

GREATER NORWICH LOCAL PLAN EXAMINATION

Tuesday 8th February 2022

Matter 4 – Issue 2:

Is Policy 3 justified, effective and consistent with national policy?

Further Statement by The Norwich Society

1. Our Regulation 19 submission

In the Norwich Society's response to the Greater Norwich Local Plan Regulation 19 consultation we submitted a formal representation concerning the soundness of **Policy 3** as currently drafted. As not all of our submission is reproduced within the Core Submission Documents A11 and A12, we reproduce it here. We said:

"In the Society's view, Policy 3 does not fully reproduce the clear and unambiguous statements concerning heritage assets which are set out in the National Planning Policy Framework (NPPF). We think this is probably an unintentional departure, but the wording now used has serious potential dangers for heritage assets in the path of development.

*The clear requirement of the NPPF is that developments which will cause substantial harm to a designated heritage asset should be refused unless it can be demonstrated that this is "**necessary** to achieve other substantial public benefits that outweigh that harm" (...our emphasis). In effect the potential harm has to be necessary, that is to say **unavoidable**, before the merits of any substantial public benefits can be allowed to kick in and the policy test can be passed.*

The current wording selected for Policy 3 rather turns this presumption on its head. Now, the claimed existence of "overriding benefits" (whatever that might mean) can be used to trump the duty of "avoiding harm". The 'necessity' rule in the NPPF is no more. A simple reading of the proposed policy suggests that the prospect of an "overriding benefit" (not even a substantial one perhaps) could be used legitimately to justify a heritage harm or loss, whether that harm or loss was actually avoidable or not. This is surely not what was intended.

The Society requests that this Policy is redrafted to bring it fully into compliance with national planning policy and therefore pass the test of soundness".

2. The Council's response

The Council's response was to reject this argument and to propose no change to the Plan. It said, "the policy is appropriately worded and reflects the NPPF. 'Avoiding harm' applies as a principle, but this does not discount the need to consider other benefits that might arise". (Document A8.19 p.148)

3. Current national policy

A new version of the National Planning Policy Framework was published on 20 July 2021. Paragraph 201 of the NPPF is now the relevant reference point, but the national policy is essentially unchanged. Paragraph 201 states (our emphasis):

*“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 total loss is **necessary** to achieve substantial public benefits that outweigh that harm or loss, or all of the following apply:*

(a) the nature of the heritage asset prevents all reasonable uses of the site; and

b) no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; and

(c) conservation by grant-funding or some form of not for profit, charitable or public ownership is demonstrably not possible; and

(d) the harm or loss is outweighed by the benefit of bringing the site back into use”.

The effect of the NPPF wording is to require the refusal of any development that would cause substantial heritage harm unless **three** separate tests are passed.

The third of these tests, whether a heritage asset lacks any viable future use, is not an issue we need to address in our submission. Our concern is with the interplay between the other two tests.

Firstly, to comply with paragraph 201, and thus to avoid the refusal of consent, there must obviously be the prospect of a substantial public benefit arising from the development. But, secondly, it must also be clear that this potential benefit is unachievable without harming a designated heritage asset. The harm must be **necessary**. Something regrettable, but unavoidable for the greater good.

Under the NPPF, it therefore falls to the applicant to demonstrate why their development could not be so designed as to achieve much or all of the substantial benefit without causing any such harm or loss. And it falls to the local planning authority to assess whether the same public benefit might in fact be achievable by other means, such as in a different form of master plan or through the designation of other, less sensitive, sites.

4. Does GNLP Policy 3, as drafted, say the same thing?

The relevant GNDP text is set out below with the key sections highlighted.

The Built and Historic Environment

The development strategy of the plan and the sites proposed for development reflect the area's settlement structure of the city, towns and villages, retaining the separate identities of individual settlements.

Development proposals will be required to conserve and enhance the built and historic environment through:

- being designed to create a distinct sense of place and enhance local character taking account of local design and other guidance, undertaking a heritage impact assessment if significant impacts might arise, and providing measures such as heritage interpretation to further the understanding of local heritage issues;
- **avoiding harm to designated and non-designated heritage assets and historic character, unless there are overriding benefits from the development that outweigh that harm or loss and the harm has been minimised;**
- providing a continued or new use for heritage assets whilst retaining their historic significance.

In applying the above, regard will be given to the level of importance of the heritage asset.

The Norwich Society accepts that Council staff are seeking to comply with national policy and honestly believe they have done so. However, their drafting introduces subtle changes of emphasis with potentially significant consequences for future development management.

Firstly, the draft abandons the NPPF's explicit statement that consent should be refused for harmful development unless specific circumstances apply. This now has to be inferred from the text and clarity is lost unnecessarily.

Secondly, and as the Council's response says, the 'avoiding harm' principle is retained, but now it is counterbalanced by the pursuit of unspecified "overriding" benefits. As framed, the avoidance of harm now appears to be contingent on there not being overriding benefits to be had.

Thirdly, the NPPF's 'necessity' test is not clearly reproduced in the text of Policy 3. Admittedly, there is recognition in the commentary (at paragraph 207) that harm will need to be unavoidable in order to be potentially justifiable, but this is not carried forward into the Policy itself. The policy does not ask the developer to demonstrate that the harm to heritage assets is unavoidable, only that it has been minimised which is not quite the same thing.

5. The Potential Consequences

The Norwich Society does not believe that this is just a matter of semantics. The proposed policy lacks the precision seen in the NPPF and will be open to varied interpretation, not least as to what constitutes an “overriding” consideration.

Later, in Part 2 of the Examination, the Norwich Society will be seeking to demonstrate what the potential consequences of the drafted policy are for a specific site within the city, Anglia Square, where a significant number of heritage assets are at continuing risk from what will no doubt be claimed to be an “overriding” benefit.

6. Conclusion and Recommendation

The Norwich Society believes that this is a relatively simple issue to rectify and would have preferred to have seen an agreement between the parties prior to this Examination.

The Society now requests that this Policy is redrafted as follows to bring it fully into compliance with national planning policy and therefore pass the test of soundness.

The Built and Historic Environment

The development strategy of the plan and the sites proposed for development reflect the area’s settlement structure of the city, towns and villages, retaining the separate identities of individual settlements.

Development proposals will be required to conserve and enhance the built and historic environment through:

- being designed to create a distinct sense of place and enhance local character taking account of local design and other guidance, undertaking a heritage impact assessment if significant impacts might arise, and providing measures such as heritage interpretation to further the understanding of local heritage issues;
- **avoiding harm to designated and non-designated heritage assets and historic character. Consent will therefore be refused for developments that cause such harm unless it can be demonstrated that this is necessary to achieve other substantial public benefits that outweigh the harm. In all instances the harm must be minimised.**
- providing a continued or new use for heritage assets whilst retaining their historic significance.

In applying the above, regard will be given to the level of importance of the heritage asset.

Michael Jordan – for The Norwich Society