

Plan:MK

Representations to Examination in Public - Built
Heritage

Matter 8, Issue 4, Question 8.22 (Historic Environment)

June 2018

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1. Introduction

Purpose of and Context for this Report

- 1.1 These representations set out in this report have been prepared by Turley’s specialist built heritage team on behalf of Hermes CMK GP Limited (our “Client”) to provide professional commentary on the soundness of the emerging Plan:MK, in particular with regard to emerging local planning policy and guidance in relation to development affecting the significance of built heritage assets. These representations have been prepared for the benefit of the appointed Planning Inspector and forthcoming independent examination of the plan, during summer 2018. These are also made in light of the relevant statutory duties of the Planning (Listed Building and Conservation Areas) Act 1990 (“the Act”), prevailing National Planning Policy Framework (NPPF) 2012 and supporting National Planning Policy Guidance (NPPG) from 2014, and national best planning practice and advice from Historic England.
- 1.2 As context, Milton Keynes Council is preparing a replacement local plan; Plan:MK, which includes detailed policies that would be used in determining planning applications. The Council has now submitted the Proposed Submission version (dated October 2017 un-modified) of the Plan:MK to the Planning Inspectorate for independent examination into the soundness of this plan. In response, initial representations were made to the Planning Inspectorate by Turley on behalf of the Client in December 2017.
- 1.3 The appointed Planning Inspector has subsequently published his Matters, Issues and Questions (dated May 2018) to frame the debates at the forthcoming hearings. The representations set out in this report (with regard to built heritage asset matters) follow on from our initial representations, and also directly in response to this further publication. These representations also relate specifically to the emerging Policy HE1 (Heritage and Development) of the Proposed Submission version of Plan:MK, and its soundness. This is discussed under Matter 8, Issue 4 and Question 8.22.
- 1.4 It is recognised that consideration of the soundness of emerging Plan:MK should be based on the criteria set out in paragraph 182 of the NPPF 2012. In summary, this is that the plan is (1) positively prepared; (2) justified; (3) effective; and, (4) consistent with national policy.

Structure of this Report

- 1.5 Firstly, this **Section 1** establishes the purpose and context of this report and also its structure, with regard to our representations to the forthcoming Examination in Public of Plan:MK.
- 1.6 Reference is made to the statutory duties of the Act, national policy in the NPPF and as supported by NPPG, as well as other relevant national planning guidance and advice for development within the historic environment. This is set out in full for reference at **Appendix 1**. This appendix includes a review of current local planning policy and guidance (due to be replaced) for completeness, and as relates to built heritage assets.

- 1.7 **Section 2** comprises our representations on behalf of the client, and commentary on the soundness of the emerging Plan:MK, in relation to built heritage assets and in particular emerging Policy HE1 (Heritage and Development). This is considered in light of the prevailing national planning policy and guidance requirements (as well as the overarching legislation, as relevant).
- 1.8 In summary, it is our view that the emerging Plan:MK, and in particular Policy HE1, with regard to development affecting built heritage assets, does not meet the criteria for soundness as set out in paragraph 182 of the NPPF 2012.

2. Inspector's Matters, Issues and Questions

Plan: MK Proposed Submission version (Policy HE1)

- 2.1 The emerging Plan:MK (Proposed Submission version dated October 2017) sets out under section 13 planning policy objectives with regard to "Heritage". Following a preamble on the historic environment of the authority area, including both designated and no designated heritage assets, and both archaeological and built heritage¹ (paragraphs 13.1-13.4), the Council's strategy for the conservation and enjoyment of the historic environment is set out (paragraph 13.5). This states that:

"In order to sustain and enhance the significance of Milton Keynes' rich and varied historic character, important local distinctiveness and its sense of place, Milton Keynes will implement a positive strategy for the conservation and enjoyment of the historic environment."

- 2.2 This accords with the principles for plan making set out in paragraph 126 of the NPPF 2012. To do this the Council commits to four core actions or duties. Bullet point 1 generally accords with paragraph 127 of the NPPF with regard to conservation area designation and review. However, it is recommended that it is made explicit that due consideration is given to the requirements of this national policy, in particular *"...that the concept of conservation is not devalued through the designation of areas that lack special interest."*
- 2.3 Bullet point 3 identifies the drawing up of a Local List for the New Town area (known as the MK New Town Heritage Register). This broadly follows NPPG² and advice from Historic England on the subject³. Further commentary on this local list and how this should be considered properly as part of decision making within the planning process is provided within our review of emerging Policy HE1 of the local plan.
- 2.4 The management of heritage and development is considered with reference to national policy and guidance, and the Government's goal of achieving sustainable development (paragraphs 3.6-3.15). This is the supporting wording / justification to the Policy HE1 within this section of the emerging local plan. It is noted that due reference is also made to the overarching statutory duties of the Planning (Listed Buildings and Conservation Areas) Act 1990, specifically in relation to designated heritage assets of listed building and conservation areas.
- 2.5 One policy for the management of development and decision making is proposed. This is Policy HE1 (Heritage and Development). For completeness and also ease of use the wording of this policy is set out in full below:

"A. Proposals will be supported where they sustain and, where possible, enhance the significance of heritage assets which are recognised as being of historic, archaeological,

¹ It should be noted that the representations in this report relate to built heritage assets matters only

² NPPG Paragraph: 006 Reference ID: 18a-006-20140306

³ Historic England Advice Note 7: Local Heritage Listing 2016

architectural, artistic, landscape or townscape significance. These heritage assets include:

- Listed Buildings;
- Conservation Areas;
- Scheduled Ancient Monuments and non-designated Archaeological sites;
- Registered Parks and Gardens;
- Assets on the MK New-Town Heritage Register; and
- Other places, spaces, structures and features which may not be formally designated but considered to meet the definition of 'heritage assets' as defined in the Annex 2 of the NPPF.

B. Where appropriate, development proposals must provide an impartial and objective Heritage Assessment. Where necessary, the Council will require suitably qualified specialists to undertake the Heritage Assessment. The Heritage assessment shall:

- 1. Assess and describe the significance of the heritage assets affected, identifying those elements that contribute to that significance and, where appropriate, those that do not. The level of detail shall be proportionate to the asset's importance and no more than is sufficient to understand the potential impact of proposals on their significance. Limited and localised alterations to an unlisted building in a conservation area need not be supported by the level of detail required to convey the impact on significance caused by development in the setting of a listed building or by proposed alterations to the built fabric of a listed building.*
- 2. Be of an analytical and interpretive nature rather than simply provide a description of the assets and the proposed works.*
- 3. Provide a sound justification for the works, based on the economic, social and environmental benefits delivered by the scheme, for example, promoting the long term care for a heritage asset and/or its setting.*
- 4. Explain how the scheme has taken account of the significance of the assets in its scope, design and detail, in order to minimise or avoid harm to the heritage assets affected.*
- 5. Assess the nature and extent of any harm or public benefit arising from the scheme.*
- 6. Where harm is caused by the proposal, the assessment shall explain why such harm is unavoidable or required to deliver public benefits that outweigh the harm caused.*

C. Where applications seek to change the use of a listed building, evidence should be submitted to demonstrate that the proposal includes the full scope of works required to achieve that use (such as those that will be required by Building Regulations, The Fire Authority, Environmental Health etc.). Where a change of use requires a significant alteration or structural works, an engineer's report shall be submitted to demonstrate

that the building is capable of conversion, set out the full extent of works and show how they have taken account of 2 a) above.

D. Granting of permission for proposals that result in substantial harm to or total loss of the significance of a designated heritage asset will only be exceptional or wholly exceptional in accordance with national policy and guidance.

E. Permission for proposals that cause less than substantial harm to a designated heritage asset will only be granted where the harm is demonstrably outweighed by public benefits delivered by the scheme.

F. Proposals that result in harm to the significance of non-designated heritage assets will be resisted unless the need for, and benefits of the development clearly outweigh the harm, taking into account the asset's significance and importance, and only once all feasible solutions to avoid and mitigate that harm have been fully implemented.

G. In assessing any potential harm or enhancement to the significance of a heritage asset(s) the following will be considered:

- 1. Avoiding successive small scale changes that lead to a cumulative loss or harm to the significance of the asset or historic environment;*
- 2. Respecting the character, appearance, special interest and setting of the asset and historic environment;*
- 3. Retaining architectural or historic features which are important to the character and appearance of the asset (including internal features) in an unaltered state; and*
- 4. Retaining the historic form and structural integrity of the asset.*

H. Where 'enabling development' is proposed, the Council will expect the proposal to accord with Historic England's published guidance. The applicant will provide accurate evidence to establish that a 'heritage deficit' exists. It is not the role of 'enabling development' to reimburse owners or applicants who have paid above the market value of asset, that value being based on the current condition of the asset.

I. Proposals will be accompanied by an appropriate desk-based assessment and field evaluation where development is proposed affecting an unscheduled site of known archaeological interest or with the potential to include heritage assets with archaeological interest (General requirement for applications affecting heritage assets)

J. The ability to record evidence of our past should not be a factor in deciding whether the loss of significance should be permitted. Where harm to or loss of heritage assets occurs as a consequence of development it will be necessary for developers to record and advance understanding of the significance of the affected assets in a manner proportionate to their importance and the impact (NPPF paragraph 141). Recording techniques should keep in step with current best practice and in particular the use of photogrammetry and fine grain LIDAR ground scans where unavoidable loss will occur. In the case of heritage assets of greater than local importance the results of this

recording work should be published in the relevant local or period journal or in book form according to the scale and significance of the assets affected. Where significant archaeological remains are found, provision shall be made for public open days, exhibitions and/or popular publications/booklets. Where archaeological remains are preserved within public open space appropriate on-site interpretation and a strategy for long term care (and funding thereof) shall be produced as part of a holistic approach to the long term stewardship of the open space in question and agreed with the body responsible for the same. Where recording or assessment results in a physical archive for deposition at an appropriate museum or archive facilities, consideration of resources for its storage, interpretation and public access should be made in order to capture the heritage significance of that asset for future generations.”

Plan: MK Examination - Inspector’s Matters, Issues and Questions

Matter 8: Policies for Managing Development

Issue 4: Environment and Heritage

Question 8.22 (Historic Environment)

“Is Policy HE1 justified, effective and consistent with national policy? In particular does it accord with NPPF paragraphs 132-135 in relation to proposals that may result in harm or loss to a heritage asset?”

Response (Turley)

Introduction

- 2.6 In response to submission of the Proposed Submission version of the Plan:MK for examination, initial representations were made to the Planning Inspectorate by Turley. In summary, these representations established concern on behalf of our Client that implementation of this policy (as currently worded) in development control decisions could further hinder the ability of areas of Central Milton Keynes to meet the need to continue to develop into the future in a sustainable manner, especially the Primary Shopping Area.
- 2.7 Accordingly it was considered (and remains our view) that the wording of the emerging Plan:MK and Policy HE1, is not appropriately proportionate, balanced or justified, and therefore not sound. In light of the criteria for soundness as set out in paragraph 182 of the NPPF 2012, it was set out in our initial representations that in this regard Plan:MK has not been positively prepared, justified, or consistent with national policy. This is further discussed in this section below for Policy HE1 (part by relevant part); with reference where appropriate to national planning policy and guidance / advice⁴ relating to development affecting the significance of built heritage assets.

Policy HE1 (Heritage and Development)

- 2.8 Paragraph 126 of the NPPF 2012 sets out that in developing a strategy for the conservation of the historic environment (including plan making), local planning authorities should take into account; the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their

⁴ Set out in full and for reference at **Appendix 1**

conservation; the wider social, cultural, economic and environmental benefits that conservation of the historic environment can bring; the desirability of new development making a positive contribution to local character and distinctiveness; and, opportunities to draw on the contribution made by the historic environment to the character of a place. Supporting NPPG⁵ also sets out that local authorities should set out their local plan a positive strategy for the conservation and enjoyment of the historic environment, and also states that they should recognise in this way that conservation is not a passive exercise [our underlining for emphasis]. NPPG also states that “*Conservation is an active process of maintenance and managing change. It requires a flexible and thoughtful approach to get the best out of assets ...*”⁶

- 2.9 It is important, therefore, that the Council looks to utilise the historic environment and heritage assets of this authority area proactively and imaginatively as a resource to inform and support in a sustainable manner the future development requirements of Milton Keynes (and its key central area, including the Primary Shopping Area). This should run as a thread through the emerging Policy HE1 (and its supporting text) and as well as the emerging Plan:MK when read as a whole. There is concern overall that the existing wording of Policy HE1 does not strike the right balance between the different considerations (including the protection of the historic environment) in looking to achieve sustainable development in accordance with the objectives of the NPPF 2012.
- 2.10 In order to meet the aspirations and objectives of the Council expressed in the Plan:MK, especially as Milton Keynes looks forward to 2050, they should in our view be inspired by, and then build on, the pioneering spirit and mission of Milton Keynes Development Corporation as founded in 1967 to create a new city. The Council should look to continue to grow and evolve the New Town and its distinctive characteristics, rather than put in place mechanisms that could unreasonably restrain future development. Investors are attracted by positivity and certainty, and this is what is needed in a comprehensive planning strategy if Milton Keynes is to continue to expand and be enhanced as a place to live, work and visit, and also to compete regionally and nationally.

Part A

- 2.11 Part A of emerging Policy HE1 sets out that “*Proposals will be supported where they sustain and, where possible, enhance the significance of heritage assets which are recognised as being of historic, archaeological, architectural, artistic, landscape or townscape significance ...*” The desirability of the conservation of heritage assets is a key theme of national policy (a core planning principle and as set out in paragraphs 126 and 131 of the NPPF 2012). Accordingly, annex 2 (Glossary) of the NPPF defines “*Conservation (for heritage policy): [as] The process of maintaining and managing change to a heritage asset in a way that sustains and, where appropriate, enhances its significance.*” However, the use of the term where possible [our underlining for emphasis] in relation to enhancing the significance of heritage assets in this part of the emerging local policy does not accord with the use of the term where appropriate as set out in national policy. This wording is therefore not consistent with the NPPF, and is not appropriate, reasonable or justified.

⁵ NPPG Paragraph: 004 Reference ID: 18a-004-20140306

⁶ NPPG Paragraph: 003 Reference ID: 18a-003-20140306

- 2.12 The use of the term where possible in this context overstates the requirements of national policy, and so risks use in error at the local level in development management decision making. Undue emphasis on enhancing rather than sustaining heritage significance could have the effect of placing disproportionate planning constraints on delivering the future development requirements for Central Milton Keynes, which is an area that currently includes a number of designated heritage assets (and also has in the opinion of the Council the potential to contain identifiable non-designated heritage assets⁷).
- 2.13 IN further reviewing the first sentence of Part A of this policy, Annex 2 (Glossary) of the NPPF 2012 defines “*Significance (for heritage policy): [as] The value of a heritage asset to this and future generations because of its heritage interest. That interest may be archaeological, architectural, artistic or historic ...*” This is based on published national guidance and advice (including from DCMS⁸ and Historic England⁹). The definition for the significance of heritage assets set out in Part A, however, looks to expand this definition by introducing the terms landscape and townscape significance [our underlining for emphasis]. This wording is therefore not consistent with national policy, and is not sufficiently explained or evidenced within the accompanying wording to this policy and section 13 of the plan. This is not in our view reasonable, appropriate or clearly justified.
- 2.14 There is concern that such wording of this policy could be interpreted wrongly to over emphasise the importance and relative significance of designated and also any identified non-designated heritage assets through the process of development management. In particular for our Client, this could have the effect of placing disproportionate planning constraints on delivering the existing and also changing development requirements to sustain the vitality, vibrancy and attractiveness of Central Milton Keynes (and the Primary Shopping Area) into the future. This is a particularly important consideration in relation to the distinctive landscape and townscape features of this part of the New Town, which include very substantial distances and physical barrier between key uses and buildings due to the dominating road layout, and as a result the more inward looking nature of past and recent developments. In turn this could serve to discourage new or different uses and types of development, and so constrain future commercial investment within the central area. Evidence of this is perhaps best provided by the current lack, or slow progress, of development taking place on land fronting the south of Midsummer Boulevard, including the long standing vacancies in the Food Centre.
- 2.15 Part A of the policy provides a list of heritage assets to be included in the implementation of this policy. The fifth bullet point is “*Assets on the MK New-Town Heritage Register*”. Although we recognise that baseline evidence and guidance for selection documents have been published by the Council (following a period of public

⁷ Referencing the emerging MK New Town Heritage Register launched in 2017 by the Council

⁸ In particular Department of Culture, Media and Sport (DCMS) Circular: Principles of Selection for Listing Buildings 2010; as supported by Historic England’s Selection Guides

⁹ Notably Historic England: Historic Environment Good Practice Advice in Planning Note 2: Managing Significance in Decision Taking in the Historic Environment 2015, alongside other published guidance and advice

consultation)¹⁰ for the implementation of what is a local list for the New Town, at this stage no buildings or other features have been selected for the register and subsequently approved formally by the Council. There is concern, therefore, that wording of this policy and specific reference to this register may be premature; before the implications of the identification of such heritage assets has been tested through the development management process.

- 2.16 The sixth and final bullet point lists *“Other places, spaces, structures and features which may not be formally designated but considered to meet the definition of ‘heritage assets’ as defined in the Annex 2 of the NPPF.”* Specific reference in this bullet point to such features to be considered as non-designated heritage assets could be misinterpreted to suggest that Assets on the MK New Town Heritage Register listed in the former bullet point may be treated comparatively more formally and as designated heritage assets. This risks the implementation in error of more powerful national policy provisions with respect to designated heritage assets in development management decision making. It is recommended that this distinction for planning policy purposes is made explicit in the wording of this policy.
- 2.17 Annex 2 (Glossary) of the NPPF 2012 specifically defines *“designated heritage assets”*, and also more broadly defines a *“Heritage asset: [as] A building, monument, site, place, area or landscape identified as having a degree of significance meriting consideration in planning decisions, because of its heritage interest. Heritage asset includes designated heritage assets and assets identified by the local planning authority (including local listing).”* It is recognised that the sixth bullet point also makes reference to this definition of heritage assets as part of national policy. However, the use of the terms spaces, structures and features [our underlining for emphasis], which are not explicitly part of that definition, looks to expand this definition without reason. This wording is therefore not consistent with national policy, and has not been justified.

Part B

- 2.18 Part B of Policy HE1 sets out that *“Where appropriate, development proposals must provide an impartial and objective Heritage Assessment. Where necessary, the Council will require suitably qualified specialists to undertake the Heritage Assessment ...”* Six criteria are also described with regard to what such an assessment should do and or include. The NPPF 2012 (and also supporting NPPG and relevant national guidance from Historic England) provides clear advice on information requirements for heritage related applications. Paragraph 128 of the NPPF states that *“In determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any 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 relevant historic environment record should have been consulted and the heritage assets assessed using appropriate expertise where necessary ...”*

¹⁰ Milton Keynes Council (Alan Baxter): Milton Keynes New Town Heritage Register: Statement of Significance & Selection Criteria, both 2017

- 2.19 Overall there is concern that the wording of this part of the emerging local policy (and its full criteria) looks to set a higher threshold for the provision of supporting information for such application submissions. This is not consistent with national policy, nor is it reasonable, appropriate or fully justified. It is not explained sufficiently within the supporting text to this policy why this is required for this local authority area. Accordingly, there is also related concern that such requirements could discourage, or otherwise arrest, applications for new development effecting heritage assets. This would not accord with the delivery of the development requirements for Central Milton Keynes and sustaining its future as a regionally important centre.
- 2.20 NPPF 2012 is clear that the level of detail for any such assessment should be proportionate to the effected heritage assets' importance and no more than is sufficient to understand the potential impact of the proposal on heritage significance (paragraph 128). Although this is set out in part under criterion 1 of Part B of the policy, it is recommended reasonably and appropriately that this important statement be made more explicit within the introduction to this part of the policy for clarity.
- 2.21 Discussion of an intended proportionate approach to the provision of heritage assessment as part of an application submission under the later part of the wording (third sentence) of criterion 1 is unclear and potentially confusing, or open to wide interpretation. With reference also to supporting NPPG¹¹ and relevant national guidance from Historic England, it is recommended that this wording is amended or removed accordingly. For example, there is no clear guidance here as to the likely requirements for information to support an application for development affecting a non-designated heritage asset, or an appreciation that even localised [our underlining for emphasis] alterations to an historic building within a conservation area could have a significant effect on its heritage significance (that could then require more detailed analysis).
- 2.22 Criterion 3 requires that heritage assessment *"Provide a sound justification for the works, based on the economic, social and environmental benefits delivered by the scheme, for example, promoting the long term care for a heritage asset and/or its setting."* It is best practice to provide justification in planning terms for a proposed development as part of presenting an application submission, however it is not necessarily a national policy requirement. For heritage assets the NPPF 2012 only explicitly requires that *"clear and convincing justification"* be provided where harm, or loss, has been identified as a result to the significance of a designated heritage asset (paragraph 132). The direct link that this made in this criterion between such justification and the public (i.e. economic, social and environmental) benefits; in national planning policy terms¹², that a development could deliver is not consistent with national policy. Again, the conservation of heritage assets is advised by national policy to be a process of maintaining and managing change in a way that sustains and, where appropriate, enhances (i.e. provides heritage benefit to) their significance. Account should be taken of the potential for realising public benefits (as set out in paragraph 126 of the NPPF on plan making), but the wording of this criterion overstates the requirements of national policy for applications and development

¹¹ NPPG Paragraph: 009 Reference ID: 18a-009-20140306

¹² NPPG Paragraph: 020 Reference ID: 18a-020-20140306

management. Undue emphasis on delivering public (and potentially heritage) benefits could have the effect of placing disproportionate planning constraints on delivering the future development requirements for Central Milton Keynes.

- 2.23 Lastly, criterion 6 requires that for heritage assessment *“Where harm is caused by the proposal, the assessment shall explain why such harm is unavoidable or required to deliver public benefits that outweigh the harm caused.”* There is concern that the wording of this criterion over emphasises any requirement to avoid harm to the significance of a heritage asset. This is not in full accordance with national policy (or national guidance). Paragraph 129 of the NPPF 2012 discusses the value of heritage assessment, and sets out that this should be taken 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 [our underlining for emphasis]. The wording of the NPPF (and also supporting NPPG) is clear here that account should be taken of desirability of avoiding or minimising heritage harm, and not solely avoidance. This is also described as good practice in relevant Historic England guidance¹³. Further commentary on the Council’s approach to harm to heritage significance is set out below; in relation to other parts of this emerging local policy.

Part E

- 2.24 With regard to Part E of this policy the proposed wording is that *“Permission for proposals that cause less than substantial harm to a designated heritage asset will only be granted where the harm is demonstrably outweighed by public benefits delivered by the scheme.”* Paragraph 134 of the NPPF 2012, where the term less than substantial harm [our underlining for emphasis] is first introduced, sets out relatively simply that such harm should be weighed against the public benefits of the proposal, including securing its optimum viable use. The wording of this part of Policy HE1; in particular the use of the new term demonstrably [our underlining for emphasis] again looks to over emphasise the requirements of national policy, and could be seen to set a higher threshold for the determination of a heritage related application; and the weighing up of the planning balance, and so delivery of future development.

Part F

- 2.25 With regard to Part F of this policy the proposed wording is that *“Proposals that result in harm to the significance of non-designated heritage assets will be resisted unless the need for, and benefits of the development clearly outweigh the harm, taking into account the asset’s significance and importance, and only once all feasible solutions to avoid and mitigate that harm have been fully implemented.”* Paragraph 135 of the NPPF 2012 introduces the effect of development on the significance of a non-designated heritage asset as a material planning consideration. The national policy requirements of this paragraph set out much more simply and broadly; relative to the proposed wording of this local policy, that *“... 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”*.

¹³ Notably Historic England: Historic Environment Good Practice Advice in Planning Note 2: Managing Significance in Decision Taking in the Historic Environment 2015, alongside other published guidance and advice

- 2.26 The full wording of this part of Policy HE1; in particular the use of the terms ... need for, and benefits of the development clearly outweigh the harm ... [our underlining for emphasis], and also ... and only once all feasible solutions to avoid and mitigate that harm have been fully implemented ..., is of concern. This is not consistent with national policy or indeed supporting national guidance. Nor has such an approach to the planning requirements for development that could harm the significance of a non-designated heritage asset been sufficiently or reasonably explained or justified in the supporting text to this policy for this local authority area. This wording over emphasises the requirements of national policy, and looks to set a much higher threshold for the determination of such a heritage related application. This could upset any planning balance for decision making in such a situation, and so place disproportionate planning constraints on delivering the future development requirements for Central Milton Keynes. This is particularly relevant here where it has been recognised by our Client that this central area has been identified by the Council in the past as having the potential to contain non-designated heritage assets.
- 2.27 At paragraph 13.12 of the supporting text to this policy reference is made to heritage harm overall. This sets out that *“The Council considers it desirable that the significance of its heritage assets be sustained and enhanced by all proposed. Where proposals cause harm to heritage assets, they will be considered against using the criteria, weighing exercises and balanced judgements set out in the NPPF, depending on the type of asset and the degree of harm.”* This is not fully consistent with the wording of Policy HE1 as proposed, or indeed in accordance with national policy. The consideration of application proposals where harm is identified to heritage significance should not in our view just depend on the type of asset and the degree of harm as set out in this paragraph, but also in relation to the relative significance of the heritage asset. Amended wording is recommended to accord with national policy, in particular paragraph 132 and 135 of the NPPF 2012.
- 2.28 There is a more general point to be made here in relation to development proposals affecting non-designated heritage assets, with regard to this part of Policy HE1 as well as the wording of this emerging local policy as a whole. There is concern that this wording, and its emphasis, does not sufficiently recognise the provisions of national policy and guidance / advice with regard to the importance of proportionality in both plan making and decision making in development management affecting all heritage asset types.
- 2.29 Paragraph 132 of the NPPF 2012 states that *“When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation. The more important the asset, the greater the weight should be ...”* Paragraph 135 of the NPPF that relates to the consideration of non-designated heritage assets, establishes this as a material planning consideration but sets a lower threshold for the requirements such development and related applications. National guidance (both NPPG¹⁴ and relevant Historic England guidance) also establishes the difference in importance (as well as different methods and or requirements, or indeed a lack, of planning control) between designated and non-designated heritage assets. NPPG is explicit that *“A substantial majority of buildings*

¹⁴ NPPG Paragraph: 039 Reference ID: 18a-039-20140306

*have little or no heritage significance and thus do not constitute heritage assets. Only a minority have enough heritage interest for their significance to be a material consideration in the planning process.*¹⁵

- 2.30 It is self-evident that designated heritage assets, such as listed buildings or conservation areas, are of a greater importance and have heritage significance in the national context relative to non-designated heritage assets that may only have significance confined to a particular feature or association at the local level. It is recommended, therefore, that such a proportionate application of heritage policy to heritage assets; if designated or non-designated, is clearly set out in the wording of this local policy and any supporting text.

Part G

- 2.31 Part G of this policy sets out further considerations for heritage related applications and the assessment of any potential harm and or enhancement to the significance of a heritage asset through development. Four criteria are suggested under this part.

- 2.32 Criterion 3 is a cause for concern. Encouragement of the retaining of architectural or historic features which are important to the character and appearance of a heritage asset broadly follows the objectives of national policy and guidance. Specific reference in the wording to “... (including internal features) ...” is potentially confusing for the purposes of development management and control. This part of the policy is assumed to relate to both designated and non-designated heritage assets, however planning permission would not normally or necessarily be required for works of internal alteration to a building that is not statutorily listed, or indeed for a listed building itself, even if internal features were potentially considered to be of importance. Listed building consent is recognised as a different procedure within planning control. In this context, and to avoid implementation of this policy in error, it is recommended that the wording here is amended or removed accordingly.

- 2.33 The use of the term in an unaltered state [our underlining for emphasis] in the wording at the end of criterion 3 of this part of the policy is also recommended for amendment or removal. It has been established in this section that the conservation of heritage assets is advised by national policy to be a process of maintaining and managing change in a way that sustains and, where appropriate, enhances their significance¹⁶. The use of this term; in particular the apparent promotion of retaining a heritage asset (or its features) in an unaltered state, does not accord with the requirements of national policy for development control. This requirement is disproportionate, unreasonable and unjustified if applied to any and all heritage assets types, and could be interpreted to be seeking to discourage change per se. Such a policy position could further constrain applications that could contribute to delivering the future development requirements for the New Town.

Part H

- 2.34 Part H of this policy relates to enabling development (as defined in the NPPF 2012 - paragraph 140) for heritage related applications. The wording requires such a proposal to accord with Historic England’s published guidance. Although we recognise that new

¹⁵ NPPG Paragraph: 039 Reference ID: 18a-039-20140306

¹⁶ NPPF Annex 2 (Glossary) 2012

guidance is forthcoming from Historic England (to be refer to as GPA4: Enabling Development), and that public consultation has been undertaken on a draft of new guidance, at this stage a final document has not be published formally. The existing standing Historic England publication on this matter¹⁷ dates from September 2008, which pre-dates the NPPF 2012 and also NPPG. There is concern, therefore, that wording of this policy in relation to existing but aged guidance may be premature and could be quickly outdated.

Part J

- 2.35 Part J of the Policy HE1 sets out with regard to recording that “... *Where harm to or loss of heritage assets occurs as a consequence of development it will be necessary for developers to record and advance understanding of the significance of the affected assets in a manner proportionate to their importance and the impact (NPPF paragraph 141)*”. Indeed paragraph 141 of the NPPF 2012 states that local planning authorities “... *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, ...*”
- 2.36 However, the wording of this part of the emerging local policy does in our view over emphasise the requirements of national policy, and so looks to set a higher threshold for the determination (and also the potential use of related planning conditions) of heritage related applications. The wording of paragraph 141 of the NPPF sets out that such a recording exercise should be undertaken in cases where the whole or part of a heritage asset would be lost as a result of a proposed development. The wording of local policy instead broadens the criteria for this requirement to include cases not only where loss is proposed but also harm to heritage significance would occur. This is a potentially disproportionate planning constraint on future development within Central Milton Keynes involving all types of heritage assets.

¹⁷ English Heritage: Enabling Development and the Conservation of Significant Places 2008

Appendix 1: Heritage Legislation, National and Local Policy and Guidance

Statutory Duties

The Planning (Listed Buildings and Conservation Areas) Act 1990

- 2.1 Section 1 (1) of the Act states that the Secretary of State shall compile lists of buildings of special architectural or historic interest. In compiling this list, they may take into account not only the building itself, but also:
- (a) any respect in which its exterior contributes to the architectural or historic interest of any group of buildings of which it forms part; and
 - (b) the desirability of preserving, on the ground of its architectural or historic interest, any feature of the building consisting of a man-made object or structure fixed to the building or forming part of the land and comprised within the curtilage of the building.
- 2.2 Once a building has been included on the statutory list, Section 7 (1) of the Act sets out that no person shall execute or cause to be executed any works for the demolition of a listed building or for its alteration or extension in any manner which would affect its character as a building of special architectural or historic interest, unless the works are authorised, by way of a listed building consent application.
- 2.3 Section 16(2) sets out the general duty with regard to the determination of listed building consent applications:
- “In considering whether to grant listed building consent for any works the local planning authority or the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.”*
- 2.4 Section 66 imposes a similar duty with respect to the exercise of planning functions. Subsection (1) provides:
- “In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.”*
- 2.5 With regard to applications for planning permission within conservation areas, the Act outlines in Section 72(1) that:
- “In the exercise, with respect to any buildings or other land in a conservation area, of any powers under any of the provisions mentioned in subsection (2), special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.”*
- 2.6 Thus the statutory provision is satisfied if the development does one thing or the other, and there will be cases where proposals will both preserve and enhance a conservation area. The meaning of preservation in this context is taken to be the avoidance of harm. Character relates to physical characteristics but also to more general qualities such as

uses or activity within an area. Appearance relates to the visible physical qualities of the area. Importantly, however, the concept of the setting of a conservation area is not enshrined in legislation and does not therefore attract the weight of statutory protection.

- 2.7 Notably and importantly, recent case law¹⁸ has confirmed that Parliament’s intention in enacting section 66(1) was that decision-makers should give “considerable importance and weight” to the desirability of preserving the setting of listed buildings, where “preserve” means to “to do no harm” (after South Lakeland). Case law has also confirmed that this weight can also be applied to the statutory tests in respect of conservation areas¹⁹. These duties, and the appropriate weight to be afforded to them, must be at the forefront of the decision makers mind when considering any harm that may accrue and the balancing of such harm against public benefits as subsequently required by national planning policy. The Secretary of State has confirmed²⁰ that “considerable importance and weight” is not synonymous with “overriding importance and weight”.

National Policy

National Planning Policy Framework (NPPF) 2012

- 2.8 The National Planning Policy Framework (NPPF) was introduced in March 2012 and provides a full statement of the Government’s planning policies. The NPPF is currently undergoing public consultation and an amended draft has been issued by the Ministry.

- 2.9 As it stands, one of the core planning principles in the NPPF is that planning should:

“Conserve heritage assets in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of this and future generations.”

- 2.10 Chapter 12 Conserving and enhancing the historic environment, sets out the Government’s policies specifically regarding planning and the historic environment.

- 2.11 With regard to the plan making process; paragraph 126 of the NPPF sets out that local planning authorities should set out in their Local Plan a positive strategy for the conservation and enjoyment of the historic environment. In doing so, they should recognise that heritage assets are an irreplaceable resource and conserve them in a manner appropriate to their significance. They should take into account:

- *the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;*
- *the wider social, cultural, economic and environmental benefits that conservation of the historic environment can bring;*

¹⁸ Barnwell Manor Wind Energy Limited and (1) East Northamptonshire District Council (2) English Heritage (3) National Trust (4) The Secretary of State for Communities and Local Governments, Case No: C1/2013/0843, 18th February 2014

¹⁹ The Forge Field Society v Sevenoaks District Council [2014] EWHC 1895 (Admin); North Norfolk District Council v Secretary of State for Communities and Local Government [2014] EWHC 279 (Admin)

²⁰ APP/H1705/A/13/2205929

- *the desirability of new development making a positive contribution to local character and distinctiveness; and*
 - *opportunities to draw on the contribution made by the historic environment to the character of a place.*
- 2.12 When considering the designation of conservation areas; either new or amended, local planning authorities are required by paragraph 127 to 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.
- 2.13 In determining applications for development (or works); paragraph 128 requires that an applicant provide a description of the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the asset's importance and no more than is sufficient to understand the potential effect of the proposal on their significance.
- 2.14 Paragraph 131 sets out the considerations to be made by the local planning authority in determining planning applications. These are; the desirability of sustaining and enhancing the significance of heritage assets and putting them into viable uses consistent with their conservation; the positive contribution that conservation of heritage assets can make to sustainable communities including their economic viability; and, the desirability of new development making a positive contribution to local character and distinctiveness.
- 2.15 Paragraph 132 applies to the consideration of the effect of proposed development on the significance of a designated heritage asset²¹, noting that great weight should be given the asset's conservation²² - the more important the asset, the greater the weight should be. This includes the setting of a heritage asset. It is noted that significance can be harmed or lost through alteration or destruction of the asset itself or, by development within its setting.
- 2.16 As heritage assets are irreplaceable, any harm or such loss requires clear and convincing justification. It so noted in paragraph 132 that substantial harm or loss of a grade II listed building or park or garden should be exceptional and substantial harm or loss of designated heritage assets of the highest significance should be wholly exceptional.
- 2.17 Paragraph 133 established that in cases where a proposed development would lead to substantial harm to or total loss of significance of a designated heritage asset; local planning authorities should refuse consent in these circumstances unless it can be demonstrated it necessary to deliver substantial public benefits that outweigh such harm or loss. Alternatively, the nature of the heritage asset prevents all reasonable uses of the site; and, no viable use of the heritage asset can be found in the medium term through appropriate marketing that will enable its conservation; and, conservation by grant funding or some form of charitable or public ownership is

²¹ Designated Heritage Asset defined as a World Heritage Site, Scheduled Monument, Listed Building, Protected Wreck Site, Registered Park and Garden, Registered Battlefield or Conservation Area under the relevant legislation (NPPF Annex 2: Glossary)

²² Conservation defined as the process of maintaining and managing change to a heritage asset in a way that sustains and, where appropriate, enhances its significance (NPPF Annex 2: Glossary)

demonstrably not possible; and, the harm or loss is outweighed by bringing the site back into use.

- 2.18 Paragraph 134 applies where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset. In these circumstances the harm should be weighed against the public benefits of the proposal. It outlines this harm should be weighed against the public benefits²³ of the proposal, including securing its optimum viable use.
- 2.19 Paragraph 135 considers the effect of an application on the significance of a non-designated heritage asset and states that this should be taken into account in determining an application. In decision making, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.
- 2.20 Paragraph 137 encourages local planning authorities to look for opportunities for new development within conservation areas and within the setting of heritage assets, such as the listed buildings, to enhance or better reveal their significance. It also states that proposals that preserve those elements of the setting that make a positive contribution to or better reveal the significance of a heritage asset should be treated favourably.
- 2.21 Paragraph 138 states that not all elements of a conservation area will necessarily contribute to its significance. Loss of a building (or other element which makes a positive contribution to the significance should be treated either as substantial harm under paragraph 133 or less than substantial harm under paragraph 134, as appropriate, taking into account the relative significance of the element affected and its contribution to the significance of the area as a whole.

National Guidance

National Planning Practice Guidance (NPPG) 2014

- 2.22 National Planning Practice Guidance (NPPG) 2014 has been issued by the Government as a web resource and living document, including a category on conserving and enhancing the historic environment. This is intended to provide more detailed guidance and information with regard to the implementation of national policy set out in the NPPF.
- 2.23 The NPPG 2014 helps to define some of the key heritage terms used in the Framework. With regard to substantial harm, it is outlined that in general terms this is a high test, so it may not arise in many cases. For example, in determining whether works to a listed building constitute substantial harm, an important consideration would be whether the adverse impact seriously affects a key element of its special interest. Optimum viable use is defined in the NPPG as the viable use likely to cause the least harm to the significance of the heritage asset, not just through necessary initial changes, but also as a result of subsequent wear and tear and likely future changes.

²³ Public benefits are defined in NPPG to include anything that amounts to economic, social or environmental progress as described in paragraph 7 of the NPPF and must be of a nature and scale to be of clear benefit to the public at large

2.24 Public benefits are also defined in the NPPG 2014, as anything that delivers economic, social and environmental progress as described in the NPPF. Public benefits should flow from the proposed development, and they may include heritage benefits. Heritage benefits are also defined in the NPPG as:

- *sustaining or enhancing the significance of a heritage asset and the contribution of its setting*
- *reducing or removing risks to a heritage asset*
- *securing the optimum viable use of a heritage asset in support of its long term conservation.*

Department of Culture, Media and Sport Circular: Principles of Selection for Listing Buildings 2010

2.25 The Principles of Selection for statutory listing buildings sets out the general criteria for assessing the special interest of a building in paras. 9 and 10, as below:

“Architectural Interest. To be of special architectural interest a building must be of importance in its architectural design, decoration or craftsmanship; special interest may also apply to nationally important examples of particular building types and techniques (e.g. buildings displaying technological innovation or virtuosity) and significant plan forms;

Historic Interest. To be of special historic interest a building must illustrate important aspects of the nation’s social, economic, cultural, or military history and/or have close historical associations with nationally important people. There should normally be some quality of interest in the physical fabric of the building itself to justify the statutory protection afforded by listing.

10. When making a listing decision, the Secretary of State may take into account the extent to which the exterior contributes to the architectural or historic interest of any group of buildings of which it forms part. This is generally known as group value. The Secretary of State will take this into account particularly where buildings comprise an important architectural or historic unity or a fine example of planning (e.g. squares, terraces or model villages) or where there is a historical functional relationship between a group of buildings. If a building is designated because of its group value, protection applies to the whole of the property, not just the exterior.”

2.26 In addition to the criteria and general principles set out in the guidance, a number of **Selection Guides** for different building types have been re-published as updates by Historic England in 2017. These Selection Guides provide further information regarding each building type, and demonstrate what features are considered significant and likely to make a building of special architectural or historic interest when assessing each building type.

National Advice

Historic England: Historic Environment Good Practice Advice in Planning Note 1: The Historic Environment in Local Plans 2015

2.27 GPA Note 1 provides information to assist; principally local planning authorities, in implementing historic environment policy in the National Planning Policy Framework (NPPF) and the related guidance given in the National Planning Practice Guidance (NPPG). It emphasises that all information requirements and assessment work in support of plan-making and heritage protection needs to be proportionate to the significance of the heritage assets affected and the impact on the significance of those heritage assets. At the same time, those taking decisions need sufficient information to understand the issues and formulate balanced policies.

Historic England: Historic Environment Good Practice Advice in Planning Note 2: Managing Significance in Decision Taking in the Historic Environment 2015

2.28 GPA Note 2 provides information to assist in implementing historic environment policy in the National Planning Policy Framework (NPPF) and the related guidance given in the National Planning Practice Guidance (NPPG). These include; assessing the significance of heritage assets, using appropriate expertise, historic environment records, recording and furthering understanding, neglect and unauthorised works, and marketing. It provides a suggested staged approach to decision-making where there may be a potential impact on the historic environment:

1. *Understand the significance of the affected assets;*
2. *Understand the impact of the proposal on that significance;*
3. *Avoid, minimise and mitigate impact in a way that meets the objectives of the Framework;*
4. *Look for opportunities to better reveal or enhance significance;*
5. *Justify any harmful impacts in terms of the sustainable development objective of conserving significance and the need for change;*
6. *Offset negative impacts on aspects of significance by enhancing others through recording, disseminating and archiving archaeological and historical interest of the important elements of the heritage assets affected.*

2.29 With particular regard to design and local distinctiveness, advice sets out that both the NPPF (section 7) and NPPG (section ID26) contain detail on why good design is important and how it can be achieved. In terms of the historic environment, some or all of the following factors may influence what will make the scale, height, massing, alignment, materials and proposed use of new development successful in its context:

- *The history of the place*
- *The relationship of the proposal to its specific site*

- *The significance of nearby assets and the contribution of their setting, recognising that this is a dynamic concept*
- *The general character and distinctiveness of the area in its widest sense, including the general character of local buildings, spaces, public realm and the landscape, the grain of the surroundings, which includes, for example the street pattern and plot size*
- *The size and density of the proposal related to that of the existing and neighbouring uses*
- *Landmarks and other built or landscape features which are key to a sense of place*
- *The diversity or uniformity in style, construction, materials, colour, detailing, decoration and period of existing buildings and spaces*
- *The topography*
- *Views into, through and from the site and its surroundings*
- *Landscape design*
- *The current and historic uses in the area and the urban grain*
- *The quality of the materials*

Historic England: Historic Environment Good Practice Advice in Planning Note 3: The Setting of Heritage Assets 2017 (2nd Edition)

2.30 The second edition of the GPA Note 3 provides information to assist in implementing historic environment policy with regard to the managing change within the setting of heritage assets, and also relevant views analysis. This also provides a toolkit for assessing the implications of development proposals affecting setting and views. A series of stages are recommended for assessment, these are:

Step 1: identifying the heritage assets affected and their settings

Step 2: assessing whether, how and to what degree these settings make a contribution to the significance of the heritage asset(s)

Step 3: assessing the effect of the proposed development

Step 4: maximising enhancement and minimising harm

Step 5: making and documenting the decision and monitoring outcomes.

2.31 Guidance sets out that the contribution of setting to the significance of a heritage asset is often expressed by reference to views. However, assessing how development can affect heritage significance is not purely a visual consideration, but should also consider other aspects such as any impact on historical relationships between assets and within

the townscape or landscape context, patterns of use or access, noise through activity etc.

Historic England: Advice Notes

2.32 Further advice notes have been published by Historic England, which include detailed practical advice on how to implement national planning policy and guidance. These include:

Historic England: Advice Note 1: Conservation Area Designation, Appraisal and Management 2016

Historic England: Advice Note 2: Making Changes to Heritage Assets 2016

Historic England Advice Note 3: The Historic Environment and Site Allocations in Local Plans 2015

Historic England Advice Note 4: Tall Buildings 2015

Historic England Advice Note 5: Setting up a Listed Building Heritage Partnership Agreement 2015

Historic England Advice Note 6: Drawing up a Local Listed Building Consent Order 2015

Historic England Advice Note 7: Local Heritage Listing 2016

Historic England Advice Note 8: Sustainability Appraisal and Strategic Environmental Assessment 2017

Historic England Advice Note 9: The Adaptive Reuse of Traditional Farm Buildings 2017

Historic England Advice Note 10: Listed Buildings and Curtilage 2018

The Development Plan

- 2.33 There is no statutory requirement to have regard to the provisions of the development plan (regional and local policy) in the consideration of applications for listed building consent. As such, less weight should be given to the policies set out in the plan compared to the statutory duties of the Act. This is not the case for the determination of applications for planning permission that may affect the significance (or setting) of heritage assets.
- 2.34 The objectives of national policy and the development plan, with regard to the protection of heritage assets, should be closely aligned. Local authorities should also ensure that aspects of heritage conservation policy that are relevant to development control decisions are included in the local development plan.
- 2.35 There are several planning documents currently under preparation which will largely replace the existing Development Plan which include the emerging Plan:MK and the emerging Site Allocations Plan (both currently undergoing Examination in Public (EiP))

prior to adoption). The current Development Plan for the borough includes the following documents:

Milton Keynes Core Strategy 2013

- 2.36 The Milton Keynes Core Strategy was adopted in July 2013 and provides strategic planning policy up to the year 2026. It aims to build upon making Milton Keynes an attractive place to live and work.
- 2.37 Policy CS19 is concerned with the historic and natural environment. With regard to built heritage assets, this states that:

“Developments will protect and enhance the significance of the Borough’s Heritage Assets, including important elements of the 20th Century New Town architecture. Development proposals must consider the character, appearance and setting of sites, buildings, structures, areas, parks and gardens and landscapes that are of historic, architectural, cultural, biodiversity or archaeological significance ...”

Milton Keynes Local Plan (Saved Policies) 2005

- 2.38 The Milton Keynes Local Plan was first adopted in December 2005 with an intended lifetime up to 2011. A number of policies of this local plan have been saved under direction from the Secretary of State by letter dated 24 October 2008 and remain in use until replaced following the full adoption of the new Plan:MK that would also replace the current Core Strategy.
- 2.39 With regard to built heritage assets, firstly Policy HE2 states that the Council will exercise its planning and listed building control powers to safeguard the preservation of listed buildings by permitting a change of use where it would contribute to the retention of the building without adversely affecting its character, special interest or structural integrity.
- 2.40 Policy HE3 relates to the demolition of listed buildings and sets out a presumption against the demolition of such building, except within very exceptional cases.
- 2.41 Policy HE4 states that external development to a listed building will not be permitted unless, where relevant, the siting, design, external appearance, access to and landscaping of the proposed development would respect the listed building’s setting, integrity, character and appearance and would also serve to preserve, restore or complement its features of special architectural or historic interest.
- 2.42 Policy HE5 goes onto states that planning permission will be refused for any form of development that would adversely affect the setting of a listed building or group of listed buildings.
- 2.43 Policy HE6 relates to conservation areas, and sets out that development proposals within or affecting the setting of a conservation area should preserve or enhance the character and appearance of that area.
- 2.44 Policy HE7 relates to the policy protection of the significance of historic parks and gardens.

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