

Somersal Herbert

Conservation Area Appraisal

8. Conservation Policy & Legislative Context



CONSERVATION POLICY & LEGISLATIVE CONTEXT

National Planning Guidance

In March 2012 Planning Policy Statement 5: Planning for the Historic Environment which provided a national framework of policies affecting the historic environment, was revoked by the introduction of the National Planning Policy Framework (NPPF). However at the time of writing this Appraisal the Historic Environment Planning Practice Guide (HEPPG) which accompanied PPS5 remains pertinent, particularly Part 6. This part of the document provides information on making Repairs; Restoration, Additions and Alterations; and Works for Research.

Historic Environment Planning Practice Guide
www.english-heritage.org.uk

National Planning Policy Framework

In March 2012 the Government introduced the National Planning Framework (NPPF) which revoked many of the previous Planning Policy Guidance documents and Planning Policy Statements including Planning Policy Statement 5 : Planning for the Historic Environment.

The NPPF identifies that its overarching priority is the provision of sustainable development. The NPPF sets out the Governments Planning Policies for England and how these are expected to be applied. It focuses on delivery of sustainable development by considering 13 factors:-

1. Building a strong competitive economy
2. Ensuring the vitality of town centres
3. Supporting a prosperous rural economy
4. Promoting sustainable transport
5. Supporting high quality communications infrastructure
6. Delivering a wide choice of high quality homes
7. Requiring good design
8. Promoting healthy communities
9. Protecting Green Belt land
10. Meeting the challenge of climate change, flooding and coastal change
11. Conserving and enhancing the natural environment
12. Conserving and enhancing the historic environment
13. Facilitating the sustainable use of materials

Whilst the historic environment is referred to within various parts of the NPPF the most pertinent policies are contained within Part 12.

Part 12 - Policies on Conserving and Enhancing the Historic Environment

NPPF Policy 126

Local Planning Authorities (LPAs) should set out in their Local Plan a positive strategy for the conservation and enjoyment of the historic environment, including heritage assets most at risk through neglect, decay or other threats. LPAs should recognise heritage assets as an irreplaceable resource and conserve them in a manner appropriate to their significance.

LPAs should take account of :-

- sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation.
- social, cultural, economic and environmental benefits that conservation of the historic environment can bring
- new development making a positive contribution to local character and distinctiveness
- the contribution made by historic environment to the character of a place.

NPPF Policy 127.

When considering the designation of Conservation Areas, LPA's should ensure that an area justifies such status because of its special architectural or historic interest and that the concept of conservation is not devalued through the designation of areas that lack special interest.

NPPF Policy 128. LPA's should require applicants to describe the significance of any heritage assets affected including contribution made by their setting. The level of detail should be proportionate to the assets importance and no more than is sufficient to understand the potential impact of the proposal on their significance. As a minimum the Historic Environment Record (*held by DCC*) should have been consulted and the heritage assets assessed using appropriate expertise where necessary. Where a site includes or has the potential to include heritage assets with archaeological interest LPAs should require developers to submit an appropriate desk based assessment and where necessary a field evaluation.

NPPF Policy 129.

LPA's should identify and assess the particular significance of any heritage asset that may be affected by a proposal (inc. setting) taking account of available evidence and any necessary expertise. LPAs should take this assessment into account when considering the impact of a proposal on a heritage asset to avoid or minimise conflict between

the heritage asset's conservation and any aspect of the proposal.

NPPF Policy 130 Where there is deliberate neglect of, or damage to a heritage asset, the deteriorated state of the heritage asset should not be taken into account in any decision

NPPF Policy 131 In determining planning applications L.P.A.s should take account of

- The desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation
- The positive contribution that conservation of heritage assets can make to sustainable communities including their economic viability
- The desirability of new development making a positive contribution to local character and distinctiveness

NPPF Policy 132 When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the assets conservation. The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification.

- Substantial harm to, or loss of a grade II listed building, park or garden should be exceptional.
- Substantial harm to, or loss of designated heritage assets of the highest significance, notably scheduled monuments, protected wreck sites, battlefields, Grade I and II* listed buildings, Grade I and II* Registered Parks and Gardens and World Heritage Sites should be wholly exceptional.

NPPF Policy 133. Where a proposed development will lead to substantial harm to, or total loss of significance of a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh that harm or loss, or all of the following apply:-

- The nature of the heritage asset prevents all reasonable use of the site;

- No viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation
- Conservation by grant funding or some form of charitable or public ownership is demonstrably not possible
- The harm or loss is outweighed by the benefit of bringing the site back into use

NPPF Policy 134. Where the development proposal will lead to less than substantial harm to the significance of the designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use.

NPPF Policy 135.

The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that affect directly or indirectly non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset'.

NPPF Policy 136. Local Planning Authorities should not permit loss of the whole or part of a heritage asset without taking all reasonable steps to ensure the new development will proceed after the loss has occurred.

NPPF Policy 137 Local Planning Authorities should look for opportunities for new development within Conservation Areas and World Heritage Sites and within the setting of heritage assets to enhance or better reveal their significance. Proposals that preserve those elements of the setting that make a positive contribution to, or better reveal the significance of the asset should be treated favourably.

NPPF Policy 138 Not all elements of a WHS or a Conservation Area will necessarily contribute to its significance. Loss of a building or other (element) which makes a positive contribution to the significance of the Conservation Area or World Heritage Site should be treated either as substantial harm under paragraph (policy) 133 or less than substantial harm under paragraph (policy) 134, as appropriate taking into account the relative significance of the element affected and its contribution to the significance of the Conservation Area or World Heritage Site as a whole.

NPPF Policy 139 Non-designated heritage assets of archaeological interest that are demonstrably of

equivalent significance to scheduled monuments, should be considered subject to the policies for designated heritage assets.

NPPF Policy 140 LPA's should assess whether the benefits of a proposal for enabling development, which would otherwise conflict with planning policies but which would secure the future conservation of a heritage asset outweigh the dis-benefits of departing from those policies.

NPPF Policy 141.

LPA's should make information about the significance of the historic environment gathered as part of plan making or development management publicly accessible. They should also require developers to record and advance understanding of the significance of any heritage assets to be lost (wholly or in part) in a manner proportionate to their importance and the impact, and to make this evidence (and any archive generated) publically accessible (*as part of the HER—see DCC, museum archive or public depository*). However the ability to record evidence of our past should not be a factor in deciding whether such loss should be permitted.

NPPF Section 7 – Requiring Good Design (policies 56 to 68) are also relevant.

Historic Environment Planning Practice Guide
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LOCAL PLANNING GUIDANCE

Derbyshire Dales Local Plan **(Adopted November 2005)**

The adopted Local Plan reinforces the view that the quality of the environment, natural and man-made, is an asset to be conserved. It realizes that this can be viewed as a major constraint to development, but that it also offers great opportunities for development to be conceived in harmony with it. Positive conservation policies coupled with a development strategy are needed, so that aims to meet real needs and encourage sustainable realistic developments in conjunction with the environment, are achieved.

The policies below can be found within the **Natural, Historic and Built Environment** section. The most relevant to this Appraisal are noted:

Policy NBE4

Protecting Features or Areas of Importance to Wild Flora and Fauna

Planning permission for development within, or likely to have an adverse impact upon the integrity or continuity of areas or features of importance to wild flora and fauna, will not be granted unless it can be clearly demonstrated that there are benefits resulting from development which would outweigh the importance of the feature to wild flora and fauna.

Where appropriate the Council will impose conditions or seek to negotiate a Section 106 Obligation to secure appropriate long term management, mitigation and / or compensatory measures to protect and enhance the importance of the area or feature to wild flora and fauna

Policy NBE5

Development affecting Species Protected by law or are Nationally Rare

Planning permission for development likely to have a direct or indirect adverse impact upon species protected by law or identified as nationally rare will only be granted if it can be demonstrated that there is an overriding need for the development and where necessary, mitigation and/or compensatory measures can be put in place that allows the status of the species to be maintained or enhanced.

Policy NBE6

Trees and Woodlands

Planning permission will only be granted for development likely to have a direct or indirect adverse impact upon trees and woodlands if it can be demonstrated that the justification for the development outweighs their importance for the nature conservation or amenity value. Where any trees are lost as part of a development proposal the Council will impose conditions or seek to negotiate a Section 106 Obligation to replace those that are lost on the basis of three replacements for each one lost.

Policy NBE7

Features Important in the Landscape

Planning permission will only be granted for development likely to have an adverse impact upon landscape features such as hedgerows, walls, streams and ponds, where it can be demonstrated that the justification for the development outweighs their importance to the character and appearance of the immediate and wider landscape. In appropriate circumstances the Council will impose conditions or seek to negotiate a S106 Obligation to safeguard the long-term protection and management of such features.

Policy NBE8

Landscape Character

Planning permission will only be granted for development that protects or enhances the character, appearance and local distinctiveness of the landscape.

Supplementary Planning Guidance

In July 2007 Derbyshire Dales District Council adopted Supplementary Planning Guidance for Landscape Character and Design.

Somersal Herbert Conservation Area is defined within that document as being within the Needwood and South Derbyshire Claylands and is divided between two different landscape character types, these being Settled Farmlands and Settled Plateau Farmlands. (See Landscape Section for further information).

Policy NBE16

Development Affecting a Listed Building

Planning permission for development will only be granted where it does not have an adverse impact upon the special character or setting of a listed building.

Policy NBE17

Alterations and Extensions to a Listed Building

Planning permission for development involving alterations or extensions to listed buildings will only be granted where;

- (a) the historic form of the building is retained and;
- (b) any architectural or historically important elements of the building, are retained in largely unaltered form; and
- (c) the proposed design, materials, scale and detailing does not have an adverse impact the character and appearance of the listed building

Policy NBE18

Conversion and Changes of Use of a Listed Building

Planning permission for the conversion and/or change of use of a listed building will be granted provided that;

- (a) the original use is no longer appropriate or viable and;
- (b) if the proposed use is not the original use, it is appropriate to the status of the listed building
- (c) the proposal will protect the listed building and its setting

Policy NBE19

Demolition of Listed Buildings

Planning permission for development involving the demolition of a listed building will only be granted where;

- (a) the building is wholly beyond economic repair and;
- (b) it can be demonstrated that every possible effort has been made to continue its current use or find a compatible alternative use that would allow for the retention of the listed building and;
- (c) the application is accompanied by a redevelopment scheme for the site, the merits of which would outweigh the loss of the listed building.

The Council will impose conditions or seek to enter into a Section 106 Obligation to ensure the implementation of the redevelopment scheme at the earliest possible opportunity following demolition of the listed building.

Policy NBE20

Enabling Development

Planning permission for development adjacent to or within an Heritage Asset* (**Scheduled Monument, other archaeological remains, listed building, other historic buildings of more local significance, conservation areas or registered parks and gardens*) and used to fund the repair, restoration or improvement of a Heritage Asset will not be granted unless:-

- a. it can be demonstrated that it is the only viable means of repairing, restoring or improving the heritage asset and;
- b. it would not have an adverse impact on the archaeological, architectural, historic or landscape interest of the heritage asset or its setting and;
- c. it can be demonstrated that the development is the minimum necessary to secure the long-term future of the heritage asset and;
- d. the benefits that accrue from the development outweigh any long-term benefits.

Policy NBE21

Development Affecting A Conservation Area

Planning permission for development proposals within or adjacent to a conservation area will be granted provided that they preserve or enhance the character or appearance of the area.

Policy NBE24

Archaeological Sites and Heritage Features

Planning permission will not be granted for development likely to disturb or have an adverse impact upon Scheduled Ancient Monuments or other nationally important archaeological remains or their setting

Planning permission for development likely to disturb or have an adverse impact upon other important archaeological or heritage features, or their setting will only be granted where it can be demonstrated that;

- (a) the feature can be preserved in-situ, or;
- (b) where in-situ preservation is not feasible mitigation measures can be put in place that minimises any adverse impact upon the feature and its setting.

Where appropriate the Council will impose conditions or seek to negotiate a Section 106 Obligation to ensure appropriate investigation and recording, before and during development.

Policy NBE26

Landscape Design in Association with New Development

In determining applications for planning permission the Council will consider whether there is a need for the submission, implementation and maintenance of a scheme of landscaping to ensure that the proposed development would integrate with or enhance its surroundings. Where this is considered to be necessary appropriate conditions will be imposed on any planning permission.

Other policies in the Derbyshire Dales Adopted Local Plan will be relevant to Somersal Herbert although they are not all recorded here, where the emphasis is on the built and natural environment of the Conservation Area. Other relevant policies include:-

Strategic Framework policies

- SF4 Development in the Countryside
- SF5 Design and Appearance of Development
- SF6 Protection of the Best Agricultural Land (Part of Somersal Herbert Conservation Area is identified as Grade 2 Agricultural land)

Housing policies

- H2 Extensions to Dwellings
- H3 Dependent Persons Units
- H4 Housing Development Outside Settlement Framework Boundaries
- H5 Conversion and Re-use of Buildings to Provide Residential Accommodation Outside Settlement Frameworks

- H6 Replacement Dwellings in the Countryside
- H8 Extending Domestic Curtilages into the Countryside
- H9 Design and Appearance of New Housing.
- H12 Alternative Provision for Affordable Housing Outside Settlement Frameworks
- H13 Affordable Housing Exceptional Sites in Rural Areas

Economic & Development Policies

- EDT4 Other Existing Employment Land and Business Premises
- EDT7 Extension and Expansion of Existing Industrial and Business Land and Premises
- EDT8 Design and Appearance of New Industrial and Business Premises
- EDT13 Buildings Associated with Agriculture, Forestry or Other Rural Based Enterprise
- EDT14 Farm Diversification
- EDT15 New Build Industrial and Business Development Outside of Settlement Frameworks
- EDT16 Re-use of Rural Buildings for Industrial and Business Use

Transportation policies

- TR1 Access Requirements and the Impact of New Development
- TR3 Provision for Public Transport

Infrastructure & Community Facilities policies

- CS5 Renewable Energy Installations
- CS6 Wind Turbine Generator Development

Leisure and Recreation policies

- L9 Safeguarding Public Rights of Way
- L12 Potentially Intrusive Sport or Recreation Activities

LEGISLATION

Conservation area designation has always had minimal impact on the individual and successive governments have always sought to ensure that the rights of individuals within conservation areas are not overly constrained, as compared with individuals outside of protected areas. However, erosion of historic fabric within conservation areas over the years has led to some additional controls being made available to protect the overall environment. Conservation Area Consent is required for the total (or substantial) demolition of a building. Following the outcome of the Shimizu case, various works that would previously have constituted partial demolition are not now subject to consent, despite their removal having a potentially detrimental effect on the character or appearance of the area e.g. removal of architectural detail etc.

Development

The Town & Country Planning (General Permitted Development Order) 1995 indicates the rights of an individual to act without the need for a planning approval. However, some of these rights are withdrawn, or are more limited in their application in conservation areas and national parks, than elsewhere. In October 2008 amendments were introduced to the TCP (GPDO) 1995 by the TCP (GPDO) 2008. The following indicate constraints within a Conservation Area that are **'additional'** to **planning requirements** outside a Conservation Area.

Planning permission is required for:-

- An extension to the dwelling-house which would extend beyond a wall forming a side elevation of the original dwelling-house.
- An extension of the dwelling-house which would have more than one storey and extend beyond the rear wall of the original dwelling-house.
- Cladding a house with stone, artificial stone, pebble-dash, render, timber, plastic and tiles.
- The enlargement of a house consisting of an addition or alteration to its roof.
- The provision, alteration or improvement of a building/enclosure/pool or the provision of a container to be used for domestic heating purposes (oil/gas) within the curtilage of a dwelling-house **if** any part of the building, enclosure, pool or container would be situated on land between a wall forming a side elevation of the house and the boundary of the curtilage of the house.
- The installation, alteration or replacement of a chimney, flue or soil and vent pipe on a house **if** the chimney, flue, soil, or vent pipe would be installed on a wall or roof-slope which fronts a highway or forms either the principal or side elevation of a house.
- The installation, alteration or replacement of a satellite dish on a house, or within the curtilage of a house **if** it consists of the installation of a satellite dish, on a chimney, wall or roof slope which faces onto, and is visible from a highway or on a building which exceeds 15 metres in height.

Installation of Micro-generation Equipment

Planning permission is required for :-

- The installation, alteration or replacement of solar thermal equipment on a house (or flats) **if** the solar PV or solar thermal equipment would be installed on a wall forming the principal or side elevation of the house and would be visible from the highway, or; on a wall of a building within the curtilage of the house and would be visible from a highway.
- The installation, alteration or replacement of stand alone solar within the curtilage of a dwelling-house **if** it is to be situated within any part of the curtilage of the dwelling-house and would be visible from the highway.
- The installation, alteration or replacement of a flue, forming part of a biomass heating system on a dwelling-house **if** the flue would be installed on a wall or a roof-slope forming the principal or side elevation of the dwelling-house and would be visible from a highway.
- The installation, alteration or replacement of flue, forming part of combined heat and power system, on a dwelling-house **if** the flue would be installed on a wall or a roof-slope forming the principal or side elevation of the dwelling-house and would be visible from a highway.

Trees

Under the Town and Country Planning Act 1990 (Section 211), subject to range of exceptions, anyone proposing to cut down, or prune a tree in a Conservation Area is required to give six weeks notice to the local planning authority. This provides the local authority with the opportunity for bringing the tree under their general control by making a tree preservation order in respect of it. Penalties for contravention are similar to those relating to tree preservation orders.

Conservation Area Consent

Conservation Area Consent is required for the substantial or total destruction of a building in a conservation area greater than 115 cubic metres. Consideration is given as to whether the building makes a positive contribution to the character and appearance of the Conservation Area. Conservation Area Consent is also required for the demolition of walls, fences and other means of enclosure where planning permission would have been required for their construction.

Article 4 Directions

It is recognized that in some conservation areas, the above criteria only provides limited measures, and additional controls may be desirable. The General Planning Development Order (GPDO) therefore allows the local authority to introduce Article 4 Directions to withdraw further rights in relation to features, which are considered to be of particular significance in the area. Items which can be brought under additional control include:-

- Alteration to a dwelling-house (this could include external windows)
- Roof slopes and materials
- External doors/porches
- Ancillary buildings
- Hard surfaces, e.g. drives and hard-standings
- Satellite antennae
- Gates, walls, fences
- Chimneys
- Painting

If it is considered that there is a particular threat to the character or appearance of a conservation area from inappropriate 'permitted development', the local planning authority will give consideration to the establishment of an Article 4 Direction (under the provisions of the Town and Country Planning Act 1990) to bring specified aspects of permitted development under control. Normally it is recommended that any Article 4 Direction should be reviewed every five years.

Any potential new Directions would be the subject of a full public consultation exercise with local residents and the Parish Council.

Advertisement Control

It is recognized that all outdoor advertisements affect the appearance of the building or the neighbourhood where they are to be displayed and there is a duty by the Local Planning Authority to pay special regard to the desirability of preserving or enhancing the character and appearance of the conservation area. As many conservation areas include retail and commercial premises, outdoor advertising is essential to commercial activity and the success of local businesses will usually help to maintain buildings in good repair and in having an attractive appearance.

In summary, in a Conservation Area, the District Council can:-

- ensure that proposed new design and materials harmonise with the buildings and the surrounding area

- control demolition of buildings and walls/fences of certain sizes /heights
- control works to trees
- prepare development or design briefs for specific sites in conservation areas
- introduce an Article 4 Direction to control minor works if it is considered appropriate (this is subject to public consultation)
- control advertisements and shop signage
- endeavour that traffic control measures are not at odds with the character of the area
- consider enhancement schemes and look to environmental improvements (where funding is available)
- provide grant aid (where available) for the repair of buildings and for enhancement schemes within the area