

ENGLISH HERITAGE CONSULTATION ON HISTORIC ENVIRONMENT GOOD PRACTICE ADVICE IN PLANNING

Deadline for responses: 5th September 2014

MPA responses to consultation questions

1. Do you think the topics selected for publication as Good Practice and Technical Advice in Planning are the right ones? If not, please list any topics which you consider should be included.

NO – but mainly because the current titles are misleading. If it is intended to include advice on Neighbourhood Plans in GPA1 then the title should be changed to “The Historic Environment in Local Plans and Neighbourhood Plans”. Apart from making it clearer who should read that GPA, Neighbourhood plans are not part of the Local Plan although they are part of the Development Plan. Similarly, if GPA2 is all about planning applications, the title should say so. “Decision taking” in the planning system includes decisions related to the local and neighbourhood plans, as well as enforcement and comments on the plans of other authorities. Decision taking on development plan matters is already covered by GPA1.

If neighbourhood planning is to be addressed then it would be useful to say something about Assets of Community Value and Local Green Spaces which must be of considerable value in conserving and adding to the enjoyment of the historic environment.

GPA1 also strays into other territory which is not connected to local plan making. This includes the items on Nationally Significant Infrastructure Projects, Marine Planning, Community Infrastructure Levy and Section 106 agreements. It is suggested that marine planning might need a separate GPA as the context, both physical and statutory, is completely different.

2. Does GPA 1 give sufficient information on sources of evidence to address the historic environment in drawing up a Local Plan? If not, please list any sources of evidence you consider are missing.

NO – there is no reference in GPA 1 to the English Heritage publication “Mineral Extraction and Archaeology: A Practice Guide”. Whilst reference is made to it in GPA 2, the guidance it contains is equally applicable to plan-making and making decisions on planning applications. It should also be noted that the document is not a Minerals and Historic Environment Forum publication as stated in GPA2 but one that is published by English Heritage.

3. Does GPA 1 give sufficient and proportionate information and advice on how to develop a positive strategy for the conservation and enjoyment of the historic environment for the Local Plan area? If not, please indicate how you consider it can be improved.

NO – it adds very little to what is in the NPPF. In referencing the NPPF it is not clear where the direct quotes from the NPPF end and paraphrasing of its content by EH begin. In relation to mineral development, the final bullet point of GPA1, paragraph 11, is an inappropriate starting

point for a positive approach to accommodating both the needs of the historic environment and the needs of society for minerals, in a local plan. It should be re-drafted:

“Facilitating a sustainable supply of essential minerals – How might any impacts of mineral development on an area’s heritage assets be controlled to acceptable levels. How might the opportunities to improve archaeological knowledge that can be provided by mineral extraction be maximised?”

Potential sources of building and roofing stone are no more significant than other minerals. Specific mention of those materials in the GPA indicates a parochial approach by EH to local plan making based solely on the need for materials to maintain heritage assets. That is not helpful. The NPPF (Para.142) sets out the Government position on minerals; minerals are essential and can only be worked where they are found. Local planning authorities are told in the NPPF that both the impacts of a proposed development on the significance of a designated heritage asset (Para 132) and the benefits of mineral extraction (Para 144) are to be given “great weight”. As a generality therefore, neither heritage assets nor mineral resources should be assumed to be of greatest importance or to have the greatest degree of protection. In cases of conflict it depends entirely on the specific circumstances of that case.

4. Are the steps given in paragraph 9 of GPA 2 on the sources of information that might be consulted, or the exercises that might be carried out in assessing significance, useful? If not, please list any others which you consider might usefully be added?

NO. As written those steps indicate serious cost implications for potential developers and that could constitute an unacceptable commercial risk at the pre-application stage. It may discourage a developer from proceeding with a proposal. In drafting each of these GPAs EH might consider what their own role is and what the role of the planning authority heritage advisors is in assisting the potential developer through the planning process. The EH Mineral Extraction and Archaeology Practice Guide sets out an incremental approach to archaeological assessment and it should be referred to.

5. Do you consider that the advice in GPA 2 which applies specifically to listed buildings, including paragraphs 12 on curtilage and paragraphs (25-29) on the recent changes to the listed building control system (under the ERR Act 2013) is helpful in managing change to these heritage assets? If not, please list any other factors which you consider could usefully be addressed.

No comment

6. Do you consider that the paragraphs in GPA 2 which apply specifically to assets with archaeological interest, including those on Archaeological and Historic Interest (13-14), and Decision-taking for Assets with Archaeological Interest (30-31) and the archaeological conditions included at paragraph 37 provide proportionate advice on the protection of non-designated heritage assets with archaeological interest? ? If not, please list any other factors which you consider could usefully be addressed.

Areas of high archaeological potential i.e. those “where there is good reason to suspect that [they] contain important remains” will clearly be known in advance and EH should promote the designation of such areas by the planning authority as Good Practice.

Government is currently consulting (Technical consultation on planning – July 2014) on a number of issues, including “Improving the use of planning conditions” (Section 3). In particular Government is concerned about the indiscriminate use of pre-commencement conditions. In relation to paragraph 37.1 of GPA2, only the first and last bullet points are reasonable and justified in a pre-commencement condition.

7. Would the planning conditions included at paragraph 37 of GPA 2 be sufficient to ensure an appropriate level of archaeological work while being flexible enough to allow development to proceed in a reasonable and timely way?

NO. Identification of the appropriate level of archaeological work should be finalised as early as possible in the planning application process and certainly no later than the point at which permission is granted. The suggestion in paragraph 37 that this should be done before commencement of the development is unacceptable. Also, as stated in response to Question 7, pre-commencement conditions should not include the submission of details which could reasonably be submitted at a later stage in the development process. Most planning authorities have developed their own schemes of archaeological conditions and it seems inappropriate for EH to suggest what is good practice.

8. Do you consider that the section on what makes development successful in its context (paragraph 58) covers the main matters in this regard? If not, please list any additional considerations you think should be included.

YES

9. Does the way that GPA 3 – The Setting of Heritage Assets – is set out give clear steps to aid the assessment of setting, bearing in mind that the main concepts relating to setting are now housed in the Government’s Planning Practice Guide (paragraph 18a-013)?

The MPA is still unconvinced that the “setting” of a heritage asset is something that can be defined sufficiently precisely to meet the requirements of the planning system. The GPA provides no evidence that that is not so. The setting remains something which is largely subjective and therefore the GPA gives little assistance on this matter. Paragraph 10 of GPA3 states that “Most places are within the setting of a heritage asset.” Most places are within the setting of a heritage asset but minerals can only be worked where they occur.

However, It seems sensible to provide some guidance on how the planning system should deal with temporary effects on the setting of heritage assets, particularly where effects on setting and significance are short term and where there are longer term benefits to both.

10. Have you any further comments to make on Good Practice Advice notes 1-3?

Whilst the statutory authority to regulate land use rests with the planning authorities, the planning system in the UK has been successful because it provides a framework through which

those with differing interests can ensure that those interests are taken into account in the decision making processes. But to do that the parties must engage with the planning system and provide input to those processes. What is missing from these GPAs is any clear statement of what EH will do to assist the process; what they consider their part is. Indeed there seems to be very little about what EH considers is good practice for planning authorities in local plan making and decision-taking. The majority of the advice seems to suggest large amounts of work for developers with little commitment that it will do other than make the task of obtaining planning permission more difficult as a result.

GPA 1 does little but paraphrase and act as a signpost to parts of the NPPF relevant to the heritage sector. GPA 3 is wordy and far too esoteric for either developers or planning authorities to draw any great value from. Only GPA 2 provides anything approaching Good Practice Advice, in being a document which attempts to fill in the gaps left between the lines of planning policy in the NPPF.

In creating good practice “to assist local authorities, planning and other consultants, owners, applicants, and other interested parties”, it would seem sensible to engage representatives from those sectors in the drafting process. But the drafting group from the Historic Environment Forum does not appear to include such representatives. The drafting group therefore did not have the benefit of advice from their defined audience on what they needed from the GPAs.

The MPA also believe that any such GPAs will be of limited value if they do not carry the endorsement of all appropriate parties. This seems unlikely if they have not been involved in developing it.