

**PLANNING POLICY STATEMENT 15 (PLANNING FOR THE HISTORIC ENVIRONMENT): RESPONSE TO CONSULTATION**

**REPORT BY THE DEPUTY CHIEF EXECUTIVE**

**1.0 PURPOSE OF REPORT**

1.1 The Department of Communities and Local Government (CLG) has issued a consultation paper on proposed new draft policy statement on planning for the historic environment (PPS15). This report provides comments on the PPS and seeks Committee's agreement for it to be submitted as the Council's formal response.

**2.0 BACKGROUND**

2.1 Planning Policy Statements (PPS) set out the Government's national policies on planning. They are taken into account in preparing Council planning policy documents such as the Local Development Framework (LDF) and are material considerations in determining planning applications.

2.2 The draft PPS15 sets out the national planning policy framework for delivering the Government's objectives for the historic environment. The consultation period runs until 30<sup>th</sup> October 2009. A copy of the Consultation Paper on a new Planning Policy Statement 15: Planning for the Historic Environment is available in the Members Room or on the CLG website ([www.communities.gov.uk](http://www.communities.gov.uk)). Responses received by CLG will be taken into account in preparing the final PPS.

2.3 In its final form, this PPS will consolidate national planning policy on the historic environment into a single streamlined planning policy statement and will replace:-

- Planning Policy Guidance Note 15: Planning for the Historic Environment (1994), and
- Planning Policy Guidance Note 16: Planning and Archaeology (1996).

2.4 The draft PPS is part of the culmination of an extensive period of consultation and debate that began in the year 2000 on how the UK has designated and subsequently regulated heritage assets and how these processes could be made simpler, more effective and more transparent. This debate has been led by English Heritage with the Secretary of State for Culture, Media and Sport and the then Secretary of State for the Environment, Transport and the Regions.

- 2.5 The Government had intended to bring to Parliament during the current session a new Heritage Bill for enactment; however, this has been postponed. The main rationale for the new Heritage Act was the need to "... develop a unified approach to the historic environment; to maximise opportunities for inclusion and involvement; and to support sustainable communities by putting the historic environment at the heart of an effective planning system." The Government in association with English Heritage is keen to bring forward as much of this ambition as possible prior to the Act being brought forward (timeframe not determined) and sees the new PPS as playing a key part in underlining the historic environment's essential place in the planning context in the interim.

### **3.0 HERITAGE ASSETS OF THE CITY OF SUNDERLAND**

- 3.1 The Council has a long standing commitment to protect and enhance the historic environment of Sunderland, which features many fine heritage assets such as the nationally significant scheduled monuments at St Peter's monastic site and Bowes Railway and fine listed buildings and historic areas. An audit of the heritage assets currently designated within the City may be viewed in the online version of the Council's 'State of the Historic Environment Report 2<sup>nd</sup> edition 2009'. (see [www.sunderland.gov.uk/conservation](http://www.sunderland.gov.uk/conservation))
- 3.2 The Policies contained within the Council's Unitary Development Plan relating to the City's heritage assets have been 'saved' until such time as they are reviewed and incorporated into the emerging Local Development Framework (LDF). The policies are very much founded in the Planning Act of 1990 and the current PPGs 15 and 16. These policies will be progressively reviewed and adopted by Council under the LDF and restructured to ensure that they derive directly from the new Government policy statement.

## **4 MAIN ASPECTS OF DRAFT PLANNING POLICY STATEMENT 15**

- 4.1 The Government is committed to streamlining the planning system including the old style PPGs and is doing this by separating out policy from guidance. The government's proposed policy framework for the historic environment is therefore covered in only thirteen policies statements within the draft PPS; the document appears insubstantial compared to the former PPG that provided very useful guidance for every day application. Such detailed guidance has now been reviewed and redrafted and is now found in a separate document produced by English Heritage, which is also subject to consultation currently and ongoing refinement. (see [www.english-heritage.org.uk/PPS](http://www.english-heritage.org.uk/PPS)) This guidance is in turn to be supplemented from time to time by more in-depth advice on specific topics, also to be prepared by English Heritage.

- 4.2 The Government's broad objectives for the PPS are stated as being:
- to apply the principles of sustainable development to proposals involving the historic environment;
  - to conserve and, where appropriate, enhance England's heritage assets in a manner appropriate to their significance; and
  - to contribute to our knowledge and understanding of our past.
- 4.3 It should be noted in respect of the objectives at 4.2 that the term 'historic environment' is now expanded to include 'archaeological' and 'artistic' interest, as well as the former 'architectural' and 'historic'. It is also significant that the stock phrase used is now '... preserve *and* enhance ...'; which implies a more pro-active approach to securing positive outcomes for a heritage asset than was the case under the previous wording of the PPG which was '... preserve *or* enhance ...'.
- 4.3 The full text of the policies themselves are not reproduced here (but see para 2.2 above), but are summarised as follows with the observations of officers added in italics where appropriate:

#### **HE1 Using evidence to plan positively**

The Draft PPS emphasises that local planning authorities (LPAs) should ensure that they have evidence about heritage assets sufficient to inform adequately the decision making process. This evidence should be in a publicly documented and accessible 'Historic Environment Record' (HER) to be maintained by the LPA. *(Note that in Tyne and Wear this service is already provided through the office of the County Archaeologist; part of the county-wide Specialist Conservation Team)*

#### **HE2 Regional Spatial Strategy (RSS) and planning approach**

The significance of landscapes, townscapes and types of heritage assets that give distinctive identity to a region should inform the RSS and account should be taken of the positive contribution made to regeneration, tourism and enhancing the environment and the region's sense of place.

#### **HE3 Local Planning Approach**

On the basis of the evidence of a heritage asset's significance, a LPA should set out a pro-active strategy for the conservation and enhancement of the historic environment, focusing on local distinctiveness and promoting a sense of place, including inspiring new imaginative buildings that sit well in their historic context; also considering how best to conserve heritage assets that are 'at risk'.

#### **HE4 Heritage assets and sustainable development.**

LPAs should encourage the conservation of heritage assets as they represent embodied energy and resources and hence their continued use reduces the consumption of new resources. Modifications to heritage assets may help to reduce CO2 emissions and hence such work is encouraged insofar as it does not conflict with the special significance of the asset.

#### **HE5 Permitted Development and the use of Article 4 Directions.**

LPAs should use Article 4 Directions if it is considered that works that normally fall within the scope of 'permitted development' represent a risk to the special significance of heritage assets and their features. *(Note: A specific policy on Article 4 Directions is very welcome; these additional control measures are currently underused as a 'conservation management tool' by many local authorities, yet can be very effective in conserving the historic environment. Sunderland Council is very proactive in the use of Article 4 Directions and it is encouraging that the approach taken by the Council to their usage in recent years is endorsed in the PPS.)*

#### **HE6 Monitoring Indicators**

LPAs should monitor the impact of their decisions, having particular regard to those heritage assets that are considered to be at risk of loss or decay.

#### **HE7 Pre-application Discussion**

Following the principles laid down in 2005 in the Government's PPS1: Delivering Sustainable Development LPAs are encouraged to engage in pre-application discussions with developers as it is stressed that understanding the significance of affected heritage assets is key to successful design. This is also the case where archaeological interest is present and LPAs are asked to require developers to carry out appropriate desktop and field evaluations and have due regard to the outcomes of these as part of any application. This process can be informed by the County Historic Environment Record (see HE1) and the outcome of evaluations carried out should be deposited in the HER to enrich that archive.

#### **HE8 Information requirements for validation of applications for consent.**

Further to HE1 where the concept of 'informed decision making' is embodied and HE7 where such information is to be used to facilitate meaningful early discussion of proposals, this policy urges LPAs not to validate applications for consent where the extent of the impact of the works on heritage assets cannot be fully understood from the information supplied.

LPA should require applicants to fully document such affects and cite the expertise that has been consulted in preparing such documents; which must be inclusive of relevant Historic Environment Record entries. *(Note that this may represent a more onerous extension to current practice that is encapsulated in LPAs requirement for a Design and Access Statement and Heritage Statement; though much of this requirement is already embodied in the Tyne and Wear Validation Criteria currently in use.)*

**HE9 Policy Principles guiding the determination of applications for all heritage assets. (including those not formally designated as such)**

This policy incorporates the largely familiar principles that underlie most of the policies and guidance of previous PPGs and the Act that form the basis for the City's Development Plan Policies and Development Control decision making. The policy is founded on much the same bases as English Heritage's recent publication 'Conservation Principles Policies and Guidance' (April 2008) and gives effect to the over-arching duty to 'preserve and enhance' heritage assets that has been present in Planning legislation since its beginning.

HE9.1 LPA should identify and assess the significance of any element of a heritage asset to be affected by a development, this process to be informed by specialist advice from experts and interested parties and the understanding thus gained used to avoid or minimise conflict with the objective of conserving and enhancing the significance of the asset.

HE9.2 The process required at HE1 is to include experts, consultants and national and local amenity groups as appropriate.

HE9.3 The process required at HE1 is to include the local community where it is considered that the significance to the local community may not come across from formal records or the statutory consultees ie. the community themselves should be involved in saying what they value.

HE9.4 The LPA should take account of the desirability of enhancing as well as securing the conservation of heritage assets and utilising their positive role in place-making.

HE9.5 The LPA should be mindful of the desirability of measures that help to mitigate climate change, but also mindful of the potentially damaging affect these may have on heritage assets and their setting; accordingly the LPA through the pre-application system should help applicants to identify less harmful measures.

HE9.6 LPAs should ensure that the design of new developments respect their setting and reinforce locally distinctive characteristics, taking care not to stifle innovation or to undermine sustainable development.

HE9.7 Where a development is considered harmful to the significance of a heritage asset or its setting, the LPA should weigh the public benefit of the development against the harm being done; recognising that the greater the harm, the greater the justification will be needed for any loss.

HE9.8 Generally, the LPA should not accept any material harm to the significance of the heritage asset or its setting unless there is a compelling reason. Criteria to substantiate such reasons are given as (i) the harm is necessary to sustain the asset in its use or other sustainable use that will conserve the asset; (ii) the asset impedes all reasonable uses of the site and that there is clear evidence that no viable use can be found; and (iii) it can be demonstrated that the harm to be done is outweighed by the wider social, economic and environmental benefits to be delivered , including mitigating climate change. *(Note that there are a number of concerns with the wording of this policy. First, it is disturbing that only one of the three criteria have to be satisfied to justify demolition or material harm to a heritage asset, compared to the current PPG, where all three criteria must be met. Second, the validity of including this policy in the section for all heritage assets may not be appropriate as assets not formally designated have no statutory protection from demolition. It may be more appropriate to include such a policy under HE10 which applies to designated assets only. Third, it will be difficult to make a credible assessment during the period leading up to the submission of an application as to whether “conservation through grant funding or some form of charitable or public ownership is not possible”, due to the changing focus and priorities of funding providers such as English Heritage, Heritage Lottery Fund etc.*

HE9.9 The LPA should be wary of deliberate acts of neglect to further a justification for harming a heritage asset and should disregard any deterioration arising from such neglect.

HE9.10 Where the loss of a heritage asset is considered to be justified, the LPA should not allow harm to be done until it is assured that the new development is to proceed before approving the application. *(Note: thereby preventing the loss of an asset on the basis of a development proposal which has not been committed by the letting of a construction contract).*

### **HE10 Additional Policy Principles relating to ‘designated’ heritage assets.**

This Policy emphasises the Government’s long held requirement that the material loss of nationally designated heritage assets should be ‘wholly exceptional’ and that, generally, the higher the significance of the heritage asset the greater should be the presumption in favour of its conservation. HE10 goes on to set out options for conservation that must be explored before decisions are made that may impact adversely on an asset. It stresses that non-designated assets, such as archaeological remains, may be equally significant to (say) scheduled monuments; the fact that the formal scheduling process has not yet recognised the asset should not lead to the remains being treated with less regard. *(Note: this is a significant policy in that it accepts that assets that lack formal designation should be the subject of the PPS policies for conservation; however, this does introduce a significant level of uncertainty into the development control process for developers and the LPA alike. Note also that the omission of grade II listed buildings from the wording in policy HE10.2 raises questions over the degree of ‘significance’ to be afforded to assets which have, historically, been defined as having ‘special interest’ and which only in the most exceptional of circumstances have been allowed to be demolished. This omission, in conjunction with the current wording of HE9.8 (as above), may encourage applications for the demolition / redevelopment of grade II listed buildings that may not be as readily resisted by the local authority.*

### **HE11 Additional Policy Principles for the setting of heritage assets.**

As with policies that deal with heritage assets themselves, this policy deals with developments that impact on setting and encourages LPAs to support schemes that enhance settings. Where developments have an adverse impact the wider benefits of the development need to be assessed, the principle being that the greater the adverse impact, the greater the benefits that will be needed to justify approval.

## **HE12 Policy Principles guiding development that is contrary to the Development Plan ('Enabling Development')**

This policy makes reference to a long standing principle that Development Plan allocations and proposals may be waived or applied with discretion where doing so would secure the future of a heritage asset that would otherwise be put at risk or remain at risk. The policy sets out criteria to determine whether the benefits of an application for such an 'enabling development' outweigh the dis-benefits of departing from the development plan.

## **HE13 Recording of Information**

The Government stresses here that recording a heritage asset is not a satisfactory substitute or justification for accepting a development that requires the loss of the asset. However, in such cases, the developer must fully investigate and document the asset and its significance and offer the resultant document to become an archive of the HER and any other suitable repository. Such a duty should be made a condition of any consent.

## **5 OVERVIEW**

- 5.1 A number of proposals outlined in the draft PPS have implications for policies in the City's emerging Local Development Framework and will serve to inform the process of bringing the Framework into being with appropriate regard for the historic environment in its policies and proposals.
- 5.2 The PPS comes at an important time as the current downturn in the economy has placed heritage assets in increased jeopardy as the aims of economic recovery may be seen by some as making issues of conserving the historic environment of secondary importance. However, the loss of heritage assets on grounds of short term expediency would be a long term dis-benefit to the community and would serve to impoverish the local townscape for future generations. The PPS is therefore to be welcomed and the Government is urged to bring forward the primary legislation for the UK's heritage assets at the first opportunity to ensure that the legislative framework is up to date and robust.
- 5.3 In responding to the draft PPS, the Secretaries of State have requested that respondents have particular regard to a series of questions posed therein. These are set out in Annex 1 to this report with recommended responses that are generally of a positive nature, reflecting the concerns that the Council has to ensure that the City's historic environment is sustained to enrich the life experiences of current and future generations.



## **6.0 NEXT STEPS**

- 6.1 This report along with the responses to the questions raised will be forwarded to CLG as constituting the formal response of the City Council with a view to it contributing to its revision of PPS15.
- 6.2 The final PPS is expected in 2010. Its requirements will be appropriately incorporated in the emerging LDF Core Strategy and associated Supplementary Planning Documents and Planning Guidance.

## **7.0 RECOMMENDATIONS**

- 7.1 Committee is recommended to:
  - i) Agree the consultation response as detailed within this report;
  - ii) Forward a copy of this report to the CLG as constituting the formal response of the City Council.

### **BACKGROUND PAPERS**

Consultation paper on a new Planning Policy Statement 15: Planning for the Historic Environment (May 2009)

## **ANNEX 1 – RESPONSES TO PPS15 CONSULTATION QUESTIONS**

- 1 Does the PPS strike the right balance between advocating the conservation of what is important and enabling change?

*It is appropriate that the PPS stresses that the significance of heritage assets needs to be understood and conserve. This should also enable appropriate changes to take place in a managed framework, once that significance is documented and appreciated. This represents a slight shift in emphasis from preserving a 'irreplaceable record' (as stated in PPG15) to more proactively managing change in the historic environment that conserves and perhaps enhances the importance of the 'place'; which is what good conservation practice should be all about and particularly relevant to modern day cities, such as Sunderland, that are also pursuing regeneration ambitions.*

*However, there are concerns that the 'presumption in favour' of retaining historic assets is not as explicit in PPS15 as it is in the current PPG. This could be interpreted as a weakening or diluting of the protection afforded to assets, and will give developers encouragement to put forward redevelopment proposals*

*involving the loss of, or harm to historic buildings. The wording in places is ambiguous and lacks clear definition and invites challenge, particularly in appeal situations. For instance, 'significance' could be 'importance'; 'should' could be 'must' and the phrase '... where reasonably practical' is a phrase that can be widely interpreted. It is suggested that policies HE9.8 and HE10.1-3 could be worded using terms that are less subjective and give more support to the Government's stated intent that the historic environment should "... be conserved, enhanced and enjoyed for the quality of life they bring ..."*

- 2 By adopting a single spectrum approach to historic assets, does the PPS take proper account of any differences between types of asset (e.g. are archaeological assets adequately covered?)

*The principles and philosophy of conservation apply equally to upstanding built remains and also archaeological remains, though there is an issue as to whether LPAs have ready access to specialisms in archaeology; though in the case of Tyne and Wear, the County Specialist Conservation Team normally provides such expertise.*

- 3 In doing so, does the PPS take appropriate account of the implications of the European Landscape Convention, and of the cultural dimensions of landscapes designated as National Parks and Areas of Outstanding Natural Beauty?

*It is not anticipated that these matters will be prejudiced through the PPS.*

- 4 Are the policies and principles set out in the PPS the key ones that underpin planning policy on the historic environment, or should others be included?

*The PPS seems quite comprehensive in establishing the principles and policies that will guide LPAs' management of the historic environment; there is little direct reference however, to a LPA taking a pro-active approach to the recognition of the value of locally significant heritage assets i.e. through the designation of conservation areas, the inclusion of assets on a 'Local List', or the conservation of locally significant archaeological sites.*

*It is surprising that measures to reverse the effect of decisions made in case law (the South Lakeland and Shimizu cases that served to undermine the ambitions of the PPG) are not more specifically reflected in the PPS, as was expected.*

*Such changes may be dealt with through separate secondary legislation to be brought forward in later years, but warrant reference in the PPS.*

*It is disappointing that a stronger statement is not included to highlight the requirement to “preserve AND enhance” Conservation Areas from the current definition to preserve OR enhance. Policy HE3 should make specific reference to Conservation Areas and reflect the above changes; Policies HE9/10 should express more clearly the requirement to enhance rather than just ‘not harm’ Conservation Areas in the determination of planning applications.*

- 5 Do you agree that it is the “significance” of a historic asset that we are trying to conserve?

*The introduction of the term ‘significance’ in the manner it is used in the PPS is considered appropriate, but is rather more vague than a more tangible phrase such as ‘historic fabric and features’ and hence may open the door to challenges being made on the issue of what constitutes ‘significance’ in a specific context.*

*Difficulties and disputes are envisaged in the processes of assessing what the significance of an asset is and the impact of a proposal on it, especially as applicants will be required to do this under Policy HE8. Many applicant’s will not have the expertise to write satisfactory statements of significance and it is perhaps unreasonable to expect applicants for smaller scale works to appoint a relevant ‘expert’ to carry out this work to satisfy validation requirements. It is suggested that the requirement for applicants to provide such statements should be limited to certain types of application and local authorities need guidance via the Historic Environment Planning Practice Guide on how this should be applied.*

- 6 Does the PPS comply with devolutionary principles with regard to what is expected at regional and local levels?

*It is not considered that the principles and policies of the PPS are particularly sensitive to matters of devolution.*

- 7 Does the PPS strike the right balance between the objectives of conserving what is significant in the historic environment and mitigating the effects of climate change?

*The recognition in HE4.1 of the contribution that the continued use of assets can make to sustainable development is welcomed and appropriate and goes some way to justifying why visually intrusive measures for energy conservation should not be accepted. Measures to mitigate climate change can appear very incongruous in the historic environment and may easily despoil a townscape or a specific building. Given that great selectivity is exercised in the designating of heritage assets, it is considered that the PPS is too accommodating to such measures and that, in these 'special areas' the onus should be placed on the developer to demonstrate that there shall be no harmful impact.*

*This is particularly apparent in the wording to Policy HE9.8 (iii) which could be interpreted as giving greater weight to environmental concerns than is afforded to historic building preservation. Statements such as seeking to 'modify heritage assets so as to reduce CO<sub>2</sub> emissions' could be interpreted as encouraging alterations (some of which can be very intrusive) over the accepted good practice of conservative 'like-for-like' repairs. It is important that the Government's current focus on climate change is not prejudicial to the protection of heritage assets and an appropriate balance is achieved. The wording of Policy HE9.8 should be reconsidered with the reference to climate change removed.*

- 8 Does the PPS make it clear to decision-makers what they should do, and where they have more flexibility? Are there any risks or benefits you would like to highlight for the historic environment sector?

*The philosophy and policy message seems reasonably clear; subsequent publication of more detailed advice from English Heritage should illuminate areas where there is lack of clarity. There are concerns, however, about the weight that the PPS will carry in appeal cases and when subject to legal challenge, if the relevant supporting guidance from English Heritage is not in place. It is important that the production of this guidance is afforded priority. A list of such supporting documents should be included in the PPS with timescales for their production.*

- 9 The draft PPS highlights the importance of ensuring that adequate information and evidence bases are available, so that the historic environment and the significance of heritage assets are fully taken into account in plan-making and decision-taking. At the same time we are concerned to ensure that information requirements are proportionate and do not cause unnecessary delays. Are you content we have the balance right? If not how would you like to see our policy adjusted? (Policies HE8 and HE9 are particularly relevant to this question).

*The PPS policies seem reasonable as stated; they may however cause delay in the validation process depending on how they are interpreted and applied in individual cases. It is suggested that further guidance is required from English Heritage in this respect but it should be recognised that the specific circumstances and requirements of particular heritage assets and the work proposed will require a case by case approach to the extent and nature of the evidence base demanded.*

- 10 In your opinion is the PPS a document that will remain relevant for at least the next 20 years? Do you see other developments on the horizon that have implications for the policies set out in the PPS?

*There are no apparent reasons that would prevent this document remaining valid for an extensive period.*

- 11 Do you agree with the conclusions of the consultation stage impact assessment? In particular, have we correctly identified and resourced any additional burdens for local planning authorities? Is the impact on owners/ developers correctly identified and proportionate to their responsibilities?

*This is difficult to assess and depends on the issues outlined at 9 above. It is considered that many developers will see the requirements as being unduly onerous; similarly, some LPAs may currently lack access to the requisite expertise. Sunderland City Council is reasonably well resourced in this respect at the present time, having regard to our ready access to the County Archaeologist and the already well developed Historic Environment Record.*

- 12 Do you think that the policy draft PPS will have a differential impact, either positive or negative, on people, because of their gender, race or disability? If so how in your view should we respond?

*There are no parts of the draft PPS that are considered to impact differentially upon particular sectors of the community.*

END