



BATH HERITAGE WATCHDOG

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Reference: **211007/LPCD**

8 October 2021

Local Plan Consultation Documents

The Bath Heritage Watchdog comments on the consultation documents are below.

Policy CP3: Renewable Energy

We have no problems with the general thrust of this policy, but in order for the council to properly support the Government's commitment to world heritage sites, paragraph 2a should be more specific: "There will be a presumption against wind energy development proposals in the World Heritage Site of the City of Bath and in low potential landscape areas".

Policy SCR2: Roof Mounted/Building Integrated Scale Solar PV

We have no particular problems with the policy as far as PV installations are concerned. However whilst PV is a sensible method of solar capture in most cases, there are developments where the main use of energy is heating water, for showers in a gymnasium for instance. Solar direct thermal capture is more efficient than solar electricity generation so it makes sense not to restrict the policy to just Solar PV. The policy should be retitled Roof Mounted/Building Integrated Scale Solar Energy Capture, and Paragraph 1 should mention "integrated solar PV or thermal capture".

Policy D5: Building Design

There is ample evidence that innovative design is not a good juxtaposition to heritage buildings. Therefore sub-paragraph d) should begin "Except where it would have an adverse effect on the World Heritage Site of The City Of Bath, good modern, innovative design is supported. There is a real need to protect the OUV and too many out of place designs in Bath will cause lasting damage.

Policy HE1: Historic Environment

Paragraph 7b could usefully cross-refer to the Shopfronts Guide where the retail frontage of listed buildings are involved.

Policy H2: Houses In Multiple Occupation

The Houses in Multiple Occupation in Bath SPD identifies what is an HMO by the number and type of residents, yet one of the popular intensifications seen is where a sui generis large HMO becomes an even larger HMO. That category needs to be added to the list in the first paragraph.

The clarification of what is and what isn't included in the radius that determines whether another HMO would be permitted is welcomed, but the 100m radius is demonstrably too small because all the expansions of existing concentrations of HMOs occur at the edges; with the count of HMOs in the radius only being on one side, permitted new HMOs are creating a gradual HMO sprawl rather than introducing HMOs to more virgin areas which was the original intention. That 100 metre radius needs to be 400 metres to prevent the sprawl effect, and it needs to include new student accommodation of all types

Policy H2A: Purpose Built Student Accommodation

There needs to be specific control over where a new PBSA can be built, by introducing a minimum distance between an acceptable new PBSA and existing PBSAs. The continuous row of PBSAs on the Lower Bristol Road could have been avoided if there had been an unacceptability radius for PBSAs as there is for HMOs.

It is also necessary to put a more general restriction on student accommodation concentrations rather than just HMOs to give a planning reason for refusing applications for PBSAs in the areas most blighted by student HMOs. Currently PBSAs are not currently regarded as HMOs, yet the ratio of students to permanent residents reaches the same imbalance point regardless of the description of the accommodation in which the students live.

It is accepted that a mid-point update to the planning policies is not the ideal place to change the policies from building numbers to occupant numbers, but it should be borne in mind for future policy development.

Policy H5: Retention Of Existing Housing Stock

The addition of the word “units” is necessary, but it does have an unintended consequence. If a house was divided into two flats and there is a desire to return it to a single dwelling, the reworded policy would make it unacceptable. There needs to be an additional benefit that it would restore a divided dwelling back to its original configuration.

Policy LCR1: Safeguarding Local Community Facilities

The “adequate existing local provision” should be “adequate spare capacity in existing local provision”, to prevent something already in plentiful use being put forward as a suitable alternative.

Policy LCR1A: Public Houses

The trend reported in the national press is that the owner of a public house only advertises a lease of the public house, so that when the lease is viewed as unacceptable (because of price or conditions attached) the owner can then claim to have proved it acceptable to go ahead and redevelop the premises. To prevent this abuse of the planning policy, the wording of “the premises have been effectively marketed” should be changed to “the freehold of the premises have been effectively marketed”. That would keep many more public houses open for business.

Policy ST1: Promoting Sustainable Travel

Paragraph 12 is a laudable aim, but the council has no control over what public transport is available. For instance, the No.12 bus used to run from Bathampton to Haycombe

Cemetery, and it took about 25 minutes. Now the No.12 only runs from Bathampton to the Bus Station, and the No.11 runs from the Bus Station to Haycombe Cemetery. Because of the divided journey and the revised timetables, the trip from Bathampton to Haycombe Cemetery now takes almost 2 hours. There have also been recent local press reports on rural locations losing their service completely. Until there is a system for giving the council control over what services run and when, Paragraph 12 is just wishful thinking and should be deleted.

Policy ST3: Transport Infrastructure

There is a complete mismatch between Policy ST3 paragraph 2 (and Policy ST5 paragraph 3) and the proposals the press are calling “The ring of steel”. Preventing blue badge holders from parking in any space they can legally use, at any time they wish to do it, is an offence against the Equalities Act. There is nothing wrong with the policy ST3 as written, but there is a potential criminal offence from treating outdated police advice (it is based on 5-year old data) as an instruction.

As a point to think about, the elderly with reduced mobility but still able to walk are mostly unable to ride a bicycle without considerable pain because the hip joint is in a rather different position to that when walking. The current loss of family accommodation to HMOs has resulted in a predominance of young and old and a scarcity of residents in the ages between. The elderly are not ideally suited to the walking and cycling preference.

Policy B4: The World Heritage Site and its Setting

The care of World Heritage Sites is an agreement between the Government (represented by DCMS) and UNESCO, and the council as custodian of the City Of Bath WHS does not have a completely free hand on what changes are made to the WHS. It is also clear from Planning Appeal decisions by the Planning Inspectorate (representing DCMS) that the impact of developments on the WHS is given considerable weight when evaluating appeals.

For this reason, there needs to be a slight change to the wording of B4. If “Where development has a demonstrable public benefit” is replaced with “Even where development has a demonstrable public benefit” it will add strength to any refusal that would be more difficult for a Planning Inspector to overturn.

Policy BD1: Bath Design Policy

The policy as written is acceptable except that it omits a cross-reference to the Design Values for New Development in Bath. The Design Values could do with a bit of additional clarification though. There should be a clarification of “a human scale” which for the WHS OUV tends to be dwellings of 3 stories in a facade, an attic storey and an optional sub-pavement level basement. The Building Heights Strategy should not recommend more than this unless it is a special case. There should also be a mention of a strong preference for pitched roofs to minimise the opportunities for seagull nests. Properties with basements have light wells between pavement and building and this sets back the buildings so that they don't loom over pedestrians. The Design Values should discourage building lines that go right up to the pavement edge.

There have been a number of plans approved which mimic the Western Riverside model, despite UNESCO having examined the plans and advising that Phases 2 and onward were considered unacceptable and should be redesigned, advice which the council ignored.

Replicating a style that UNESCO rejected will produce more and more unacceptable buildings that harm the OUV.

Addressing Flood Risk

Although the flood defence works to the north and south banks of the river between Churchill Bridge and Midland Bridge will provide some flood mitigation, it must be borne in mind that it provides **storage** and does not improve the downstream flow, so that when the storage is full, flooding will still occur.

Also, although there is a risk of fluvial flooding, the last two significant flood events were caused by torrential rain in Bath and rainwater run-off and it was the run-off rather than water arriving from upstream that raised the Avon over its banks. The flood defence works are an improvement, not a complete solution.

Policy SB2 and part of B1 and Paragraph 123

In preparing a planning policy, the primary requirement that the LPA must meet is that the policy must be lawful. This means that when the First-Tier Tribunal (Charity) under the power given in the Charities Act 2011 appointed B&NES as Custodian Trustee of the charitable land known as The Rec under the Public Trustee Act 1906, that Custodian Trustee role identifies the council as the permanent holder of the Trust land but without the authority to manage it and thus unable to be held liable for the action of the Managing Trustees committing a breach of trust unless the Custodian Trustee has concurred with the breach of trust [*Our emphasis*]. Any council policy which facilitates the ability of the Trustees to commit a breach of trust is therefore unlawful.

The Riverside East part of Policy SB2 includes “The preparation of a Development Brief ... which will enable the development of a permanent sporting, cultural and leisure stadium, in accordance with Core Strategy policy B1(8)b. Nowhere in Policy SB2 does it mention the constraint “subject to the resolution of any unique legal issues and constraints” in B1(8)b. Nowhere in Policy B1(8)b is the fact that the unique legal issues have been resolved, and the Trustees are obliged to keep all of the Rec as open land with the temporary relaxations that the Sports Centre can remain until it reaches end of life, and the land leased to Bath Rugby can remain in use by Bath Rugby until the lease expires. At the end of those temporary relaxations, the occupied land must be returned to being an open space.

The legal position the council is now in requires that any structure permitted to be erected within the area leased by Bath Rugby must be given temporary permission with a Condition that at the end of the duration of the lease the permitted structure must be demolished and the land repurposed as open grassland. It also requires that the Sports Centre cannot be replaced with anything other than open land when it reaches end of life.

The update to the Core Strategy and Placemaking Plan must therefore remove all reference to the possibility of development on the Rec, and must require that all structures within the leased area cannot survive beyond the expiry date of the lease. The reason for this is as follows.

The High Court in 2002 considered all the evidence and ruled that the Recreation Ground is a charitable trust and has been since 1956, and is subject to the covenants of 1922 and the covenants in the 1956 Conveyance. The court noted that the amateur rugby club obtained a lease in 1995 and noted that the change from amateur to professional put that lease outside the scope of the covenants, but made no ruling about the lease because that issue was

outside the scope of the case as raised. It also noted that the Sports and Leisure Centre was given permission and erected in 1974 despite the covenants which should have prevented it. The Court Order recognised that as a charitable trust, the Rec must be placed under the control of Trustees.

The Charity Commission raised an initial Objects of the Charity, and that was followed by a review of the lease in 2007 where the Commission decided it would be expedient to recognise the 1995 lease and the temporary extensions to the leased area for the temporary stand because to do otherwise would involve the council in considerable legal expense as it was argued in court. This led to some updates as the Commission tried to get to grips with how the Charity was managed. When "*The Commission directs that ... BANES demonstrate that it has discharged its responsibilities as charity trustee in respect of any decision relating to the current and future uses of the Rec and the resolution of issues arising from the Rec's current occupants*" remained unresolved the Commission tried to tighten up how the Charity was overseen, and to take the Charity out of B&NES control.

One of these amendments, to allow the Trustees to arrange a land swap if it was to the benefit of the Charity, was challenged by the land's neighbours. This led to a hearing in 2013 where the Charity Tribunal considered that the Commission had the right under the current legislation, and allowed mechanisms including a land swap option as tools that might help resolve the mismatch between what the covenants required and what had actually happened.

Local residents mounted an appeal against those findings, and the appeal hearing took place before the First-Tier Tribunal (Charity) under the power given in the Charities Act 2011, in 2014. The appellants did not get all they asked for, but the Order which was the outcome did clarify a number of ambiguities in the original hearing summary. These were:

- Bath and North East Somerset Council was identified as the "Custodian Trustee" of the land conveyed to the council in 1956. This is a specific role defined in the Public Trustee Act 1906 that identifies the council as the permanent holder of the Trust land but without the authority to manage it and thus unable to be held liable for the action of the Trustees committing a breach of trust unless the Custodian Trustee has concurred with the breach of trust.
- Apart from the Custodian Trustee which is a permanent role, the Trustees in place at the time of the Order remain as managing Trustees until the end of their appointment and thereafter a group of managing Trustees will replace them. All Trustees must have a fixed term of 3 years, and members of the council cannot be nominated as Trustees. The Trustees may make rules and regulations for the administration and management of the charity, which must be consistent with the provisions of the existing trusts and this scheme. This requires the Trustees to pursue the objective of the Charity without obligations to pursue the policies or directions of the council or any other body.
- Bath Rugby is limited to the area identified by the 1995 lease which can never be extended in time, and the Trustees cannot allow it to extend in area beyond the boundary in the lease, except that for 9 consecutive months in every 12 months a specified area can be used for a temporary stand. For the other 3 months the area used by the temporary stand must be returned to the Trustees in a condition that allows the Trustees to allocate it to other uses provided it remains an open space.
- Land swaps are limited to all or part of the land covered by the 1995 lease (which is effectively the land currently occupied by Bath Rugby and not the additional land Bath Rugby uses for the additional East Stand), and if any swaps take place they must lapse no later than the expiry date of the lease.

- The Sports and Leisure Centre can remain as an asset of the Charity until the end of the building's useful life, but it must then be returned to being open land. A replacement building will not be permitted.
- The Object of the Charity, which the Trustees must uphold is defined as *“The objects of the charity are the provision, with or without charge, of land in or near Bath, including but not limited to the Bath Recreation Ground, for use as outdoor recreational facilities for the benefit of the public at large and in particular for use for games and sports of all kinds, tournaments, fetes, shows, exhibitions, displays, amusements, entertainments or other activities of a like character and the maintenance, equipment or lay out as the trustees shall think fit of such land and always provided that*
 - (i) the charity shall not show any undue preference to or in favour of any particular game or sport or any particular person, club, body or organisation, and*
 - (ii) the charity shall not use the Bath Recreation Ground otherwise than as an open space.”*

In 2020 Bath Rugby applied to the High Court for relief from the 1922 covenant. This was dismissed, having identified around 150 addresses that even with the strictest possible interpretation of the 1922 Covenant have the right to see the Covenant properly enforced:- High Court Decision 2020 EWHC 2662 (dated 13 October 2020). Bath Rugby then applied for Leave to Appeal, and this was refused on the grounds that an appeal would have a vanishingly small chance of success:- High Court Decision 2020 EWHC 2856 (dated 28 October 2020).

This long saga of court hearings and rulings has reached a point where Bath Rugby can only use that part of the Rec defined in the 1995 lease, and is limited by the duration of the lease and the area defined within it. The managing Trustees of the Charity must deliver the Object of the Charity, which among other things requires all land not covered by the 1995 lease to remain an open space, and the council as Custodian Trustee is barred from taking any action (such as granting any planning permission that would undermine the Object of the Charity) that would enable the managing Trustees to commit a breach of trust.

Under those circumstances, there is **no prospect of erecting a stadium** on the Rec. The unique legal issues have all been clarified. The Charity Commission, the managing Trustees, and any of the 150 addresses enabled by the 1922 covenant to see it upheld, all have a right to seek a judicial review to quash any planning permission for a stadium on the Rec. It may be that the Charity Commission could also seek damages from the council under the Charities Act, but we haven't explored that legislation.

It is therefore not lawful to leave the possibility of a stadium in the policies when the legal issues have been pursued to conclusion and have all ruled out the ability to deliver it.

Policy SB5 Development Requirements And Design Principles

Paragraph 5 needs some re-wording. It is no good advising “the Grade II listed Newark Works, curtilage listed buildings such as the Foundry, and the associated public realm is important as a legacy of the city's less well known industrial heritage” when the Foundry building was demolished, contrary to the Core Strategy and the Planning (Listed Buildings and Conservation Areas) Act and for no public benefit, since the cleared site of the Foundry Building was only used for storing materials that could have been stored elsewhere. The historic rail lines the Core Strategy wants to preserve are long gone. Thus it will be impossible

to support the statement “in the case of demolition, that the harm arising is outweighed by public benefits arising from the proposals”.

Paragraph 12 places all the emphasis on keeping the river water out of the site. It also needs to recognise that the Lower Bristol Road in front of the site is prone to flooding because of rainwater run-off.

Policy SB7 Development Requirements ... Sydenham Park

Diagram 10 and Paragraph 3 will need to be rewritten, now that the refused permission for the Homebase site has been overturned on appeal. There will now be development with planning permission in the British Land area which will conflict with Policy SB7.

Policy B3 Placemaking Principles – Newbridge Riverside.

The description of the Bath Spa University presence as a “campus” needs to be avoided. The Core Strategy requires that student accommodation should be delivered on campus, and recognising that the university's presence on the riverside as a campus without a clearly defined map of the exactly where the boundary of it occurs runs a very real risk of PBSAs cropping up anywhere the university might claim the campus extends to. Replacing “Campus” with “Site” avoids any conflict between Policy B3 and the Core Strategy.

Also lessons need to be learned from the Plumb Centre Appeal Decision. It is apparent that unless there is a policy statement that PBSAs will not be permitted (“Purpose built student accommodation in this area is not acceptable as this would impede the delivery of other Council objectives” is the wording used elsewhere) an appeal inspector is likely to overturn any refused applications for PBSAs. It is possible to promote creative industries yet ban student accommodation in the Newbridge area.

Policy SB22 Locksbrook Creative Industry Hub

The amendment to Policy B3 needs to be carried forward into Policy SB22 Context. Paragraph 167e needs to replace “campuses” throughout with something more neutral, such as “sites”. The description “close to purpose built student accommodation” should be clarified as “close to the already approved purpose built student accommodation”.

Paragraph 167g and 167h also need the word “Campus” replaced.

Paragraph 220f in SB24 Sion Hill, Bath - Site Allocation also needs the word “campuses” to be replaced, perhaps with the word “locations” rather than sites. No changes to SB24 itself are needed

In the Policy SB22 itself, Paragraph 3 needs to be extended. A new sentence “The Creative Industry Hub should not provide residential developments beyond the 72 bedspaces already approved”. That should prevent any new PBSAs and also prevent any attempt to modify the current permission in order to add more bedspaces to the permitted building or repurpose a building intended for other uses.

Policy SB9 Development Requirements And Design Principles

The policy should state that it refers to the Bath Press site. Policies can be quoted without reference to the descriptions that precede them, so as a general principle, site specific policies should state which sites they refer to.

The beginning of paragraph 2 (“Retention of the 1920s factory façade and the historically important elements of the building”) is too imprecise. It would be far clearer to describe the requirement as “Retention of the 1920s Lower Bristol Road façade and the historically important chimney structure”.

Paragraph 5 comes immediately after recognising that the Building Heights recommendation is subject to modifiers, and in that context the expression “larger scale building typologies” will encourage developers to think in terms of very tall buildings rather than the intended non-conventional floor areas. Something along the lines of “in layout rather than height” is necessary here.

Policy SB23 Weston Island

The point that must not be overlooked is that the bus depot was moved to Weston Island in order to permit the Safeway (now Morrison's) supermarket, and the depot on Weston Island has allowed the current biodiversity to develop because only the bus company staff use it.

Therefore the Bus Company should not be obliged to move again unless it is beneficial to them. This can be assisted by a slight rewording of Paragraph 1 to read “Once a suitable alternative solution for the bus depot ...”. It is also important to bear in mind that the businesses potentially occupying the space are trades with deliveries both in and out plus parking for customers who should be plentiful to keep the company in business, but that level of movement is likely to have a detrimental effect on the biodiversity. One final complication is that at present the business is in easy walking distance to populated areas, and those without their own transport are likely to forsake what used to be their local shop, and this could affect the viability of the business.

For these reasons, it would be better to cast SB23 as an opportunity rather than an objective, because otters and kingfishers are shy of people. Therefore the start of Paragraph 1 should read “Once a suitable alternative solution for the bus depot has been provided, examine the potential to develop the site ...”

Policy SB15 Hartwells Garage

This policy is out of date. A planning inspector has overruled the council's refusal of a planning application for this site and student accommodation is part of the appeal decision.