed development will lead to substantial harm or to total loss of significance of a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the harm is necessary to achieve substantial public benefits that outweigh that harm or all of the following apply [these are then listed in four separate bullet points]*"

11 Having regard to the various judgements and the NPPF, the proposed wording of Policy He1 (as proposed to be modified as set out in the Statement of Common Ground with Historic England) is, in the Council's view, consistent with the NPPF and, hence, the various judgements which have been made. It is wording which has been agreed with the Government's heritage advisor, Historic England.

- 12 It should be remembered that Policy He1 (2) works in conjunction with the NPPF and it is not necessary to repeat what the NPPF says. Instead Policy He1(2) establishes the Council's overall approach to proposals for development which could impact upon Heritage Assets.
- 13 The first sentence of He1(2) is phrased positively (in recognition of the generally accepted need for policies to be phrased in the positive rather than the negative) to support proposals for development which conserve the significance of a heritage asset. The second sentence then goes to make it clear that where harm would result a proposal will not be supported unless "*the works are justified, there are overriding public benefits and mitigation measures are secured*". The issue of justification is covered by the four bullet points which are listed in paragraph 133 of the NPPF. As already noted Policy He1 works in conjunction with the NPPF but does not repeat the NPPF's provisions.
- 14 It is quite clear that Policy He1 does not provide a carte blanche for development to harm Heritage Assets, but that it sets out the steps which will need to be undertaken to ensure that where harm does occur there is a justification and mitigation is provided.
- 15 Cllr Saffell refers to slide 16 from the presentation which accompanied his statement. This lists four bullet points the first two of which are particularly pertinent to this matter. The first bullet point states:

"The onus is now clearly on the applicant to demonstrate sufficiently powerful material considerations exist and are relevant/necessary to justify harm"

This is covered in Policy He1 by the last part of He1(2) as referred to above.
- 16 The second bullet point states:

"This includes showing that alternative options have been explored and ruled out that would otherwise avoid the resulting harm to the asset(s)".
- 17 Again this is covered by the reference in He1 (2) to "*the works are justified*" as set out above in paragraph 13.
- 18 As such the proposed modification set out in EX/24 is considered to be consistent with the NPPF, and established case law and is clear as to how the council as decision maker will consider proposals which could impact upon Heritage Assets.