

By virtue of **ss71(1) (2) and (3) Planning (Listed Buildings and Conservation Areas) Act 1990:**

“Formulation and publication of proposals for preservation and enhancement of conservation areas

(1) It shall be the duty of a local planning authority from time to time to formulate and publish proposals for the preservation and enhancement of any parts of their area, which are conservation areas.

(2) Proposals under this section shall be submitted for consideration to a public meeting in the area to which they relate.

(3) The local planning authority shall have regard to any views concerning the proposals expressed by persons attending the meeting.

PPG15 paras 4.9 and 4.10 state:

Policies for conservation areas

4.9 *Section 71 of the Act places a duty on local planning authorities to formulate and publish proposals for the preservation and enhancement of conservation areas. It is important that designation is not seen as an end in itself: policies will almost always need to be developed which clearly identify what it is about the character or appearance of the area, which should be preserved or enhanced, and set out the means by which that objective is to be pursued. Clear assessment and definition of an area's special interest and the action needed to protect it will help to generate awareness and encourage local property owners to take the right sort of action for themselves.*

4.10 *The Act requires proposals for the preservation and enhancement of a conservation area to be submitted for consideration to a 'public meeting' in the area, but wider consultation will almost always be desirable, both on the assessment of special interest and on proposals for the area. Consultation should be undertaken not only with local residents and amenity societies but also with chambers of commerce, public utilities, and the highway authority. The character and appearance of many conservation areas is heavily dependent on the treatment of roads, pavements and other public spaces (see paragraphs 5.13-5.18). It is important that conservation policies are fully integrated with other policies for the area, eg. for shopping and traffic management. Account should also be taken of wider policies (eg. for house renovation grants) which may affect the area's character or appearance. The preparation of local plans provides the best opportunity for integrating conservation policies with wider policies for the area, though a local planning authority's detailed statement of proposals for the conservation area should not itself be part of the development plan (see paragraphs 2.9 above and 4.15 below). Carefully targeted grant schemes using the authority's powers under section 57 of the Act to help with repair and enhancement should also be considered as part of the policy for an area. In certain cases English Heritage Conservation Area Partnership funding may be available.*

Para 4.15 states:

4.15 *The status now accorded to the development plan by section 54A of the principal Act makes it particularly important that an authority's policies for its conservation areas, insofar as they bear on the exercise of development controls, should be set out in the local plan. There should also be a clear indication of the relationship between the plan itself and detailed assessment documents or statements of proposals for particular conservation areas, making clear that development proposals will be judged for their effect on the character and appearance of the area as identified in the assessment document.*

Para 2.9 states:

2.9 Plans should set out authorities' broad criteria for the designation of new conservation areas and for the review of existing conservation area boundaries; and, where possible, which particular areas are in mind for both. The process of assessment, detailed definition or revision of boundaries, and formulation of proposals for individual conservation areas (as required by section 71 of the Act) should involve extensive local consultation and should be pursued separately from the local plan process itself. But the plan should provide a policy framework, making clear to the public how detailed assessment documents and statements of proposals for individual conservation areas relate to the plan, and what weight will be given to them in decisions on applications for planning permission and conservation area consent. (See also paragraphs 4.3-4.7, 4.10 and 4.15). Designation strategies should take account of the fact that authorities now have general powers to control the demolition of dwelling houses outside conservation areas (see Department of the Environment Circular 26/92).

Having regard to the duties outlined in the Act, supported by PPG15, we believe that the committee cannot reasonably be expected to make substantial development decisions without a character appraisal. The whole basis of the Applicant's applications is the preservation and enhancement of the conservation area of Moorpool. It would not be reasonable, we believe, to complete and consult upon a character appraisal after any development decisions have been made, particularly in light of the extent of objection to the current plans. To do so would make a nonsense of the statutory and policy requirements. In essence, the character appraisal goes to the heart of the application, and the mandatory requirement for its completion is a fundamentally necessary part of the decision making process. To ask that the committee make its decision without the character appraisal, outlining the relevant legislative and policy requirements to them, may lead to the possibility of illegality.

The requirement for and continuing lack of a character appraisal has also been an outstanding issue for English Heritage. I enclose a copy of an email sent to my colleague, Rob Sutton, Chairman of the Residents' Association, following a meeting between him and Michael Taylor, Historic Areas Adviser for English Heritage on 24th April 2009. We believe that not only does this encapsulate the strength of English Heritage's opinion of the proposals, but reiterates the need for a character appraisal. From Michael Taylor's letter, it is clear that any such appraisal of the Moor Pool estate would have at its heart the deliberately planned network of integrated open spaces and that any decisions by the Planning Committee without cognisance of this would risk permanently damaging a conservation area of exceptional importance to the West Midlands Region and potentially of national importance. Rob Sutton has been given permission to distribute the content of this email and therefore we would wish the content of this email to be brought in full to the attention of the committee and for its implications to be fully understood.

I also remind you of the objection from The Victorian Society from which I quote "As these proposals are likely to significantly alter the character of parts of the area, in any case it is our opinion that the applications for planning and conservation area's consent cannot properly be considered by the Planning Committee until the Character Appraisal and Management Plan has been adopted by the Council."

We would again wish the content of this email to be brought in full to the attention of the Committee.

It is our belief that a character appraisal is not only necessary but also a mandatory duty imposed upon the authority, and that development decisions within a conservation area such as Moor Pool which has particular historical significance should not be made without its formulation, publication and consultation. We would urge you to consider this in light of the above and to discuss this issue with your conservation officer and legal department.

Ecology:

There are a number of ecology issues outstanding, which have not been addressed fully in the reports to the committee. These are outlined in our original letter of objection. There is substantial disparity between the ecology report prepared by the Applicant and the MRG, and this has not been fully outlined in the reports.

Of particular concern is the inadequacy of the bat survey. The bat survey conducted by the Applicant is inadequate, and this is an assertion supported by the Wildlife Trust. The Applicant has not followed the **English Nature Bat Mitigation Guidelines 2004**, and this is not addressed in the reports. The committee should be provided with the full details of this important point, as the guidelines provide the yardstick against which reasonable action might be measured. The recommendation in the reports is to deal with the issue of the inadequacy of the bat survey with conditions. This is contrary to the decision of **R-v-Cornwall County Council ex parte Jill Hardy 22nd September 2000**.

Whilst the objections are alluded to in the reports, the full extent of the discrepancies between the Applicant's ecology survey and the Residents' survey is not outlined. Given the content of the Residents' survey there is a fear that species protected by **s74 Countryside and Rights of Way Act 2000** may be placed at risk.

The reports do not address biodiversity duties, newly imposed upon local planning authorities. Under such duties every public authority must, in exercising its functions, have regard so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity. The net loss of allotments and the many outstanding issues in relation to ecology may place the authority in breach of these duties, as this has not been addressed.

The issue as to whether there is a requirement for an Environmental Impact Assessment (EIA) has also not been addressed. We believe that the size of a given project is not the only criterion. The European Court of Justice (ECJ) has consistently held in its application, that the requirement for an EIA is to be interpreted as having a "wide scope and broad purpose". (**Kraaijveld (Dutch Dykes) Case C-72/95**). This has implications for local planning authorities when they are screening for EIA. The wording of the EIA directive should be interpreted widely. The fact that a particular type of development is not listed specifically within one of the categories of projects in the directive or EIA regulations does not imply that it is not caught. The categories of projects are illustrative, not exhaustive and should be read in a purposive manner to include similar types of project. Particular care is needed when considering development that could fall within the categories of "industrial estate development" and "urban development projects" listed under infrastructure projects (schedule 2.10 projects). We are concerned that there may be a requirement for an EIA in this case, but this issue has not been investigated or brought to the attention of the committee.

In relation to all of the outstanding ecology issues, outlined above, and in our original letter of objection, we would urge you to consult your ecology officer and legal department. Of particular concern are the inadequate bat survey and the possible breach of the relevant guidelines and legal authority.

Open Space:

As submitted to the committee on 23rd April 2009, we do not believe that the compensatory proposals within the reports accord with paragraphs 3.52A and 3.62A UDP. We note from the addendum report, prepared for the committee at a late stage, that the Moor Pool Allotment Association's alternative proposal requested by them as a condition for the demolition application for the Valley Site (Site A) was rejected, stating that it did not form part of the original application. The Applicant's new "offer" of the re-introduction of Site B, which is presently allotment land and the re-introduction of twenty-six allotment plots, did not form any part of the Applicant's original application. This is not mentioned in the reports or made clear to the committee, and it would seem that there is a lack of proportionality when considering these two points. (The issue of site B vs. our proposal) It was also not made clear that Site B is already allotment land, and therefore part of the open space network, for which there is evidenced demand. If the committee are to make a reasonable and proportionate decision we believe that the reality of the "re-introduction" of existing allotment space, which did not form any part of the application and the Allotment Associations proposal for Site A allotment restoration as a condition, should be made clear to the committee.

I am aware of the considerable pressure placed upon you by this and the many other planning applications, which you must consider. However, in view of the conservation status of the Moorpool area and the potentially serious outstanding issues outlined above, the MRG would urge you to consider these matters in consultation with your colleagues. We believe that the consequences for the estate will be grave if these matters are not dealt with before any decision is made.

If you require clarification on any of the above points, or wish to discuss them, please do not hesitate to contact me. I look forward to hearing from you in due course.

Yours sincerely,

A handwritten signature in blue ink that reads "Andrew Hackett". The signature is written in a cursive style and is underlined with a single blue stroke.

Andrew Hackett
Chairman, Moorpool Regeneration Group