

Matter 2: Definitions and use of Terminology

Issue 2.1: Whether the Plan is effective and consistent with national policy in its definitions and use of terminology.

1. We are neutral on the definition of “basement” at paragraph 34.3.46 (Inspector’s paragraph 10), and have not objected to it.
2. The points made at paragraphs 11, 12, and 13 of the Inspector’s “Matters Issues and Questions for Examination” concern the Council’s choice of inflexible terminology, namely “rules”, “control”, and the lack of “significantly” in relation to harm within CL7 I. In each respect we agree with the Inspector’s suggestion, while maintaining that merely changing these words will not be sufficient to prevent the policy operating in an inflexible and negative fashion. After all, it is the pursuit of “clarity” (which appears to be interpreted by the Council to mean lack of flexibility) within the policy which is said to justify the “rules” and “controls” which the Council wishes to impose. In our view the reasoning for and the effect of the “rules” is similar to a “rule” that residential development by way of an extension to a village in the countryside should be limited to no more than x dwellings. They are unjustified, ineffective, and inconsistent with national policy.
3. In our Representations we referred to CL7 I at paragraphs 15-157 and 167-168. We agree with the Inspector’s suggestion. Please see also our proposed draft policy contained within our Hearing Statement for Matter 11 and our response to paragraph 65 of ID/9A.
4. Turning to paragraph 13, we find the definition of larger sites vague but (if it is necessary to have the flawed and arbitrary criteria proposed by the Council) ultimately not unhelpful. This paragraph of the reasoned justification opens the door to the introduction of flexibility and demonstrates the need for it. The paragraph refers implicitly to the objective of the arbitrary criteria: to ensure construction impacts are acceptable and/or adequately mitigated. The ability to do so is, of course, not confined to “larger sites” or to “new development” and therefore the text introduces unnecessary uncertainty into the scope of the exception and the application of the policy. This uncertainty is surely undesirable if the criteria are defended for being “clear” (i.e. rigid) but is welcome to us as a necessary qualification in the circumstances. It is one which will be used to argue that, wherever construction impacts and any other considerations are adequately mitigated on site there is no real reason for the cap on proportion of garden and number of storeys.
5. Finally, paragraph 15 refers to clause e of CL7 and suggests that “substantial” should be added. Clause e at present reads “not cause harm to the significance of heritage assets”. It is one of three criteria dealing with heritage assets (f and g follow with certain prohibitions).
6. We agree that some qualification is needed if this criterion is to be consistent with the NPPF. However, merely adding “substantial” could itself have the problems referred to by English Heritage in response to the First Consultation [see our Representations at paragraph 125].
7. We believe there need only be one criterion (f and g are onerous and unnecessary if e is properly drafted). However the criterion needs to address the question both of “substantial”

and of “less than substantial” harm¹. We would endorse English Heritage’s suggestion² (quoted at paragraph 125 of our Representations) and recommend that the two tests within paragraphs 133 and 134 of the NPPF are used in a replacement of criterion e, f and g as follows: “not cause substantial harm to the significance of heritage assets. If proposals cause harm that is less than substantial, the public benefits of the development should outweigh any harm to the significance of the heritage asset.”

- END OF HEARING STATEMENT -

¹ See for example the recent Court of Appeal Judgment in *East Northamptonshire v SSCLG* [2014] 1 P&CR 22.

² We are told by the Council in BAS 06/02 that English Heritage have subsequently advised that they are “broadly content” with the soundness of the policy. We do not believe that this undermines the good sense of their original recommendation.