



Good Practice Advice Consultation
Government Advice Team
English Heritage
1 Waterhouse Square
138-142, Holborn
London, EC1N 2ST.

03 September 2014

Dear Sir / Madam,

Consultation on Historic Environment Good Practice Advice in Planning Notes 1, 2 & 3

Thank you for the opportunity to comment on these draft Good Practice Advice Notes.

The Institute for Archaeologists

The Institute for Archaeologists (IfA) is a professional body for the study and care of the historic environment. It promotes best practice in archaeology and provides a self-regulatory quality assurance framework for the sector and those it serves.

The IfA has over 3,000 members and more than 70 registered practices across the United Kingdom. Its members work in all branches of the discipline: heritage management, planning advice, excavation, finds and environmental study, buildings recording, underwater and aerial archaeology, museums, conservation, survey, research and development, teaching and liaison with the community, industry and the commercial and financial sectors.

The Institute was represented on the drafting group of the Historic Environment Forum which contributed to the production of these draft Good Practice Advice Notes.

IfA has successfully petitioned for a Royal Charter of Incorporation which was granted on 03 June 2014.

Historic Environment Good Practice Advice in Planning Notes 1, 2 & 3

General

IfA welcomes the publication of these draft Good Practice Advice Notes (GPAs). They represent a necessary and important updating and revision of *PPS5: Planning for the Historic Environment Practice Guide*. This Guide has played a significant role in the management and protection of the historic environment through the operation of the planning regime, but requires replacement now that the National Planning Policy Framework (NPPF) has superseded PPS5. The withdrawal of the PPS5 Practice Guide without further, fit-for-purpose advice would leave the historic environment vulnerable to unacceptable loss and damage.

The draft GPAs are particularly welcomed

- for their clear articulation of the respective responsibilities of local planning authorities and applicants in relation to heritage assets with archaeological interest and
- for their recognition of IfA standards as the accepted industry benchmark of good, proportionate practice designed to secure the best outcomes for both developers and the public.

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Detailed comments in response to the specific questions posed in the consultation are provided below. These comments should not detract from IfA's general support for the draft GPAs. Nevertheless, IfA does wish to highlight two areas of particular concern to its members in relation to GPA 2: Decision-Taking in the Historic Environment.

- The concept of '*limited harm*' to the significance of an asset of archaeological interest in paragraph 32 does not appear in paragraph 141 of the NPPF (which talks about requiring '*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*'). There is real concern that the concept of '*limited harm*' will in practice be interpreted so as to avoid taking steps to advance our understanding of the past (such as recording) in any but the most severe cases approaching total loss. This would undermine the delivery of public benefit and contradict the NPPF. IfA wishes to see the phrase '*limited harm*' removed from the GPA, to be replaced by a more proportionate approach in paragraph 32.
- The model conditions in paragraph 37 are strongly supported by the Institute (save that the wording of condition 3 has been inadvertently truncated in the draft GPA: see below). Conditions and obligations are key mechanisms to secure public benefit in relation to archaeological interest. However, the model conditions relating to archaeology in Appendix A to Circular 11/95 and the PINS Model Planning Conditions are insufficiently nuanced in all cases to facilitate sustainable development at the earliest opportunity while at the same time safeguarding and promoting the historic environment. The model conditions at paragraph 37 go much further towards achieving that goal through clearly identified, staged requirements (only one of which, that is draft condition 1, is 'pre-commencement' condition, thus allowing development to proceed in advance of the fulfilment of other requirements). These model conditions are supported by the Association of Local Government Officers (ALGAO) and others in the sector, as well as IfA, and their inclusion in the draft GPA is regarded as one of its strengths.

Specific Questions

Q1. 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.

1.1 Yes, save that further advice on HERs and their operation is needed.

Q2. 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.

2.1 Yes, save that it would be helpful to add a further example to paragraph 6 by deleting the word '*or*' in the fourth line and adding the words '*or archaeological assessment in order to investigate the potential for heritage assets with archaeological interest to be present in areas where the HER indicates that there has been little or no previous investigation*' after the words '*important heritage assets*' in the fifth line.

Q3. 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.

3.1 Yes, although there is a typographical error at the top of page 5 where the end of the first bullet point under paragraph 12 has been omitted.

3.2 Further detailed comments on the wording of GPA 1 are provided under question 10.

Q4. 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?

4.1 Yes. IfA particularly welcomes the identification of the Historic Environment Record in step 1(b) as a key point of reference.

Q5. Do you consider that the advice in GPA 2 which applies specifically to listed buildings, including paragraphs 12 on curtilage and paragraphs (229) 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.

5.1 Yes, provided that the GPA will be updated regularly, since otherwise references to 'changes to the regime' may soon become out-of-date.

Q6. 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.

6.1 Yes, subject to the following.

6.2 The first sentence of paragraph 31 helpfully makes clear that the benefits of conserving sites with archaeological interest (whether designated or not) are material considerations in the planning process. However, this clarity is undermined by the second sentence which appears to 'damn with faint praise'. IfA appreciates the need for proportionality in the process, but detects here and elsewhere in the GPA an over-emphasis on proportionality which risks diluting the robustness and practical benefit of the advice.

6.3 IfA suggests deleting the second sentence of paragraph 31 and replacing it (and other specific references to proportionality) with an overarching statement about the need for proportionality at the beginning of the document.

6.4 Similarly, the reinforcement of the word 'may' in paragraph 14 with 'occasionally' appears doubly to dilute the warning in the first sentence. The use of the word 'may' is appropriate since this is by no means always the case, but we would suggest deleting the word 'occasionally'.

6.5 Draft condition 3 in paragraph 37 stops mid-sentence. The full sentence should read:

'The development should not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the written scheme of investigation approved under condition 1 and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.'

6.6 It would also be helpful in paragraph 37 to highlight the fact (whether in text or by the use of sub-headings in the draft conditions) that the only pre-commencement requirements are those under condition 1.

6.7 Further detailed comments on the wording of other aspects of GPA 2 are provided under question 10.

Q7. 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?

7.1 Yes, provided that condition 3 is revised as suggested above. As revised, not only are they sufficient; they are necessary to provide clarity for practitioners and developers alike. As precise, proportionate and fit-for-purpose conditions they satisfy the requirements of Good Practice Guidance (formerly in the main body of Circular 11/95) and would help to reduce unnecessary burdens on development. IfA strongly supports English Heritage's inclusion of these draft conditions in GPA 2. See also above under general comments and paragraphs 6.5 and 6.6.

Q8. 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.

8.1 Yes.

Q9. 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)?

9.1 Yes, but further work is needed on this document to ensure that policy, guidance and advice on setting (now spread across the NPPF, the Planning Practice Guide and GPA 3) are clear, consistent and comprehensive. In the first instance, clearer cross-referencing between these documents would be helpful, but more fundamental issues remain.

9.2 IfA (in particular, through the work of its settings working group) contributed to the formulation of English Heritage Guidance: The Setting of Heritage Assets (2011). It is understood that this document will be superseded by GPA 3 (along with the NPPF and the Planning Practice Guide) and IfA is concerned that some aspects of this valuable guidance, necessary for the effective management and protection of the historic environment, may be lost if GPA 3 is published in its present form.

9.3 For instance, strategic planning and Strategic Environmental Assessment (section 3 of the 2011 Guidance) are not addressed in GPA 3. Furthermore, although EIA is touched upon in the text box on page 6, section 6 of the 2011 Guidance (relating to Environmental Impact Assessment) is not reproduced in the draft GPA and more detailed advice would aid the assessment of setting in this context.

9.4 Much of the detail in the appendices to the 2011 Guidance is not reproduced in GPA 3. While some details might best be incorporated through the wider cross-referencing advocated above, other matters considered in the appendices warrant inclusion in the main body of the GPA. The material on statutory duties in Appendix 2 of the 2011 Guidance, for example, should be clearly addressed (considering such matters as procedural requirements and the implications of the duty to 'have special regard').

9.5 IfA has the following comments upon advice which does appear in the draft GPA:

(1) The suggestion that '*character ... is a ... non-statutory concept*' (page 1, the second bullet point of paragraph 2) needs to be qualified insofar as conservation areas are defined in the Planning (Listed Buildings and Conservation Areas) Act 1990 by reference to '*character and appearance*'.

(2) There is scope for confusion between the advice in the opening part of paragraph 8 ('*Setting is not a heritage asset...*') and the advice later in the paragraph, on '*Designed settings*' ('... *designed settings may also be regarded as heritage assets in their own right.*'). This would best be resolved by qualifying the former

assertion and perhaps providing a cross-reference to the advice on designed settings. Reference is also made in that paragraph (and repeated in paragraph 14 on page 7) to the 'immediate' (as opposed to 'wider') setting of assets. Such terms are not defined and should not be used to restrict the assessment of impact. A reference such as that in section 2.2 of the 2011 Guidance (*'Reference is sometimes made to the 'immediate' and 'extended' setting of a heritage assets, but the terms should not be regarded as having any particular formal meaning'*) could be inserted as a footnote to clarify this.

(3)(i) Draft GPA 3 rightly addresses the significance of heritage assets and the effects of development on that significance in the context of setting. However, it does not deal with the assessment of 'substantial harm' caused by development within the setting of a heritage asset. The Good Practice Guide (Reference ID: 18a-017-20140306) does provide guidance on this, which includes the following:

'In general terms, substantial harm is a high test, so it may not arise in many cases. ... The harm may arise from works to the asset or from development within its setting.'

Moreover, in the section on 'Renewable and low carbon energy' (Reference ID: 5-019-20140306) the Guidance acknowledges that:

'As the significance of a heritage asset derives not only from its physical presence, but also from its setting, careful consideration should be given to the impact of wind turbines on such assets. Depending on their scale, design and prominence a wind turbine within the setting of a heritage asset may cause substantial harm to the significance of the asset.'

(ii) Nevertheless, Inspectors in a number of appeal decisions have taken a restrictive view of the ability of development within the setting of a heritage asset to cause substantial harm to the significance of that asset (see, for instance, paragraph 23 of the decision letter in respect of Warren Farm, Wells (Appeal Ref: APP/Q3305/A/12/2181741) which justifies a narrow approach, in part, by reference to the PPS 5 Practice Guide).

(iii) With that in mind, it would be helpful clearly to state in GPA 3 (perhaps under Step 3 on pages 9-11 of the draft):

'Depending on its scale, design and prominence, development within the setting of a heritage asset may cause substantial harm to the significance of the asset.'

(4) The draft GPA touches on issues of permanence and reversibility. However, unsustainable development which causes harm to the significance of heritage assets should not be allowed simply because it is reversible¹

Q10. Have you any further comments to make on Good Practice Advice notes 1-3?

GPA 1

10.1 For those not familiar with Areas of Archaeological Importance, it would be helpful to amplify footnote 17 under paragraph 15 to indicate that AAIs have only ever been designated in relation to five cities, namely Canterbury, Chester, Exeter, Hereford and York and do not override the local planning authority's or applicant's responsibilities under the NPPF. Otherwise the mistaken impression may be given that this is a ubiquitous designation.

10.2 Adding the following, further example to paragraph 16 (after the words *'This could mean...'* in the fourth line) would help to make the approach more explicit:

'avoiding the allocation of areas where there are designated heritage assets or undesignated heritage assets with archaeological interest of equivalent significance, and where development would harm the significance of those assets, ...'

10.3 IfA welcomes the reference in paragraph 20 to marine planning, but would like to see mention in that paragraph (and in GPA 2 in relation to decision-making) of the overlap of jurisdictions in the inter-tidal zone and the need for a consistent approach in marine and terrestrial planning both in the inter-tidal zone and elsewhere.

10.4 A cross-reference back to paragraph 5 (*Sources of evidence*) in the section on Neighbourhood Plans (paragraphs 26-29) would assist with signposting appropriate sources of information for use in neighbourhood planning.

10.5 The highlighting in paragraph 27 of the statutory requirements relating to listed buildings and conservation areas is understandable, but may lead an uninformed reader to assume that these are the only historic environment considerations relevant to neighbourhood planning. Further references to the historic environment in this paragraph (for instance, making clear that national policies and advice and strategic local polices include policies and advice on the historic environment and referring specifically to scheduled monuments) would be helpful.

10.6 The reference to 'neighbourhood forums' in paragraph 28 excludes parish councils which should either be expressly included or subsumed within a reference to 'qualifying bodies'. Furthermore, such bodies propose boundaries to the neighbourhood plan area but do not actually set them.

GPA 2

10.7 IfA welcomes and strongly supports the reference to expertise in paragraph 22, but is concerned to see that this paragraph omits any reference to local authority services (cf. for instance, paragraph 73 of the PPS 5 Practice Guide). Although GPAs will not prescribe particular forms of service provision, this does not mean that English Heritage should not provide support and encouragement for local authority services which play a key role in the management and protection of the historic environment. The need to use appropriate expertise remains (whomever those experts may be employed by), but prior to that sentence the Institute suggests that the following should be inserted:

'In most cases the need to understand the significance of the heritage asset will demand expert advice from in-house experts, experts available through agreement with other authorities or consultants.'

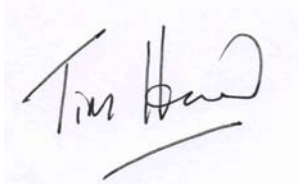
10.8 The reference in paragraph 24 (which addresses all heritage assets) should be to 'paragraphs 133 and 135' [my underlining] since the former relates to designated and the latter to non-designated assets.

10.9 Although the link to DCMS Scheduling Guidance in paragraph 47 is helpful, a brief explanation of the need for scheduled monument consent and the independence of the procedure from the planning process would also be useful.

10.10 The phrase '*generally impeding useful development of its site*' in paragraph 52 does not appear in the NPPF nor in the PPS 5 Practice Guide as one of the criteria justifying loss or substantial harm to heritage assets. Although most archaeological remains are likely to fall within the exception (assets '*which, by their nature, have limited or no economic end use*'), the phrase '*genuinely impeding useful development of its site*' could be interpreted more narrowly than its predecessor in the PPS 5 Practice Guide (*'preventing all reasonable uses of the site in which it sits*', paragraph 92 [my emphasis]) and should be revised to avoid any inadvertent weakening of protection.

The Institute will be pleased further to contribute to the formulation of Good Practice Advice relating to the historic environment (and hopes shortly to meet representatives of English Heritage further to discuss the most appropriate wording of draft conditions). In the meantime, if there is anything further that I can do to assist please do not hesitate to contact me.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Tim Howard', with a horizontal line underneath.

Tim Howard LLB, Dip Prof Arch
Policy Advisor

¹ Paragraph 101 of English Heritage's Conservation Principles (2008) makes the further point that *'Unless of very short duration, crude and intrusive changes are certainly not justifiable simply because they are theoretically temporary or reversible, for they risk becoming permanent.'*