



## ENGLISH HERITAGE

### COMMENTS SUBMITTED BY ENGLISH HERITAGE ON THE NATIONAL PLANNING PRACTICE GUIDANCE BETA VERSION

#### General points:

1. Various sections covering the processes relating to planning permission need either to specifically include reference to other statutory processes which are modelled on, or otherwise mirror in certain aspects, planning permission (including e.g. listed building consent and scheduled monument consent) or at least to include a general reference that other statutory processes follow the same general requirements (e.g. the sections on Appeals, Consultation and pre-decision matters, Flexible options for planning permissions, Making an application, Use of Planning Conditions, When is permission required).
2. There appears to be only one mention of pre-application discussions (under '*How can delays in the statutory consultation phase be avoided?*' in Consultation and pre-decision matters). There needs to be greater stress on pre-application discussions as early as possible so as to speed up both consultation and decision-making processes, both between applicants and local planning authorities and between local planning authorities and statutory and non-statutory consultees.
3. A number of sections, e.g. Appeals and Lawful development certificates, will need to cover matters arising from the ERR Act when the regulations come into force, i.e. in April 2014.

#### Detailed points:

##### **Appeals**

4. Table under section 3 – omit reference to conservation area consent; it has now been abolished and replaced by planning permission.
5. Section 1 – '*What type of cases could be recovered for decision by the Secretary of State?*' In order to be consistent with other mentions of World Heritage Site buffer zones in the document, the note 'and its setting including any buffer zone or equivalent' should be added after 'Outstanding Universal Value, integrity, authenticity and significance of a World Heritage Site'.

### **Assessment of Land Availability**

6. Section 3 flow chart contains the phrase 'overcoming constraints'. While it is clearly possible, and usually desirable to overcome some constraints, there are others, for example the existence of designated or undesignated heritage assets where the constraints cannot be overcome. That is not to say that development may not be acceptable if carefully located and designed but in some cases the constraints of some of the identified land may be too great to make development viable. This is not made clear enough in the flow chart and the supporting text.

Identifying sites with serious constraints at the earliest possible stage reduces wasted assessment work later on in the process. The guidance could usefully emphasise this.

### **Climate Change**

7. Section 3 might also usefully mention improving the energy efficiency of existing buildings.
8. Section 10 - Mention is made of passive solar design but not of other technologies, particularly heat pumps/biomass fuel.

### **Climate Change (and Flood Risk and Coastal Change)**

9. Reference appears to be missing to Shoreline Management Plans under Climate Change/sustainability appraisals and adapting to climate change (section 3-7), and also under Flood Risk and Coastal Change.

### **Conserving and enhancing the historic environment**

10. Section 1 - *'What is meant by the conservation and enhancement of the historic environment?'* English Heritage believes that this paragraph may be misleading in a couple of respects. Firstly, the word 'beneficial' (which appears twice) may be better replaced by 'active' or 'functional', so as to distinguish between utilitarian uses and the wider benefit to society of a heritage asset. Secondly, the phrase 'active management may not be necessary' may be better replaced by something like 'periodic changes may not be necessary', as the management of all assets needs active consideration. The distinction being highlighted is really that to achieve conservation of some assets change is necessary from time to time, whereas for a small category conservation is best achieved by consolidation and mitigation of the risks of decay alone.
11. Section 3 - *'What is a historic environment record?'* EH suggests that reference is made to HERs being dynamic records (i.e. they evolve over time and may be constituted in slightly different ways between local authorities) and the desirability of them being actively maintained and supported by dedicated expert staff.
12. Section 3 - *'What is a viable use for a heritage asset and how is it taken into account in planning decisions?'* The third paragraph uses the

phrase 'beneficial use'. For the reasons given above, this may be better phrased as 'active' or 'functional' use.

13. Section 3 - *'How to assess if there is substantial harm?'* The reaction to the guidance on substantial harm has not been positive. There is an appetite to explain the distinction between substantial and less than substantial harm, with many noting that it is the most common area of doubt and debate with an important consequence. Most also say that the guidance should be clearer that substantial harm is a high test.

There has been argument in a public inquiry since the publication of the NPPG that the planning guidance means that substantial harm can only arise when the designation status (or at least the grade) is under direct threat. This is arguably supported by a judicial review decision from last year that has recently come to our attention.

Such an approach is too formulaic, in our view. Assessment of harm to heritage significance and the degree of justification required should be a matter for the judgment of the decision-maker in each case.

Clearly, substantial harm is a high test and the guidance should make clear that less than substantial harm is the appropriate policy for the majority of harm cases. However, it is not appropriate to apply the high test only to cases where the result would be de-designation. That would, for example, elevate the loss of a grade II building well above the loss of an entire wing of a grade I internationally important palace.

So we would suggest a change to the guidance to give the general sense that substantial harm is a high test, whilst leaving the judgment on individual cases to the decision-maker. If we do not address this issue there is a risk of decision-makers feeling bound by the policy and its judicial interpretation to over-protect in some cases and under-protect in others.

14. Section 3 - *'What about harm in relation to conservation areas?'* Firstly, EH believes that the first sentence could cause confusion and should be reduced down to the essence of the point by deleting from 'and unlike' to the end of the sentence. Secondly, we believe it is misleading to suggest that s72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 applies only in the circumstances described in the second sentence. It applies to all development within a conservation area. The reference should be deleted, in our view.

15. Section 4 - *'How are World Heritage Sites protected and managed in England?'* The current circular (07/09) refers to the outstanding universal value as being a 'key material consideration'. This should be reflected in the guidance.

16. Section 5 - *'How are non-designated heritage assets identified?'* 2<sup>nd</sup> paragraph of the sub-heading. For improved clarity English Heritage

suggests adding in 'When considering development proposals, LPAs should establish if any potential.....' at the beginning of the second paragraph, as this guidance has been wrongly interpreted as being about the process of making local lists. It is intended to be guidance on the process of considering a particular development proposal.

17. Section 7 – '*When does the Garden History Society need to be consulted on applications for listed building consent?*' Text should read '*... consulted on certain planning applications*'.

### **Consultation and pre-decision matters**

18. Section 3 - '*How can delays in the statutory consultation phase be avoided?*' This appears to be the only time that early pre-application discussion is mentioned. This is one of the key aspects which should be emphasised, i.e. that early discussions are likely to lead to a better understanding of the issues on all sides, and will likely result in smoother applications and determinations. It would be helpful if Government could emphasise this.
19. Section 7 - '*Is it possible for a statutory or non-statutory consultee to direct refusal of an application?*' It states that it is not possible for a statutory or non-statutory consultee to directly refuse an application. English Heritage has powers in London to direct decisions as per the Planning (LB and CA) Act and Regulations.
20. Section 8 - the table shows The Garden History Society to be a consultee (which is correct) but the text alongside it refers to English Heritage. This needs to be amended.
21. General comment on section - Given the interest in applications that potentially affect Outstanding Universal Value of a World Heritage Site, it would be helpful to refer to the requirement to consult the local planning authority, English Heritage and Natural England at an early stage, preferably pre-application, to review impacts so they can be minimised and/or mitigated.

### **Design**

22. Section 1 – '*How can design guide the consideration of planning and development proposals, and can applications where design is poor be refused?*' A mention of architectural design assessment and/or urban design advice would be helpful here. Local authorities with access to appropriate skills in this area are likely to be able to make better quality decisions.
23. Section 1 – '*What are the outcomes of good design?*' English Heritage suggests that a new bullet point is added: 'encourage accessibility for all'.

### **Ensuring effective enforcement**

24. English Heritage recommends that a reference is made to the criminal sanctions if enforcement is not complied with, as well as criminal offences for listed buildings and scheduled monuments.
25. The NPPG is also unclear as to how to deal with demolition in a conservation area once it is within the ambit of planning permission rather than separate conservation area consent.

### **Ensuring the vitality of town centres**

26. Section 2 - *'What should a town centre strategy contain?'* English Heritage believes that in devising a town centre strategy, two vital ingredients are a good understanding of the existing form (fabric/layout/evolution etc) and a clear vision of what is intended to be achieved.

### **Flood Risk and Coastal Change**

27. Section 1 - It would be very helpful to refer to Shoreline Management Plans. These are an important addition to the information base that will help devise appropriate planning policies and decisions.
28. Section 23 - *'What should be done to make development safe from flood risk?'* It would be useful to mention that floods often affect areas that have many listed and historic buildings, conservation areas, archaeological sites, historic parks and gardens and other heritage assets. Plans to reduce flood risk need to take these issues into account in coming up with appropriate measures to minimise flood impact on these features.

### **Making an application**

29. Section 1 - This could helpfully cross-refer to the amount of information that is required to be submitted in particular with regard to heritage assets, perhaps by cross-referring to the section *'How do Design and Access Statement requirements relate to heritage assessments?'* under Conserving and enhancing the historic environment, and to the need for early pre-application discussions.
30. Section 1 – *'What is an outline application?'* This section could helpfully make clear that outline applications affecting heritage assets are not necessarily acceptable on the basis that there needs to be sufficient information to understand the proposal and its impact on the historic environment. This may not be the case with proposals affecting parts of the historic environment that are very sensitive to even physically small changes.

### **Minerals**

31. Section 4 – *'What are the environmental issues of minerals working that should be addressed by minerals planning authorities?'* For consistency within the list (and particularly in relation to the natural environment one), the 7<sup>th</sup> bullet point ought to read 'Internationally,

nationally, or locally designated heritage assets [insert link to English Heritage].

### **Natural environment**

32. We underline the importance of complementing the National Character Areas in relation to using landscape assessments to inform judgements on the value of landscapes in decision making.
  
33. We underline the importance of taking account of National Park and Area of Outstanding Natural Beauty management plans in planning, and for Local Planning Authorities outside AONBs to have regard where decisions may impact upon the statutory purpose of the AONB.

### **When is permission required?**

34. Section 1 – *'If it is not necessary to make a planning application, are there any other steps required before the development goes ahead?'*  
No link is given for Listed Building Consent. English Heritage would be very happy to provide draft text for such a link.

The (non-functioning) link given for Conservation Area Consent can be deleted as conservation area consent has been abolished.

35. Section 2 – *'Is there any demolition that can be undertaken without having to make an application to a local planning authority?'* This should make clear that listed building consent may be required for such types of demolition.

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