



Cheshire East Local Plan

Site Allocations and Development Policies Document

Cheshire East Council Hearing Statement

Matter 9: Historic Environment

Hearing date: Wed 3 Nov 2021

Introduction

1. This hearing statement has been prepared by Cheshire East Council in response to the Inspector's Matters, Issues and Questions for the Examination Part 2 [INS/10] and addresses Matter 9: Historic Environment.
2. The abbreviations used in this hearing statement are as defined in the Inspector's MIQs.

Key documents

3. The following key documents are relevant to this response:
 - SADPD Regulation 20 Representations Statement (Consultation Statement Part II) [ED 56a]
 - Local Plan Strategy July 2017 [BD 01]

Heritage at Risk (Policy HER 2)

Q145 Is Policy HER 2 justified, clear, effective and consistent with national policy, in particular in using the word 'enabling' in part 1 and in part 4 in requiring works to listed buildings at risk to be undertaken before occupation of any new buildings?

4. Policy HER 2 criterion 1 contains the word "enabling", when referring to new development and the ability of that new development to provide opportunities to secure the future of a heritage asset at risk, through repair or re-use of a building.
5. This is not a reference to the concept of "enabling development"; development to listed buildings that would otherwise be unacceptable, but for the fact that it would bring heritage benefits sufficient to justify the development being carried out.
6. ¶5.9a of the supporting information, to the policy says: "For the avoidance of doubt, this policy does not allow for 'enabling development' that would usually be considered harmful. However, any resulting benefits from enabling development that outweigh harm may be a material consideration in the determination of planning applications".
7. Criterion 4 of the policy, is consistent with NPPF ¶190 which says that plans should set out a positive strategy for the conservation and enjoyment of the historic environment, including heritage assets most at risk through neglect, decay or other threats. This policy requirement aims to make sure that the repair and re-use of the listed building is secured as early as possible in the development process and it provides a clear trigger point by which this should be done. It looks to avoid the situation where development takes place and is occupied, leaving the repair and re-use of the building at risk to be carried out at a later time, with the potential risk that it is not carried out at all.

Conservation Areas (Policy HER 3)

Q146 Is part 2 of Policy HER 3 consistent with national policy in its definition of the circumstances in which proposals for the demolition of buildings that contribute positively to the character or appearance of a conservation area will be supported?

8. Local planning authorities are under a duty to formulate and publish proposals for the preservation and enhancement of conservation areas. It is therefore consistent with the 1990 Listed Building Act/NPPF that reasonable steps are taken to ensure those features which contribute positively to a Conservation Area are preserved.
9. However, the council acknowledges the point being made in the question and would like to suggest a main modification to Policy HER 3 criterion 2 to better reflect ¶207 of the NPPF regarding the loss of a building (or other element) which makes a positive contribution to the significance of a Conservation Area. This states that such a loss should be treated either as substantial harm under ¶201 or less than substantial harm under ¶202, as appropriate, taking into account the relative significance of the element affected and its contribution to the significance of a Conservation Area.
10. The following Main Modification to Policy HER 3 criterion 2 is proposed:

“Proposals for the demolition of a building or group of buildings that positively contribute to the character or appearance of a conservation area will not be supported unless: **the harm or loss is outweighed by the public benefits of an approved replacement scheme**”

 - ~~i. the harm or loss is outweighed by the public benefits of an approved replacement scheme”; and~~
 - ~~ii. the building is structurally unsound and its repair is not economically feasible; and~~
 - ~~iii. alternative uses for the building have been investigated.~~

Listed Buildings (Policy HER 4)

Q147 Is Policy HER 4 consistent with the LPS and national policy, particularly in the following respects:

- a. In part 1, the expectation for development proposals to ‘enhance’ as well as preserve a listed building and its setting?
- b. In part 2, specifying that alterations to a listed building will only be supported where criteria (i) to (v) are met, given that paragraph 201 of the NPPF allows for substantial harm to a listed building if it can be demonstrated that it is necessary to achieve substantial public benefits?

- c. **In part 3, requiring exceptional circumstances to be demonstrated for the demolition of a listed building, when paragraph 200 of the NPPF requires clear and convincing justification?**
- d. **In part 4, specifying changes of use to a listed building will be supported where criteria (i) to (iii) are met, given that paragraph 201 of the NPPF allows for substantial harm to a listed building if it can be demonstrated that it is necessary to achieve substantial public benefits?**
- e. **In part 5, expecting development affecting the setting of a listed building to 'enhance' as well as preserve its setting?**

Q147a

- 11. The overall thrust of national policy is to conserve and enhance the historic environment. ¶190 of the NPPF states that plans should set out a positive strategy for the conservation and enjoyment of the historic environment, taking into account the desirability of sustaining and enhancing the significance of heritage assets.
- 12. Criterion 1 of Policy HER 4 is consistent with the LPS and the NPPF. The expectation for development proposals to 'enhance' as well as preserve a listed building and its setting is qualified by the words "wherever possible", which acknowledges that enhancement may not be possible in every case. This is consistent with LPS Policy SE 7 as noted in the ¶5.18 of the supporting information to Policy HER 4.

Q147b

- 13. The council acknowledges the point raised in the question and considers that it could be addressed through the proposed Main Modification to criterion 2, below. This revised wording still makes clear what would be expected of such applications whilst allowing for a public benefits test to be applied if necessary.

"2. Applications affecting a listed building involving alterations (including partial demolition and extensions) and development in its setting will **only** be ~~supported where expected to:~~

- i. **any in the case of** extensions, respect the architectural detail, appearance, character, and scale of the existing building.
- ii. ~~the proposal would~~ retain the identity of the original listed building (usually remaining subservient to it) and avoid harm to its setting;
- iii. **preserve** the listed building's architectural features and historic interest **are preserved**;
- iv. **retain** the original plan form, roof construction and interior features as well as the exterior of the building ~~is retained~~; and

v. **retain** the listed building or structures, and any curtilage listed structures or features of special architectural or historic landscape interest **are retained**.

Q147c

14. The council acknowledges the point raised in the question and considers that it could be addressed through the proposed Main Modification to criterion 3, below, thereby aligning it with the terminology used in NPPF ¶200.

“3. Proposals involving the demolition of listed buildings or structures will not be supported unless **exceptional circumstances can be clearly demonstrated there is a clear and convincing justification.**”

Q147d

15. The council acknowledges the point raised in the question and considers that it could be addressed through the proposed Main Modification to criterion 4, below. This revised wording still makes clear what would be expected of such proposals whilst allowing for a public benefits test to be applied if necessary.

“4. Proposals for the change of use or conversion of a listed building will be **supported where expected to:**

i. **preserve** the building’s architectural features and historic significance **are preserved**;

ii. ~~it can~~ accommodate the new use without changes that harm its character or historic significance (such changes include enlargement, subdivision or other alterations to form and mass, inappropriate new window openings or doorways and major rebuilding); and

iii. ~~the intended use (or associated development) of the building does not detract from its significance~~ **not detract from the significance of the building in terms of its intended use (or associated development).**”

Q147e

16. The council acknowledges that to fully align with national policy, a main modification could be made to criterion 5 as follows:

“5. New development affecting the setting of listed buildings should preserve and **wherever possible** enhance the setting taking into account all relevant issues, including (but not limited to):...”

Registered Parks and Gardens (Policy HER 5)

Q148 Is Policy HER 5 consistent with national policy in specifying that development proposals affecting a Registered Historic Park and Garden or its setting will only be supported where criteria (i) to (ii) can be demonstrated, given that paragraph 201 of the NPPF allows for substantial harm to a designated heritage asset if it can be demonstrated that it is necessary to achieve substantial public benefits?

17. The council acknowledges the point raised in the question and considers that it could be addressed through the proposed main modification, below. This revised wording still makes clear what would be expected of such proposals whilst allowing for a public benefits test to be applied if necessary.

“1. Development proposals affecting a Registered Historic Park and Garden, or its setting ~~will only be supported where it has been demonstrated that they would~~ should:

i. cause no unacceptable harm to the asset's significance, taking into account matters including the character, setting and appearance of those features that form part of and contribute to the special historic interest of the Registered Park and Garden:

ii. respect the integrity of the landscape and key views; and

iii. not lead to sub-division of the landscape.”

Historic Battlefields (Policy HER 6)

Q149 Is Policy HER 6 consistent with national policy in specifying that development proposals will not be supported that would harm the significance of a registered battlefield, given that paragraph 201 of the NPPF allows for substantial harm to a designated heritage asset if it can be demonstrated that it is necessary to achieve substantial public benefits?

18. The council acknowledges the point raised in the question and considers that it could be addressed through the proposed Main Modification, below. This revised wording still makes clear what would be expected of such proposals whilst allowing for a public benefits test to be applied if necessary.

“Development proposals ~~will not be supported that would~~ should avoid harm to the historic significance, appearance, setting, ~~or~~ integrity ~~of or~~ the ability to understand and appreciate a battlefield recorded on the Register of Historic Battlefields”

Non-designated Heritage Assets (Policy HER 7)

Q150 Is policy HER 7 consistent with national policy in respect of the ‘balanced judgement’ to be applied to proposals which affect non-designated heritage assets in paragraph 203 of the NPPF?

19. Policy HER 7 is consistent with Policy SE 7 in the LPS. Both LPS SE 7 criterion 3b (regarding non-designated heritage assets) and criterion 2 of policy HER 7 reflect the balanced judgement required in NPPF ¶203.

Archaeology (Policy HER 8)

Q151 Is Policy HER 8 consistent with national policy in paragraphs 200 and 201 of the NPPF, in stating that proposals involving harm to scheduled ancient monuments or archaeological sites of national importance will only be supported in ‘exceptional circumstances’?

20. The council acknowledges the point raised in the question and considers that the term “in exceptional circumstances” should be removed from criterion 1 of the policy. This will address this consistency issue with NPPF ¶200 and ¶201. The following Main Modification to criterion 1 is proposed:

“1. Development proposals affecting a scheduled monument or an archaeological site of national significance should conserve those elements that contribute to its significance. Proposals involving harm to such elements will only be supported ~~in exceptional circumstances~~ where the harm is clearly justified and outweighed by the public benefits of the proposal.”

Q152 For clarity and effectiveness, should part 3 of Policy HER 8 specify which applications must be accompanied by an archaeological assessment?

21. The council does not consider that this is necessary. The criterion requires that applications are accompanied by an appropriate archaeological assessment, allowing the need for (and extent of) this to be determined by the nature and location of a proposed development.

World Heritage Site (Policy HER 9)

Q153 With regard to proposals which would i harm to the significance of Jodrell Bank Observatory (JBO) World Heritage Site (WHS), is Policy HER 9 consistent with national policy, particularly in respect of the approach to assessing substantial and less than substantial harm in paragraphs 200-202 of the NPPF?

22. The council considers that the policy is appropriately worded. As worded, the Policy allows for the appropriate balance to be struck between the harm arising from a development proposal to the significance of JBO, and the public benefits arising from the development proposal. Under the NPPF, whether there is substantial harm or less than substantial harm to the significance of a designated heritage asset, the decision maker is required to weigh this harm

against relevant public benefits. The level of public benefits necessary to outweigh harm to the significance of a designated asset would need to reflect the degree of harm involved. In other words, the 'bar' for public benefits would be set much higher in instances where substantial harm arises. The height of the 'bar' would also reflect the fact that WHS is a historic asset of the highest significance.

Q154 Is it evident from Policy HER 9 and its supporting justification how harm to the significance of the JBO WHS should be evaluated for proposals on sites within the WHS Buffer Zone?

23. As noted in ¶5.33 of the supporting information to Policy HER 9, it must be considered in conjunction with LPS Policy SE 14 'Jodrell Bank'. The supporting information also highlights that the scientific value and heritage value of Jodrell Bank are inextricably linked. The present-day scientific value of Jodrell Bank is integral to its heritage significance so it would be incorrect to draw or infer a distinction between them. In the light of this it is vitally important that the efficiency of the radio telescope is not impaired through new development since this would represent harm to the significance of the WHS.
24. If harm is caused through development impairing the function of the telescope this goes to the heart of the attributes conveying the outstanding universal value of Jodrell Bank and its designation as a WHS. The level of harm would be assessed through Policy SE 14 with the "bar" set at the highest level. WHS status is the highest afforded to a heritage asset, in addition to the structures being listed in their own right, so the harm should be evaluated accordingly as set out in Policies HER 9 and SE 14.
25. The buffer zone is based on the Jodrell Bank Radio Telescope Consultation Zone, which has operated effectively to protect the Observatory for many decades. It was established by the Town and Country Planning (Jodrell Bank Radio Telescope) Direction 1973.
26. Assessing the impact that a development scheme will have on the efficiency of the radio telescope is a matter of complicated science. In determining applications and planning appeals, the Jodrell Bank Observatory has provided an assessment of such impacts. The basis of their calculations and the methodology used has been considered at appeals and accepted¹. Proposals are assessed by reference to the level of interference defined by The International Telecommunications Union (ITU) as detrimental to radio astronomy and is expressed in the form of ITU recommendation ITU-RA-769.2.
27. In ¶5.33 of the supporting information to the policy it states that further policy guidance will be provided through a SPD. This Jodrell Bank SPD is in preparation by the Council and will provide further guidance to support the implementation of Policy HER 9 and Policy SE 14. A first draft of the SPD is expected to be taken to the Council's Environment and Communities

¹ For example, planning appeal reference APP/R0660/W/21/3267030, available at <https://acp.planninginspectorate.gov.uk/ViewCase.aspx?caseid=3267030>

Committee on 11 November 2021. The draft SPD will set out the methodology that the Observatory use to determine the impact on efficiency, reflecting that used in recent appeals. The purpose of this is to assist applicants in understanding how this assessment is carried out, however only the Observatory will have the ability to make the assessment.

Q155 Is the distinction between the JBO Consultation Zone for radio interference and the WHS Buffer Zone, and the respective planning and heritage considerations that apply within each, clear from Policy HER 9 and its supporting justification?

28. As noted in the answer to Q154, Policy HER 9 and Policy SE 14 should be considered together. The present-day scientific value of Jodrell Bank is integral to its heritage significance so it would be incorrect to draw or infer a distinction between the need to protect Jodrell Bank from radio interference through new development and its heritage significance.