

EXAMINATION OF THE NORTHLEACH WITH EASTINGTON NEIGHBOURHOOD PLAN 2018-2031 Submission Plan July 2018

Examiner's questions for clarification

I have completed my initial appraisal of the submitted Northleach with Eastington Neighbourhood Plan ('the NENP') and I have read the written representations made in response to the Regulation 16 consultation. From this appraisal I have framed a number of questions seeking clarification of certain aspects of the plan and the implementation of policies. The majority, with the exception of Question 14, are addressed to the Northleach with Eastington Town Council (NETC) which is the 'Qualifying Body' for the preparation of this plan. Question 14 is best answered by the Cotswold District Council (CDC) although they may wish to comment on other aspects.

In this note I set out the background considerations leading to my questions by the use of *italic script*. I raise an issue only where I consider it possible that I may need to recommend that the plan be modified in order that it fully satisfies the basic conditions.

The responses received to these questions will assist me in reaching my conclusions and recommendations which will be given in my formal report to the CDC at the end of the examination. It is important that the examination is undertaken in an open and fair manner and any important documents, including this note, should be made available on the CDC website for this plan.

I have also found it necessary to request the CDC to undertake further consultation on the final SA/SEA report, in particular to consult with the Environment Agency on the flood risk associated with the proposal for a public parking area at West End, Northleach (NENP Policy NE1). This is the subject of a separate note.

The legislation provides that, as a general rule, the examination is to take the form of the consideration of written representations but an examiner must cause a hearing to be held should it be considered necessary to ensure adequate examination of an issue. I am reserving my position on this matter pending conclusion of the further consultation mentioned above and the responses received to the questions I pose in this paper.

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Examiner

1 November 2018

Policy NE1. Public parking at West End.

Please see separate note on implications of site location within Flood Zone 3.

Q1. *The wording of the policy appears to suggest that there is not, at least as yet, a full justification, that is in terms of robust and proportionate evidence¹, to support the 'allocation' of this site for public parking. In view of the acknowledged environmental sensitivity of this site, which lies within the Conservation Area and the AONB as well as affecting the setting of listed buildings, is there any current evidence (surveys etc.) to demonstrate that additional parking facilities are required for visitors to the town? (In paragraph 11 of Appendix 3 to the Consultation Statement (the report on the Regulation 14 consultation) there is reference to further background information being made available as an appendix to the plan. Where is it?)*

Q2. *The last paragraph in the policy has been introduced to the submission plan following Regulation 14 consultation. It largely overlaps with criterion i. Would the application of the policy be clearer if criterion i. was omitted but the final paragraph moved forward to read as a pre-requisite for the development?*

Q3. *The benefits deriving from a redesign of the layout of the Market Place are stated in paragraph 5.20 under Policy NE4. (Examiner's Note: If the Market Place is highways land planning permission may not be required for all of the elements described, for example the relocation of the bus stop and what is termed 'restructuring' the parking layout.)*

a. To what extent is the justification for additional car parking at West End directly related to the proposals for the Market Place?

b. What exactly would be the terms of any s106 obligation relating to the development at West End to which reference is made in paragraph 5.9 of the plan text? Is that intended to be a policy requirement? If it is, to what extent would the tests for such an obligation ('old' NPPF para. 204) be met?

Q4. Criterion ii. Coach parking. *This provision is somewhat contradicted by the second sentence in paragraph 5.9.*

a. If there is a need for coach parking to meet growing demands for visitors how is that to be provided?

b. Is the reasoning behind criterion ii. a concern for the visual impact of coaches on this sensitive site?

Q5. Criterion iii. What is the justification for limiting car parking provision to 30? Is there any evidence for this particular figure?

¹ Paragraph 41-040 in the National Planning Policy Guidance refers

Q6. Criterion v. What, exactly, is the intention behind the requirement for a 'full landscape and arboricultural protection and mitigation scheme'. If this includes, as stated in paragraph 5.10, that there should be a 'minimum loss of mature trees', should that not be explicitly stated as policy (as it was in the Regulation 14 draft plan)?

Q7. Text. Paragraph 5.8. *This makes reference to the rCOH Site Assessment Study but that was for a larger site (Site A) which included residential development.* To what extent is it considered that the conclusions reached in the Site Assessment report remain valid for the car parking area alone?

Q8. Text. Paragraph 5.10. *This states that (the policy) 'requires any scheme to include a comprehensive car parking strategy to demonstrate how the public benefit of the proposal outweighs the harm to the Northleach Conservation Area and the Cotswolds AONB' BUT that statement is NOT correct. There is no reference in policy to such a balancing exercise needing to be carried out before permission might be granted.* In view of national and Local Plan policy on these matters should this not be more explicitly stated? *(NB There is no reference here to the issue of location within Flood Zone 3 and the need to satisfy the 'exception test'.)*

Q9. *As the Cotswold District Council have pointed out, the policy refers to the land for public parking being shown 'indicatively' on the Policies Map but both that map and, at larger scale, Plan D, show a specific area of land with firm boundaries.*

a. Is it accepted that it would be better to show a general location by means of a star symbol? *(Paragraph 7.2 in the Consultation Statement suggests that it had been intended to make this change to the plan)*

b. What is the intended status of Plan D relative to the Policies Map, especially as it is not mentioned in either policy or text?

Policy NE2. Primary School Expansion.

Q10. *It appears that unlike in the earlier (Regulation 14) draft plan, Policy NE2 no longer allocates a specific area of land for school expansion nor is any site shown on the submission Policies Map. Instead, the policy provides support for proposals 'at or adjacent to' the existing educational facilities.*

a. Contrary to the indication in paragraph 12 the Regulation 14 report, reference to cardinal points has been retained in the policy. Is this an error? If not, does the retention of such references in criterion (v) of the policy reduce the flexibility necessary to ensure that any development would accord with national and Local Plan policies for the conservation and enhancement of the landscape within an AONB ('old' NPPF para. 115, CLP Policy EN5) and/or to avoid harm to the setting of the Conservation Area ('old' NPPF para. 132, CLP Policy EN10)?

- b. Would the clarity of the policy be improved by the omission of all references to cardinal points?
- c. In criterion (vi) are there any feasible alternatives for a pedestrian access other than north-south?

Q11. *Criterion (v) seeks to **minimise** any visual impact on the AONB and the setting of the Conservation Area. However, does that approach pay sufficient regard to national and Local Plan policy (as referenced in Q10)? Is it considered that a more appropriate test would be the degree to which any proposal might conserve and enhance those natural or heritage assets, rather than that any harm should be minimised? Might it not be the case that even if any particular design has 'minimised' (however that may be judged) the visual impact it might still fail to conserve and/or enhance the asset?*

Policy NE3. Design of the built and natural environment.

Q12. *In their Regulation 14 representations the CDC suggested that two policies be combined and put forward a revised wording for Policy NE3 which appears to have been accepted in its totality by the Town Council. However, there remains no reference in the plan to the existence of a conservation area for Eastington village even though the Policies Map shows the extent of the area with green diagonal lines and indicates that Policy NE3 applies. Local Plan Policy EN11, mentioned in NENP paragraph 5.15, applies to all conservation areas and not just to their settings as indicated in that paragraph.*

- a. Would the NETC wish to amend the wording of paragraph 5.15 to correct this?
- b. For completeness, should it be made clear that the policy also relates to the Eastington Conservation Area?

Q13. a. Rather than stating that proposals for new development should accord with 'relevant policies' in the Local Plan would it not add clarity to refer specifically to LP Policies EN2 and EN11 (as in the text)? Are any others of relevance?

b. As the Local Plan policies apply anyway why is it considered necessary to refer to them in this policy? (*See next question about the status of the Cotswold Design Code*)

As the wording of Policy NE3 was suggested by the CDC I consider it more appropriate for them to answer the next question although the Town Council may wish to respond to the part c. of the question.

Q14. *The LPA have not identified the policies in section 10 of the Local Plan, including Policy EN2, as being 'strategic'. In the circumstances, should the NENP be 'made', Policy NE3 would supersede the LP policy for the purposes of development management decisions. It requires proposals for new development*

to 'accord with ... the Cotswold Design Code' and thus goes further than the LP policy. The status of the Code is clarified in the last sentence in paragraph D3 (Appendix D) of the Local Plan which states that (the Code) 'is a material consideration in planning decisions and, set within the context of the Local Plan, carries considerable weight.'

- a. Does the LPA accept that the Design Code is in the nature of Supplementary Planning Guidance, which is a material consideration, rather than part of the statutory development plan for the purpose of decision-making²?
- b. Is it correct to state, as in NENP paragraph 5.15, that LP Policy EN2 'applies' the Design Code?
- c. Is there any particular justification in the context of Northleach for requiring proposals to accord with the Code?

Policy NE4. Town Centre

Q15. *Planning Practice Guidance*³ states that: A policy in a neighbourhood plan should be clear and unambiguous. It should be drafted with sufficient clarity that a decision maker can apply it consistently and with confidence when determining planning applications.

The main part of this policy, although not the last paragraph (see below), is clearly intended as a development management policy to be read alongside Local Plan Policy EC8 which it duplicates in part.

- a. How are the terms 'support' and 'resist' to be interpreted for the purpose of decision-making by the Local Planning Authority, other than as 'permitted' and 'refused' respectively?
- b. In the circumstances is it considered that the policy would be more clearly expressed if those more precise words were used?

Q16. *The policy refers to the 'defined Town Centre boundary'. This begs the question, for a plan user not fully familiar with the area, where is it defined? As eluded to in paragraph 5.16, the reference is to the Local Plan. However, the town centre boundary is shown on the Policies Map for the Cotswold District, Inset 11 (Northleach) as reproduced on page 80 of the Local Plan. (Examiner's Note: In statutory terms the Policies Map is not part of the Development Plan. It is a separate 'Local Development Document' which shows the geographical extent of the areas to which development plan policies apply, whether they be in the Local Plan, Neighbourhood Plans or County Minerals and/or Waste Plans. There is only one such map for any LPA area.)* For clarity, and ease of application, is it accepted that the geographical extent of Northleach Town Centre might be shown on the 'Policies Map' at the end of the Neighbourhood Plan with the wording of Policy NE4 amended to state that fact?

² By reason of s38(6) of the Planning and Compulsory Purchase Act 2004

³ Paragraph 041, Reference ID: 41-041-20140306

Q17. *Planning Practice Guidance*⁴ states that: *Neighbourhood planning can inspire local people and businesses to consider other ways to improve their neighbourhood than through the development and use of land. They may identify specific action or policies to deliver these improvements. Wider community aspirations than those relating to development and use of land can be included in a neighbourhood plan, but actions dealing with non land use matters should be clearly identifiable. For example, set out in a companion document or annex.*

See my note in Question 3 in relation to Policy NE1. Although the desired physical improvements to the Market Place may involve the development and the use of land, it is not clear to what extent, if at all, they will require planning permission and thus be an appropriate matter for a neighbourhood plan policy. The re-arrangement of the parking spaces within the highway and re-configuring the bus stop may not involve either development or a change of use of land.

- a. Should the last paragraph of Policy NE4 be treated differently from the rest of the policy, identified as a 'community aspiration'?
- b. Is 'the defined area' referred to in criterion iv. the same as the 'defined Town Centre' or is it some other area (the Market Place only)?
- c. Is it correct to continue the numbering of the criteria (iv. to vii.) in the last paragraph of the policy as these appear to be unrelated to criteria (i. to iii) in the second part of the policy.

Policy NE5. Tourism Development.

Q18. *The second part of the policy indicates that proposals which enhance (my emphasis) the Old Prison will be 'supported' subject to certain criteria but the text in paragraph 5.22 indicates that the policy encourages further tourism and employment development at the site.* a. Which is correct? ('Enhancement' need not involve 'development' and conversely, 'development' may not 'enhance' but merely result in 'less than substantial harm' – 'old' NPPF para. 134)

- b. Should the second part of the policy refer to 'Development proposals ...' so as not to confuse with listed building consent procedures which are subject to separate legislation?

Policy NE6. Local Green Space.

Q19. *The primary intention of this policy appears to be to identify three areas considered to be of value to the local community and thus justify 'designation' as Local Green Space in accordance with 'old' NPPF paragraphs 77 and 78 and Local Plan Policy EN3. (See also my note under Q15 above about the use of the word 'resisted'.) Why use different words in NENP Policy NE6 than in Local Plan Policy EN3? Will that not cause uncertainty in decision-making contrary to PPG guidance? Is it necessary to do other than to state that LP Policy EN3 will apply to the areas of Local Green Space identified in the NENP, Plan H, I and J and on the Policies Map?*

⁴ Paragraph 004, Reference ID: 41-004-20170728

Thames Water Representation

Q20. *Thames Water seek the inclusion of informative text relating to water supply, waste water and sewerage. These considerations appear to be of general applicability not restricted to this Neighbourhood Plan area. Is it considered that Local Plan Policy INF8 is sufficient to cover Thames Water's concerns?*