

Bath & North East Somerset Placemaking Plan

COUNCIL'S RESPONSE TO ID/3: MATTER 4 - ENVIRONMENTAL QUALITY

Issue: Whether the Environmental Quality policies in the Placemaking Plan are positively prepared, justified, effective and consistent with national policy, in the context of the adopted CS

Q1. Are the development management policies consistent with national policy in relation to the consideration of mitigating impact on heritage interests and assets?

1. The overarching historic environment policy in the Placemaking Plan (Policy HE1 - CD/PMP/G1/1, page 99) has been drafted within the context of Core Strategy Policy CP6(2) and the NPPF (paras 126 - 141) and provides the necessary criteria against which proposals affecting heritage assets can be assessed. This is explained in paras 231 and 232 of the Placemaking Plan (CD/PMP/G1/1, page 98).
2. Criterion 6 of Policy HE1, in particular, provides clear guidelines for considering the impact of a planning proposal on heritage interests and assets. It states *'Any harm to the significance of a designated or non-designated heritage asset must be justified'* and that *'Proposals will be weighed against the public benefits of the proposal; whether it has been demonstrated that all reasonable efforts have been made to sustain the existing use, find new uses, or mitigate the extent of the harm to the significance of the asset and whether the works proposed are the minimum required to secure the long term use of the asset.'* This will ensure that the mitigation of the impact on heritage interests and assets is a key part in evaluating a scheme.
3. Whilst the Plan is intended to be to read as a whole (Core Strategy and the Placemaking Plan) when considering any proposal, there are a number of policy areas where the impact on historic environment will be a key consideration (for example, policies relating to renewable energy and transport schemes).
4. In response to the consultation on the Draft Placemaking Plan Historic England raised a number of soundness issues which the Council sought to address in the Schedule of Limited Changes (CD/PMP/G3). Historic England has since confirmed through a Statement of Common Ground with the Council (CD/PMP/SCG1) that its outstanding concerns in relation to Policies SCR2 -

SCR4, D1, D6, D8, HE1, HE2, RE6, ST1, ST3 and ST6 (see CD/PMP/R1) have been met.

5. Therefore the Council considers that the Development Management policies are consistent with national policy in relation to the consideration of mitigating impact on heritage interests and assets (both designated and non-designated) and in that respect, sound.

Landscape

Q2. Is the identification of areas that make a significant contribution to the landscape setting of settlements and the requirements of Policy NE2 positively prepared, justified and consistent with national policy?

6. The purpose of and rationale behind Policies NE2 and NE2A are explained in paras 240 - 261 of the Placemaking Plan (Volume 1, pp.103 and 108, CD/PMP/G1/1).
7. Policy NE2 contributes to achieving a number of the 12 core planning principles of the NPPF in relation to enhancing and improving places, securing good quality design and standard of amenity, recognising the different character of different areas, conserving and enhancing the natural environment, encouraging multiple benefits of land and supporting strategies to improve health, social and cultural wellbeing. The policy also promotes the principle of sustainable development given in the NPPF and specifically Sections 7, 11 and 12. Para 9 of the NPPF states that sustainable development involves seeking positive improvements in the quality of the built, natural and historic environment, as well as in people's quality of life, including '*.....replacing poor design with better design*' and '*improving the conditions in which people live, work, travel and take leisure*'. The Council considers as drafted this policy to be positively prepared, justified, effective and consistent with national policy.
8. Policy NE2A complements Policy NE2 by seeking to protect and enhance valued landscapes around settlements that contribute positively to the distinctive character of a settlement. The extent of the identified areas reflects the degree to which the surroundings of the settlement contribute to the distinctiveness and sense of place of the particular settlement as articulated in 'Landscape Setting of Settlements (Policy NE2A)' (CD/PMP/DM25).

9. The policy recognises the principles of the NPPF in preferring to develop on land of lesser environmental and lesser community value and to minimise harm. The areas safeguarded by the policy therefore indicate their value to the setting of settlements and this would be an important consideration in assessing any relevant planning application.
10. Policy NE2A is not intended to result in wholesale prevention of future development; rather that any harm to landscape character arising from new development should be mitigated in order to minimise that harm. As such it is acknowledged that the second paragraph of Policy NE2A as currently worded may appear too prescriptive and contrary to the intention of the policy. Therefore the following amendment is proposed Policy NE2A to address this issue:

POLICY NE2A: LANDSCAPE SETTING OF SETTLEMENTS

Any development should seek to conserve and enhance the landscape setting of settlements and their landscape character, views and features. Development that would result in harm to the landscape setting of settlements that cannot be successfully mitigated will not be permitted.

Q3. Is Policy NE2B effective? The term ‘curtilage’ is not a use of land and the curtilage may not necessarily correspond to the residential planning unit associated with a dwelling. Policy NE2B appears to be aimed at the material change of use of land to provide additional land for use for residential purposes (garden).

11. The purpose of Policy NE2B is to control the enlargement of residential gardens in rural locations. It is conceded that Policy NE2B as currently worded is not clear by referring to the extension of ‘residential curtilages’ and that in some cases land remains physically separated from a dwelling and therefore not necessarily within the same planning unit which is contrary to the intention of the policy. Paras 262 and 263 make it clear that proposals in the Green Belt need to comply with Green Belt policy and as such this should be reflected in the policy wording.
12. Policy NE2B could be better expressed and the following amendment is proposed:

***POLICY NE2B ‘EXTENSION OF RESIDENTIAL ~~CURTILAGES~~
GARDENS IN THE COUNTRYSIDE’***

Proposals to extend residential ~~curtilages~~ garden land will be permitted provided it can be demonstrated that there are no adverse impacts on the setting of the site or property, residential amenity, local rural landscape character, key habitat features and/or ecological functions and that the proposed boundary treatment is sympathetic to the location and that there is no conflict with Green Belt policy.

Green Belt

Q4. Is Policy GB3 'Extensions and Alterations to Buildings in the Green Belt' criterion (ii) consistent with national policy?

13. The first paragraph and criterion (i) of Policy GB3 is consistent with NPPF, para 89. The justification for the inclusion of criterion (ii) is explained in the supporting text para 305 in Volume 1 of the Placemaking Plan (CD/PMP/G1/1) and is intended to guard against the gradual erosion of the rural character as a result of the cumulative effect of building extensions. This is considered consistent with the aims of the NPPF in seeking to conserve and enhance landscape quality.
14. However, it is acknowledged that as currently framed either criterion (i) or (ii) would be applicable when considering proposals. This would mean in some cases *Proposals to extend a building in the Green Belt will only be permitted provided they would not contribute to a deterioration in rural character as a result of the cumulative effect of building extensions.* As such it is conceded that the policy is not consistent with national policy. In addition since the Plan is intended to be read as a whole the second criteria is not necessary as the issue relating to rural character and local distinctiveness is covered by the design and landscape policies.
15. Therefore the following amendment is proposed to Policy GB3:

POLICY GB3 'EXTENSIONS AND ALTERATIONS TO BUILDINGS IN THE GREEN BELT'

Proposals to extend a building in the Green Belt will only be permitted provided they would not i) represent a disproportionate addition over and above the size of the original building. ~~or~~
ii) ~~contribute to a deterioration in rural character as a result of the cumulative effect of building extensions.~~

Q5. The Placemaking Plan provides the opportunity for a review of the inner detailed Green Belt boundary such as to address anomalies.

In particular, do the circumstances set out in representation 7113 (Orchard House) & 4811 (Prior Park Garden Centre) represent the necessary exceptional circumstances to justify such a review?

16. The Government attaches great importance to Green Belts (NPPF, para 79) and its policy to protect land in the Green Belt from inappropriate development. The NPPF makes it clear that the fundamental aim of the Green Belt policy is to prevent urban sprawl by keeping land permanently open. Green Belt boundaries are intended to be enduring, and once a Green Belt has been established and approved, exceptional circumstances are required to justify an alteration and not just general planning reasons. The adopted Core Strategy sets out the strategic approach to the Green Belt reflecting national policy together with the general extent of the Green Belt.
17. The Inspector in his Report into the Core Strategy (para 110, CD/PMP/G26) concluded that there are no exceptional circumstances to warrant altering the Green Belt boundary to provide for development opportunities other than the changes already made at the four allocated Strategic Sites at Odd Down, Bath, East of Keynsham, South West Keynsham and at Whitchurch.
18. As part of the preparation of the Placemaking Plan the Council asked, through the consultation on the Launch document, whether there were any exceptional circumstances to justify an amendment to a specific part of the Green Belt boundary (DP11, p.55, CD/PMP/G7). Subsequent requests for the Green Belt boundary amendments were assessed and the recommendations (CD/PMP/DM1) published alongside the Options document in November 2014 (CD/PMP/G8). This resulted in a number of rebuttal representations to which the Council responded in the 'Green Belt Analysis and Recommendations document' (CD/PMP/DM2) in which it was reiterated that in all cases the established Green Belt boundary already followed readily recognisable physical features such as roads and hedgerows, in accordance with Government policy and that the cases made to justify removing each respective area of land from the Green Belt did not amount to exceptional circumstances. Therefore no change was recommended to the Green Belt boundary.
19. Following its consultation on the Draft Placemaking Plan in December 2015 the Council has received further representations in respect of Orchard House,

Bathwick Hill, Bath (7113), Prior Park Garden Centre, Prior Park Road, Bath (4811) and Combe House, Lynbrook Lane, Bath (4800). In each case the respondent has sought, in essence, to justify the requested change to the Green Belt boundary in terms of how the respective areas of land perform against the five Green Belt purposes. Other reasons submitted to support a Green Belt boundary amendment are, in the case of:

- Orchard House (7113) and Combe House (4800) - the respondents state there are no current plans to develop the land, but development should not be precluded in principle. The sustainability of the location is highlighted and that there are other policy designations to control development on this site if it were to be removed from the Green Belt.
- Prior Park Garden Centre (4811) - again the respondent does not allude to any current plans to develop the site, but states at some future date it might be appropriate to consider the ‘recycling’ of this land and this is put forward as the principal reason for the site to be excluded from the Green Belt. The sustainability of the location is highlighted and that there are other policy designations to control development on this site if it were to be removed from the Green Belt. The respondent also makes reference to the recommendation of the City of Bath Local Plan Inspector in 1988 that the site be deleted from the then proposed inner Green Belt boundary and be developed for housing which was subsequently overturned by Bath City Council in June 1989¹.

20. The respondents assert that the reasons cited above constitute exceptional circumstances and therefore compelling and overriding reasons for amending the Green Belt boundary.
21. The NPPF (para 83) is very clear in that: *‘Once established, Green Belt boundaries should only be altered in exceptional circumstances, through the preparation or review of the Local Plan.* Hence in order to make a change to the Green Belt boundary in a Local Plan, there have to be ‘exceptional circumstances’. This test is a very stringent one. Para 82 further elaborates, *for example when planning for larger scale development such as new settlements or major urban extensions’.*
22. The decision in the case of Gallagher Estates Ltd v Solihull Borough Council (April 2014)² (where Gallagher Estates challenged the inclusion of their site as part of the Solihull Local Plan) is useful in providing guidance on what may

¹ The Local Plan Inspector’s recommendation was made in the context of drawing up the detailed inner boundary to ensure conformity with the Avon County Structure Plan.

² <http://www.bailii.org/ew/cases/EWHC/Admin/2014/1283.html>

constitute 'exceptional circumstances' for the purposes of amendment of a Green Belt boundary. Para 125 of the decision provides that:

'The test for redefining a Green Belt boundary has not been changed by the NPPF... it is not arguable that the mere process of preparing a new local plan could itself be regarded as an exceptional circumstance justifying an alteration to a Green Belt boundary. National guidance has always dealt with revisions of the Green Belt in the context of reviews of local plans (e.g. paragraph 2.7 of PPG2: paragraph 83 above), and has always required "exceptional circumstances" to justify a revision. The NPPF makes no change to this.

'For redefinition of a Green Belt, para 2.7 of PPG2 required exceptional circumstances which 'necessitated' a revision of the existing boundary. However, this is a single composite test; because, for these purposes, circumstances are not exceptional unless they do necessitate a revision of the boundary (COPAS at [23] per Simon Brown LJ). Therefore, although the words requiring necessity for a boundary revision have been omitted from para 83 of the NPPF, the test remains the same.....Exceptional circumstances are required for any revision of the boundary, whether the proposal is to extend or diminish the Green Belt. ' [emphasis added]

23. This is further discussed in the case of *Hundal v South Buckinghamshire District Council* (2012)³ where the Inspector had found that there was no housing need that necessitated the appellant's land being removed from the Green Belt for development but had failed to take into account the particular planning history of the appellant's land. The Court in dismissing the appellant's case stated in relation to the relevance of housing need to a change in the Green Belt boundary (para 90):

'The overriding policy of PPG2 is that the Green Belt boundaries should remain fixed once they have been validly determined. It is only if a relevant circumstance occurs that requires a change in the future for planning purposes that the circumstance will be an exceptional circumstance. An obvious example would be if, in the present case, the First Defendant had determined that it could not meet the projected housing requirements for its area up to 2031 without using Green Belt land. In that case, for the purposes of the Core Strategy, the exceptional circumstance may have been made out (assuming no other practical alternatives). At that point, a subsidiary question may arise as to which land that was currently within the Green Belt should now be freed for development.' [emphasis added]

³ <http://www.southbucks.gov.uk/CHttpHandler.ashx?id=4195&p=0>

24. These cases illustrate that the bar is high when considering what constitutes 'exceptional circumstances' to justify a revision to a Green Belt boundary. It has already been established through the Core Strategy that currently there are no exceptional circumstances to justify an alteration to the Green Belt boundary to provide for development opportunities other than for the Strategic Sites (see para 5.2 above). Preparation of the West of England Joint Spatial Plan and allied review of the B&NES Core Strategy will consider whether exceptional circumstances exist necessitating alteration of the Green Belt to accommodate strategic development.

25. The respondents' rationale for amending the Green Belt boundaries in the three respective locations as summarised above (para 5.4), are considered to fall far short of the stringent test for exceptional circumstances that any revision of the Green Belt boundary must satisfy. Therefore the Council's does not consider the reasons submitted by the respondents constitute 'exceptional circumstances' within the context of the NPPF nor case law to warrant amending the Green Belt boundary at any of the three locations.